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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KETAB CORP.,  
  
Plaintiff,  
  
vs.  
  
MESRIANI & ASSOCIATES,  
RODNEY MESRIANI, SEYED ALI  
LIMONADI, ALI LIMONADI,  
STUDIO CINEGRAPHIC LOS  
ANGELES dba IRTV, MELLI  
YELLOW PAGES, INC., and  
DOES 1 through 10,  
inclusive,  
  
Defendants.

2:14-cv-07241-RSWL (MRW)  
  
**ORDER re: Mesriani  
Defendants' Motion to  
Dismiss Plaintiff's  
Second Amended Complaint  
Pursuant to Fed. R. Civ.  
P. 12(b)(6) [108]**

Currently before the Court is Defendants Mesriani & Associates and Rodney Mesriani's (collectively, "Mesriani Defendants") Motion to Dismiss [108] Plaintiff Ketab Corp.'s ("Plaintiff" or "Ketab") Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Mesriani Defendants request dismissal with prejudice of the three remaining claims

1 asserted against them.

2 Upon review of all papers submitted and pertaining  
3 to this Motion [108], the Court **GRANTS** Mesriani  
4 Defendants' Motion to Dismiss [108] in its entirety.

5 **I. BACKGROUND**

6 **A. Factual Background**

7 Plaintiff's action alleges various claims related  
8 to trademark infringement against five named  
9 defendants: Mesriani & Associates, Rodney Mesriani,  
10 Seyed Ali Limonadi, Studio Cinegraphic Los Angeles, and  
11 Melli Yellow Pages, Inc. Second Amend. Compl. ("SAC"),  
12 ECF No. 106.

13 Plaintiff Ketab Corp. is a California corporation  
14 located in Los Angeles. SAC ¶¶ 4, 12. Defendant  
15 Mesriani & Associates is a law firm located in Los  
16 Angeles. SAC ¶ 5; Mesriani Defs.' Mot. Dismiss FAC  
17 1:6, ECF No. 64. Defendant Rodney Mesriani is  
18 allegedly a principal of Mesriani & Associates who  
19 resides in Los Angeles. SAC ¶ 9.

20 Plaintiff alleges that since 1981, Plaintiff has  
21 been in the business of providing "directory and  
22 marketing services" "to the Iranian community . . .  
23 around the world," including in Southern California,  
24 "who live outside of Iran." SAC ¶ 12. Plaintiff  
25 alleges it uses "several trade names and marks to  
26 identify its services," including in relevant part an  
27 "08" mark and "combinations of the '08' mark." Id.  
28 Plaintiff's "08" mark is a federally registered design

1 mark that consists of the numbers "08" placed in a dark  
2 rectangular box overlaid with horizontal lines that  
3 resemble closed shutters. See id., Ex. 1 (Registration  
4 No. 3,271,704). Plaintiff does not specifically  
5 identify the alleged marks that it terms "combinations  
6 of the '08' mark," and Plaintiff does not provide any  
7 examples or images of any marks that combine anything  
8 with its registered "08" design mark. Plaintiff does  
9 allege that it uses a telephone number (818-908-0808)  
10 and an internet domain name (www.08.net) that contain  
11 the numbers "08." Id. ¶ 12.

12 Plaintiff alleges that Mesriani Defendants used  
13 trademarks that contained the numbers "08" in an  
14 advertisement for the Mesriani & Associates law firm.  
15 Id. ¶ 36. Specifically, Plaintiff alleges that  
16 Mesriani Defendants used "a phone number mark" (818-  
17 808-0808) and a "domain name mark" (www.08law.net) in  
18 Defendant's "advertising and marketing" of the Mesriani  
19 law firm. Id.

20 On these facts and others, Plaintiff alleges the  
21 following three claims against Mesriani Defendants:

22 (1) Federal Trademark Dilution, in violation of 15  
23 U.S.C. § 1125(c), SAC ¶¶ 79-86;

24 (2) Intentional Interference with Economic  
25 Relations, in violation of California law, SAC ¶¶  
26 104-111; and

27 (3) Negligent Interference with Economic Relations,  
28 in violation of California law, SAC ¶¶ 112-119.

1 Mesriani Defendants move to dismiss with prejudice all  
2 three claims asserted against them.

3 **B. Procedural Background**

4 Plaintiff filed its Complaint [1] on September 16,  
5 2014. On November 7, 2014, Mesriani Defendants filed  
6 their first Motion to Dismiss [29]. The Court granted  
7 [42] Mesriani Defendant's Motion to Dismiss in its  
8 entirety but granted Plaintiff leave to amend the three  
9 claims presently alleged. Plaintiff filed a First  
10 Amended Complaint [53], see Dckt. # 59, and on March  
11 14, 2015, Mesriani Defendants filed a Motion to Dismiss  
12 Plaintiff's FAC [64], which the Court granted [100].  
13 The Court again granted Plaintiff leave to amend the  
14 three claims presently alleged. See Dckt. # 100.

15 On May 22, 2015, Plaintiff filed its Second Amended  
16 Complaint ("SAC") [106]. On June 5, 2015, Mesriani  
17 Defendants filed the present Motion to Dismiss Second  
18 Amended Complaint [108]. The Opposition [122] and  
19 Reply [125] were timely filed. The present Motion to  
20 Dismiss [108] was set for hearing on July 7, 2015, and  
21 was taken under submission on July 1, 2015 [130].

22 **II. LEGAL STANDARD**

23 **A. Rule 12(b)(6) Motion to Dismiss**

24 Federal Rule of Civil Procedure 12(b)(6) allows a  
25 party to move for dismissal of one or more claims if  
26 the pleading fails to state a claim upon which relief  
27 can be granted. Fed. R. Civ. P. 12(b)(6). Dismissal  
28 can be based on a "lack of a cognizable legal theory or

1 the absence of sufficient facts alleged under a  
2 cognizable legal theory." Balistreri v. Pacifica  
3 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). A  
4 complaint must "contain sufficient factual matter,  
5 accepted as true, to state a claim to relief that is  
6 plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
7 662, 678 (2009) (internal quotation marks omitted);  
8 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).  
9 The question presented by a motion to dismiss is not  
10 whether the plaintiff will ultimately prevail, but  
11 whether the plaintiff has alleged sufficient factual  
12 grounds to support a plausible claim to relief, thereby  
13 entitling the plaintiff to offer evidence in support of  
14 its claim. Iqbal, 556 U.S. at 678; Swierkiewicz v.  
15 Sorema N.A., 534 U.S. 506, 511 (2002).

### 16 III. DISCUSSION

#### 17 A. Requests for Judicial Notice

18 Rule 201 of the Federal Rules of Evidence states  
19 that the court "may judicially notice a fact that is  
20 not subject to reasonable dispute because it: (1) is  
21 generally known . . .; or (2) can be accurately and  
22 readily determined from sources whose accuracy cannot  
23 reasonably be questioned." Fed. R. Evid. 201(b).

24 Generally, when "'ruling on a Rule 12(b)(6)  
25 motion,'" "'a district court may not consider any  
26 material beyond the pleadings.'" Lee v. City of L.A.,  
27 250 F.3d 668, 688 (9th Cir. 2001). However, two  
28 exceptions exist. Id. First, "a court may consider

1 'material which is properly submitted as part of the  
2 complaint' on a motion to dismiss without converting  
3 the motion to dismiss into a motion for summary  
4 judgment," and if the documents are not physically  
5 attached to the complaint, "they may be considered if  
6 the documents' authenticity is not contested and [if]  
7 the plaintiff's complaint necessarily relies on them."  
8 Id. (internal quotation marks and alterations omitted).  
9 Second, "a court may take judicial notice of 'matters  
10 of public record'" under Federal Rule of Evidence 201.  
11 Id.

12 1. Defendants' Request for Judicial Notice

13 Mesriani Defendants request that the Court take  
14 judicial notice of seven items of evidence. Def.'s  
15 Requ. Judicial Notice, ECF No. 110. Because the Court  
16 need not rely on any of the seven exhibits to determine  
17 the present Motion, the Court **DENIES AS MOOT**  
18 Plaintiff's Request for Judicial Notice. See Rouse v.  
19 Conner, No. C 12-2121 PJH, 2012 WL 2589240, at \*1 (N.D.  
20 Cal. July 3, 2012) ("[T]he court may deny a request for  
21 judicial notice of facts that are not relevant to the  
22 question at issue.").

23 2. Plaintiff's Request for Judicial Notice

24 Plaintiff requests that the Court take judicial  
25 notice of the following evidence:  
26 (1) USPTO Status Page for the "08" design mark, serial  
27 number 78732086, see Pl.'s Requ. Judicial Notice, Ex.  
28 A, ECF No. 123;

1 (2) USPTO Registration cancellation of the "08" design  
2 mark, serial number 7469633, see id. Ex. B;

3 (3) USPTO Status Page for the "Logo Mark" trademark,  
4 serial number 78732086, see id. Ex. C; and

5 (4) USPTO Status Page for the "Logo Mark," serial  
6 number 78732094, see id. Ex. C.

7 Because Exhibits B and C are irrelevant to  
8 determining the present Motion, the Court **DENIES AS**  
9 **MOOT** Plaintiff's Request for judicial notice of  
10 Exhibits B and C. See Rouse, 2012 WL 2589240, at \*1.

11 Because Exhibit A "can be accurately and readily  
12 determined from sources whose accuracy cannot  
13 reasonably be questioned," Fed. R. Evid. 201(b), and is  
14 a "matter of public record," Lee, 250 F.3d at 688, the  
15 Court **GRANTS** Plaintiff's Request and takes judicial  
16 notice of the fact and content of Exhibit A.

#### 17 **B. Mesriani Defendants' Motion to Dismiss**

18 Dismissal of a claim under Federal Rule of Civil  
19 Procedure 12(b)(6) can be based on a "lack of a  
20 cognizable legal theory or the absence of sufficient  
21 facts alleged under a cognizable legal theory."  
22 Balistreri, 901 F.2d at 699. A complaint must "contain  
23 sufficient factual matter, accepted as true, to state a  
24 claim to relief that is plausible on its face." Iqbal,  
25 556 U.S. at 678 (internal quotation marks omitted).

##### 26 1. Dilution of a Famous Mark Claim

27 Section 42(c) of the Lanham Act states that  
28 "[s]ubject to the principles of equity, the owner of a

1 famous mark that is distinctive, inherently or through  
2 acquired distinctiveness, shall be entitled to an  
3 injunction against another person who, at any time  
4 after the owner's mark has become famous, commences use  
5 of a mark or trade name in commerce that is likely to  
6 cause dilution by blurring or dilution by tarnishment  
7 of the famous mark, regardless of the presence or  
8 absence of actual or likely confusion, of competition,  
9 or of actual economic injury." 15 U.S.C. § 1125(c)(1).

10 To state a claim for dilution of a famous mark, a  
11 plaintiff must show that 1) the mark is famous; 2) the  
12 defendant is using a diluting mark "in connection with"  
13 the sale of goods or services; 3) the defendant's use  
14 of the mark began after the mark became famous; and 4)  
15 the defendant's use of the mark either a) "impairs the  
16 [mark's] distinctiveness" or b) "harms the reputation  
17 of the famous mark." 15 U.S.C. § 1125(c); Panavision  
18 v. Toeppen, 141 F.3d 1316, 1324 (9th Cir. 1998).

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23 a. *Famous Mark Element*<sup>1</sup>

24 A "famous mark" is defined as a mark that is

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26 <sup>1</sup> Though the Court previously stated in its February 6,  
27 2015, Order [42] that Plaintiff's allegations were sufficient to  
28 allege a famous mark, the Court reconsiders that determination  
based on the persuasive arguments of the parties and a review of  
relevant case law.



1 "widely recognized by the general consuming public of  
2 the United States as a designation of source of the  
3 goods or services of the mark's owner." 15 U.S.C. §  
4 1225(c)(2)(A); Yelp Inc. v. Catron, 70 F. Supp. 3d  
5 1082, 1096 (N.D. Cal. 2014).

6 Under Ninth Circuit case law, "trademark dilution  
7 claims are restricted to truly famous marks, such as  
8 Budweiser beer . . . and Barbie dolls." Dahon N. Am.,  
9 Inc. v. Hon, No. 2:11-cv-05835-ODW (JCGx), 2012 WL  
10 1413681, at \*9 (C.D. Cal. Apr. 24, 2012); see Fruit of  
11 the Loom, Inc. v. Girouard, 994 F.2d 1359, 1362-63 (9th  
12 Cir. 1993). The Ninth Circuit has explained that  
13 "[d]ilution is a cause of action invented and reserved  
14 for a select class of marks—those marks with such  
15 powerful consumer associations that even non-competing  
16 uses can impinge on their value." Avery Dennison Corp.  
17 v. Sumpton, 189 F.3d 868, 875 (9th Cir. 1999). In  
18 other words, a federal trademark dilution statute  
19 "tread[s] very close to granting 'rights in gross' in a  
20 trademark." Id. "Therefore, to meet the 'famousness'  
21 element of protection under the dilution statutes, a  
22 mark must be truly prominent and renowned." Id.  
23 (internal quotation marks and alterations omitted).

24 Here, Plaintiff's strongest allegations for a  
25 famous mark are its allegations regarding its "08"  
26 design mark (Registration No. 3,271,704), which is  
27 presumptively distinctive because it is a registered  
28 mark. See id. But Plaintiff's allegations for any of

1 its alleged marks do not rise above the level of  
2 distinctiveness, and mere distinctiveness is not enough  
3 to support a finding of famousness. Id. ("If dilution  
4 protection were accorded to trademarks based only on a  
5 showing of inherent or acquired distinctiveness, we  
6 would upset the balance in favor of over-protecting  
7 trademarks, at the expense of potential non-infringing  
8 uses."); see SAC ¶¶ 81-83 (alleging that all of "the  
9 KETAB MARKS" are famous without identifying any  
10 specific mark).

11 It is obvious that Plaintiff's "08" design mark, as  
12 well as Plaintiff's "08" phone number and "08" website  
13 or any other "mark" alleged by Plaintiff, does not rise  
14 to the level of famousness required by Ninth Circuit  
15 case law. Plaintiff has not pled any facts, beyond  
16 conclusory allegations, that would support a plausible  
17 assertion of famousness. See Fruit of the Loom, 994  
18 F.2d at 1363 (noting that a famous mark must be "a  
19 famous American trademark" "in the class of "TIFFANY,  
20 POLAROID, ROLLS ROYCE, and KODAK"); see also Avery  
21 Dennison, 189 F.3d at 876 (finding that the "Avery" and  
22 "Dennison" trademarks, though likely distinctive, were  
23 not, as a matter of law, famous for purposes of a  
24 trademark dilution claim). Plaintiff's "08" design  
25 mark and the other alleged "08" marks are "by no means  
26 as distinctive as . . . 'Polaroid' or 'Kodak,'" and "it  
27 strains the intellect to imagine how [Plaintiff] . . .  
28 might . . . convince the Court otherwise." Metro Pub.,

1 Ltd. v. San Jose Mercury News, Inc., 861 F. Supp. 870,  
2 880-81 (N.D. Cal. 1994). Just as the Court in Metro  
3 Publishing reasoned, if Plaintiff were to prevail on  
4 this claim, "the use of the innocuous, everyday" number  
5 combination of "08" "would become forbidden," and  
6 "[s]uch a result would make little sense." Id. at 881.  
7 As such, Plaintiff fails to allege the famousness  
8 element of its dilution claim.

9 b. *Dilution Element*

10 Additionally, Plaintiff must also plead facts that  
11 plausibly show that Defendants' alleged conduct  
12 impaired the distinctiveness, or harmed the reputation,  
13 of Plaintiff's famous mark. U.S.C. § 1125(c);  
14 Panavision, 141 F.3d at 1324.

15 To "impair the distinctiveness" of a famous mark  
16 means to "diminish the capacity of the mark to identify  
17 and distinguish goods and services." Panavision, 141  
18 F.3d at 1324. The facts alleged by Plaintiff to  
19 support this element are that (1) "Ketab started to  
20 receive calls from its customers and members claiming  
21 that [the customers] . . . called Defendants' 08 phone  
22 number believing that they were calling Ketab, . . .  
23 and were upset and confused when they realized that  
24 Defendants were not affiliated with Ketab"; (2)  
25 "Defendants' use of the marks . . . created confusion  
26 in the public" because "customers were unable to tell  
27 whether they were contacting Ketab or Defendants or  
28 whether Ketab and Defendants were one and the same";

1 and (3) Plaintiff has "seen a reduction in its business  
2 since the Defendants began to use [the alleged] marks .  
3 . . . , which can only be attributed to the Defendants[']  
4 actions." SAC ¶ 84.

5 Such allegations do not plausibly show dilution of  
6 a famous mark. Merely because customers mistakenly  
7 dialed Defendants' phone number (818-808-0808) rather  
8 than Plaintiff's phone number (818-908-0808) is not  
9 evidence that the distinctiveness of any of Plaintiff's  
10 alleged "08" marks, including its "08" design mark,  
11 have been impaired or that the alleged marks'  
12 reputations have been harmed. It is implausible that a  
13 reasonable consumer would be confused between a law  
14 firm and a provider of directory and marketing services  
15 merely because both companies use the numbers "08" in  
16 their telephone numbers and domain names.

17 In light of the above, the Court **GRANTS** Defendants'  
18 Motion to Dismiss Plaintiff's claim for federal  
19 trademark dilution. Because the Court finds that  
20 Plaintiff's alleged marks are not famous as a matter of  
21 law, Plaintiff's dilution claim is **HEREBY DISMISSED**  
22 **WITH PREJUDICE.**

23 2. Intentional Interference with Economic  
24 Relations Claim

25 "The tort of intentional or negligent interference  
26 with prospective economic advantage imposes liability  
27 for improper methods of disrupting or diverting the  
28 business relationship of another which fall outside the

1 boundaries of fair competition." Stolz, 25 Cal. App.  
2 4th 1811, 1824-25 (1994). An intentional interference  
3 with economic relations claim can be based on two  
4 theories: (1) intentional interference with prospective  
5 economic relationship, or (2) intentional interference  
6 with a contractual relationship. Id.; Pac. Gas & Elec.  
7 Co. v. Bear Stearns & Co., 791 P.2d 587, 50 Cal.3d  
8 1118, 1126 (1990).

9 a. *Contractual Relationship*

10 Intentional interference with contractual  
11 relationship requires a showing of "(1) a valid  
12 contract between plaintiff and a third party; (2)  
13 defendant's knowledge of this contract; (3) defendant's  
14 intentional acts designed to induce a breach or  
15 disruption of the contractual relationship; (4) actual  
16 breach or disruption of the contractual relationship;  
17 and (5) resulting damage." Bear Stearns, 50 Cal.3d at  
18 1126.

19 Plaintiff must first allege a valid contract  
20 between Plaintiff and a third party. Plaintiff alleges  
21 that the valid contract is a "Settlement Order" based  
22 on an alleged settlement agreement between Plaintiff  
23 and other co-defendants in this action that prohibited  
24 co-defendants Limonadi and IRTV "from directly or  
25 indirectly infringing the (1) 'Yellow Page-e-Iranian';  
26 (2) 'The Iranian Information Center'; and (3) '08'  
27 [marks], or using any combination of the above marks  
28 and names or anything confusingly similar, including

1 the corresponding Farsi characters of the above marks.”  
2 SAC ¶¶ 107-08; see SAC ¶ 32.

3 While a settlement agreement is arguably a valid  
4 contract, a Settlement Order is not a contract, but,  
5 rather, a court order. But, even if the Settlement  
6 Order could be considered a contract for purposes of  
7 this claim, Plaintiff fails to allege another essential  
8 element of this claim: that Defendants induced a  
9 “breach” of the Settlement Order. The Settlement Order  
10 prohibits *infringement* of Plaintiff’s trademarks. See  
11 SAC ¶ 32. The Court has already determined, see Dckt.  
12 # 42, that, as a matter of law, Mesriani Defendants  
13 have not infringed Plaintiff’s trademarks and, upon  
14 review of the SAC, it is clear that Plaintiff’s  
15 allegations do not support a finding that any other  
16 party to this Action has infringed on Plaintiff’s  
17 trademarks. Because Plaintiff’s SAC does not allege  
18 facts supporting a plausible allegation of breach of a  
19 contract, Plaintiff cannot allege intentional  
20 interference with economic relationship under the  
21 contractual relationship theory. See Bear Stearns, 50  
22 Cal.3d at 1126.

23 b. *Prospective Economic Relationship*

24 The elements of intentional interference with  
25 prospective economic advantage are: (1) the existence  
26 of a prospective business relationship advantageous to  
27 the plaintiff; (2) the defendant’s knowledge of the  
28 existence of that relationship; (3) intentional acts by

1 the defendant designed to disrupt the relationship; (4)  
2 actual causation; and (5) resulting damages. Stolz, 25  
3 Cal. App. 4th at 1825.

4 First, Plaintiff does not identify a specific  
5 "prospective business relationship advantageous to the  
6 plaintiff" other than alleging that Defendants actions  
7 would "attract customers and potential customers away  
8 from Ketab and to [Defendants]." SAC ¶ 106. Merely  
9 referring to customers in general is not sufficient to  
10 show a specific prospective business relationship.  
11 See, e.g., Sybersound Records, Inc. v. UAV Corp., 517  
12 F.3d 1137, 1151 (9th Cir. 2008) ("[The plaintiff]  
13 merely states in a conclusory manner that it 'has been  
14 harmed because its ongoing business and economic  
15 relationships with Customers have been disrupted,' . . .  
16 . [but] . . . does not allege, for example, that it  
17 lost a contract nor that a negotiation with a Customer  
18 failed."); Oracle Am., Inc. v. CedarCrestone, Inc., No.  
19 12-cv-04626 NC, 2013 WL 3243885, at \*3-\*4 (N.D. Cal.  
20 June 26, 2013) ("Without an existing relationship with  
21 an identifiable buyer, the expectation of a future sale  
22 is 'at most a hope for an economic relationship and a  
23 desire for future benefit.'"); F.M. Tarbell Co. v. A&L  
24 Partners, Inc., No. CV 10-1589 PSG (Ex), 2011 WL  
25 1153539, at \*4-\*5 (C.D. Cal. Mar. 23, 2011).

26 However, even if Plaintiff amended the pleading to  
27 identify specific existing economic relationships that  
28 had a probable expectation of future benefit,

1 Plaintiff's facts still do not support this claim.  
2 Plaintiff's facts must show that it is "reasonably  
3 probable that the prospective economic advantage would  
4 have been realized but for defendant's interference."  
5 Oracle America, 2013 WL 3243885, at \*3-\*4. It is not  
6 plausible under Plaintiff's facts, even if taken as  
7 true, that Mesriani Defendants' use of their "08"  
8 telephone number and domain name to advertise their law  
9 firm and legal services would harm an existing economic  
10 relationship between Plaintiff and one of Plaintiff's  
11 customer who purchases Plaintiff's directory and  
12 marketing services.<sup>2</sup> See id. at \*3.

13 Additionally, "a plaintiff seeking to recover for  
14 alleged interference with prospective economic  
15 relations has the burden of pleading and proving that  
16 the defendant's interference was wrongful 'by some  
17 measure beyond the fact of the interference itself.'" Della Penna v. Toyota Motor Sales, U.S.A., Inc., 902  
18 P.2d 740, 751 (Cal. 1995). Here, because Plaintiff's  
19 trademark dilution claim fails, and because Plaintiff  
20

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21  
22 <sup>2</sup> For example, even if customers of a directory and  
23 marketing services company contacted a law firm that seemed to be  
24 the same company, the customer would *not be purchasing directory*  
25 *and marketing services* from the law firm, but would have to  
26 independently decide to purchase legal services after discovering  
27 that the law firm was a law firm, which cannot possibly harm the  
28 directory and marketing services company. Furthermore, even if  
Defendants provided attorney referral services, as Plaintiff  
suddenly alleges and Defendants deny, see SAC ¶ 38, it is still  
not plausible that such niche referral activity would "disrupt"  
an economic relationship between Plaintiff and its customer  
because Plaintiff is not an attorney referral service, but,  
rather, provides directory and marketing services.



1 does not allege any other facts showing that  
2 Defendants' actions were independently wrongful,  
3 Plaintiff's intentional interference claim fails.

4 Because Plaintiff's factual allegations do not  
5 state a plausible claim for intentional interference  
6 with economic relations, the Court **GRANTS** Defendants  
7 Motion to Dismiss this claim.

8 The Court **DISMISSES WITH PREJUDICE** Plaintiff's  
9 claim for intentional interference with economic  
10 relations because amendment would be futile in light of  
11 Plaintiff's implausible allegations and theory of its  
12 action; because amendment would allow Plaintiff to  
13 continue to harass Defendants with meritless  
14 litigation; and because Plaintiff has already had two  
15 opportunities to amend its pleading in response to the  
16 same or similar challenges to its pleading. See Andre-  
17 Gollihar v. Cnty. of San Joaquin, No.  
18 2:09-cv-3313-TLN-KJN PS, 2013 WL 6512899, at \*3 (E.D.  
19 Cal. Dec. 12, 2013) (listing the five factors used to  
20 assess whether leave to amend should be granted).

21 3. Negligent Interference with Economic Relations  
22 Claim

23 "The tort of negligent interference with  
24 prospective business advantage has many of the same  
25 elements as an intentional interference with  
26 prospective business advantage claim," and "[t]o plead  
27 such a claim adequately, a plaintiff must allege that  
28 '(1) an economic relationship existed between the

1 plaintiff and a third party which contained a  
2 reasonably probable future economic benefit or  
3 advantage to plaintiff; (2) the defendant knew of the  
4 existence of the relationship and was aware or should  
5 have been aware that if it did not act with due care  
6 its actions would interfere with this relationship and  
7 cause plaintiff to lose in whole or in part the  
8 probable future economic benefit or advantage of the  
9 relationship; (3) the defendant was negligent; and (4)  
10 such negligence caused damage to plaintiff in that the  
11 relationship was actually interfered with or disrupted  
12 and plaintiff lost in whole or in part the economic  
13 benefits or advantage reasonably expected from the  
14 relationship.' " UMG Recordings, Inc. v. Global Eagle  
15 Entm't, Inc., NO. CV 14-3466 MMM (JPRx), 2015 WL  
16 4606077, at \*17 (C.D. Cal. June 22, 2015) (citing N.  
17 Am. Chemical Co. v. Sup. Ct., 59 Cal. App. 4th 764,  
18 786, 69 Cal. Rptr. 2d 466 (Ct. App. 1997)).

19 For the same reasons Plaintiff's intentional  
20 interference claim fails, Plaintiff's negligent  
21 interference claim fails.<sup>3</sup>

22 Furthermore, the tort of negligent interference  
23 with economic relationship "arises only when the  
24

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25 <sup>3</sup> Plaintiff fails to allege an advantageous prospective  
26 business relationship or opportunity "with particularity," UMG  
27 Recordings, 2015 WL 4606077, at \*18, and Plaintiff fails to  
28 allege plausible facts showing that Defendants' conduct was  
"independently wrongful," Singman v. NBA Props., Inc., No. CV  
13-05675 ABC (Shx), 2014 WL 7892049, at \*5 (C.D. Cal. Jan. 17,  
2014).

1 defendant owes the plaintiff a duty of care." Singman  
2 v. NBA Props., Inc., No. CV 13-05675 ABC (Shx), 2014 WL  
3 7892049, at \*5 (C.D. Cal. Jan. 17, 2014). Plaintiff  
4 alleges that Defendants owed Plaintiff a duty of care  
5 because Defendants knew of the existence of the  
6 Settlement Order and knew that using Defendants'  
7 telephone number and domain name containing the numbers  
8 "08" "would divert consumers to Defendants in direct  
9 competition with Ketab." SAC ¶ 116. Because the above  
10 analysis rejects Plaintiff's allegations of economic  
11 interference based on the Settlement Order and  
12 Defendants' use of its "08" telephone number and domain  
13 name, Plaintiff's allegations of duty are not  
14 plausible.<sup>4</sup>

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15  
16 <sup>4</sup> To allege "the tort of negligent interference with  
17 prospective economic advantage between parties not in privity of  
18 contract," "the plaintiff must show that a 'special relationship'  
19 existed between the parties." Tyson & Assocs., Inc. v. Denko,  
20 89 F.3d 846, 1996 WL 355566 (Table), at \*1 (9th Cir. June 25,  
21 1996). California courts use the following six "J'aire factors"  
22 to determine whether a special relationship exists for purposes  
23 of duty:

- 24 (1) the extent to which the transaction was intended to affect  
25 the plaintiff;
- 26 (2) the foreseeability of harm to the plaintiff;
- 27 (3) the degree of certainty that the plaintiff suffered injury;
- 28 (4) the closeness of the connection between the defendant's  
conduct and the injury suffered;
- (5) the moral blame attached to defendant's conduct; and
- (6) the policy of preventing future harm.

Id. (citing J'Aire Corp. v. Gregory, 598 P.2d 60, 63 (Cal.  
1979)). California courts use such flexible factors in order to  
allow "compensation for foreseeable injuries caused by a  
defendant's want of ordinary care." Id.

Here, because Plaintiff and Defendants engage in totally  
different types of businesses, Plaintiff's allegations that its  
business was harmed by Defendants' use of "08" in Defendants'  
telephone number and domain name are not plausible. For the same

1 Plaintiff also alleges that, "given the relatively  
2 small, close knit community of Iranian community in the  
3 U.S., most of whom shared a common experience,  
4 Defendants had a duty to take reasonable steps to avoid  
5 foreseeable harm to other members of the community."  
6 SAC ¶ 116. The Court is unaware of any law imposing a  
7 duty of economic care based on a "close knit  
8 community."

9 Because the Court finds that, as a matter of law,  
10 Defendants did not owe Plaintiff a duty of care with  
11 regard to this claim, the Court **GRANTS** Defendants'  
12 Motion to Dismiss this claim and **DISMISSES WITH**  
13 **PREJUDICE** Plaintiff's claim for negligent interference  
14 with economic relations, as amendment would be futile

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15  
16 reasons, Plaintiff's alleged facts do not support a finding that  
17 it was foreseeable that Defendants' use of their "08" telephone  
18 number and domain name would harm Plaintiff because Plaintiff and  
19 Defendant are not competitors. Regarding the third factor,  
20 though Plaintiff alleges it has suffered injury to its business,  
21 Plaintiff's allegation is vague and does little to persuade the  
22 Court why this factor should weigh in favor of duty. Regarding  
23 the fourth factor, Plaintiff has not alleged a plausible  
24 connection between Defendants' conduct (use of the "08" telephone  
25 number and domain name for Defendants' legal-related services)  
26 and Plaintiff's alleged harm of losing profits and customers  
27 because, again, Plaintiff and Defendants are not competitors.  
28 Regarding the fifth factor, Plaintiff's facts do not support a  
plausible finding that Defendants conduct was in any way morally  
wrong. And finally, there is no policy of preventing future harm  
at issue here because it is not plausible that Defendants' use of  
the number combination "08" in a telephone number and domain name  
to advertise legal services harmed Plaintiff, a provider of  
marketing and information directory services. See id. at \*1-\*2  
(holding that the allegations did not support a finding that harm  
was a reasonably foreseeable result of the defendant's alleged  
conduct). As such, the Court finds that there was no "special  
relationship" between Plaintiff and Defendants such that  
Defendants owed Plaintiff a duty of care.

1 and harassing to Defendants.

2 **IV. CONCLUSION**

3 For the foregoing reasons, the Court **HEREBY GRANTS**  
4 Mesriani Defendants' Motion to Dismiss [108] in its  
5 entirety. Plaintiff's three remaining claims against  
6 Mesriani Defendants for (1) federal trademark dilution,  
7 (2) intentional interference with economic relations,  
8 and (3) negligent interference with economic relations  
9 are **HEREBY DISMISSED WITH PREJUDICE.**

10  
11 **IT IS SO ORDERED.**

12 DATED: August 26, 2015

13 RONALD S.W. LEW  
14 **HONORABLE RONALD S.W. LEW**  
15 Senior U.S. District Judge