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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KETAB CORP.,)	CV 14-07241-RSWL-MRWx
)	
Plaintiff,)	ORDER re: Plaintiff's
)	Motion for
v.)	Reconsideration of the
)	Court's Ruling on
MESRIANI LAW GROUP, et al.)	Defendants' Motion for
)	Judgment on the
)	Pleadings [195]
Defendants.)	
)	
)	
)	

Currently before the Court is Plaintiff's Motion for Reconsideration of Court's Ruling on Motion for Judgment on the Pleadings [195] ("Motion for Reconsideration"). Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **DENIES** Plaintiff's Motion for Reconsideration [195].¹

¹ The Court **DENIES** Plaintiff's request for sanctions against Defendants Seyed Ali Limonadi ("Limonadi"), Studio Cinegraphic

1 I. BACKGROUND

2 A. Factual Background

3 Plaintiff is a California corporation based in Los
4 Angeles. Second Am. Compl. ("SAC") ¶ 4, ECF No. 106.
5 Defendant Melli is a California corporation based in
6 Studio City, California, that provides telephone
7 directory and marketing services to the Iranian
8 community in the Los Angeles area. Second Am.
9 Countercl. ¶¶ 1, 12. Defendant Limonadi is an
10 individual residing in Los Angeles who owns Melli. Id.
11 at ¶ 1. Defendant IRTV is a California corporation
12 based in Studio City, California. Id. at ¶ 1. IRTV is
13 an Iranian television channel that provides local news,
14 information, and data on Iranian businesses,
15 activities, and cultural and commercial events. Id. at
16 ¶ 9.

17 Plaintiff alleges that since 1981, it has been in
18 the business of providing "directory and marketing
19 services" "to the Iranian community . . . around the
20 world," including in Southern California. SAC ¶ 12.
21 Plaintiff alleges it uses "several trade names and
22 marks to identify its services," including an "08" mark
23 and "combinations of the '08' mark" (the "Ketaf
24 Marks"). Id. Plaintiff's "08" mark is a federally
25 registered design mark that consists of the numbers

26
27
28 Los Angeles dba IRTV ("IRTV"), and Melli Yellow Pages, Inc.
("Melli") (collectively, "Defendants" or "Limonadi Defendants").
See 28 U.S.C. § 1927.

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

12 Among other things, Plaintiff alleges that in 1997,
13 Plaintiff and Limonadi Defendants reached a settlement
14 agreement over a lawsuit filed in 1995 for infringement
15 of Plaintiff's trademarks, which included "Yellow-Page
16 Iranian," "Iranian-Information-Center" and its Farsi
17 translation "Markaze-Ettelaat Iranian," and an "08
18 Combination" phone number "818/8-08-08-08." Id. at ¶¶
19 30-31. Plaintiff alleges that a court Settlement Order
20 (the "Settlement Order")² was entered, which
21 incorporated the parties' settlement agreement. Id. at
22 ¶ 31. Plaintiff alleges that Limonadi "started using
23 the protected 'Yellow-Page-Iranian,' 'Iranian-
24 Information-Center,' and . . . 'Markaze Ettelaat,' in
25 Melli and otherwise in its advertisements and
26 marketing," in violation of the Settlement Order. Id.

27
28 ² See Limonadi Defs.' Second Am. Countercl., Ex. 4, ECF No. 137-4.

1 at ¶ 33.

2 **B. Procedural Background**

3 On September 16, 2014, Plaintiff filed its
4 Complaint [1]. Over the course of this action,
5 Mesriani Defendants filed three motions to dismiss
6 pursuant to Federal Rule of Civil Procedure 12(b)(6).
7 ECF Nos. 29, 64, 108. On August 26, 2015, the Court
8 dismissed all remaining claims against Mesriani
9 Defendants with prejudice [132].³

10 On December 7, 2015, Limonadi Defendants filed a
11 Motion for Judgment on the Pleadings [167] ("MJP"),
12 which challenged the sufficiency of Plaintiff's SAC.
13 On January 29, 2016, the Court granted in part Limonadi
14 Defendants' MJP [191], and entered judgment for
15 Limonadi Defendants on Plaintiff's claims for: (1)
16 federal trademark dilution, (2) federal contributory
17 trademark infringement, (3) federal vicarious trademark
18 infringement, (4) breach of contract, (5) intentional
19 interference with economic relations, and (6) negligent
20 interference with economic relations. Plaintiff's
21 remaining claims are for state and federal trademark
22 infringement and unfair competition.

23 After the parties met and conferred pursuant to
24

25 ³ With regard to Plaintiff's intentional interference with
26 contractual relations claim, Plaintiff alleged that the
27 Settlement Order was a valid contract. Finding this allegation
28 to be insufficient, the Court determined that "[w]hile a
settlement agreement is arguably a valid contract, a Settlement
Order is not a contract, but, rather, a court order." Order re:
Mesriani Defs.' Mot. Dismiss Pl.'s SAC 14:3-5, ECF No. 132.

1 Local Rule 7-3 on February 1, 2016, Plaintiff filed the
2 instant Motion for Reconsideration [195] that same day.

3 The Opposition [202] and Reply [216] were timely
4 filed, and the Motion was taken under submission on
5 February 25, 2016 [234].

6 II. DISCUSSION

7 A. Legal Standard

8 Motions for reconsideration are governed by the
9 Local Rules of this district. A motion for
10 reconsideration under Local Rule 7-18 may be made only
11 on the following grounds:

12 (a) a material difference in fact or law from that
13 presented to the Court before such decision
14 that in the exercise of reasonable diligence
15 could not have been known to the party moving
16 for reconsideration at the time of such
17 decision, or

18 (b) the emergence of new material facts or a change
19 of law occurring after the time of such
20 decision, or

21 (c) a manifest showing of a failure to consider
22 material facts presented to the Court before
23 such decision.

24 L.R. 7-18; see In re Countrywide Fin. Corp. Mortg.-
25 Backed Sec. Litig., 966 F. Supp. 2d 1031, 1036 (C.D.
26 Cal. 2013).

27 A motion for reconsideration pursuant to Local Rule
28 7-18 must not "repeat any oral or written argument made

1 in support of or in opposition to the original motion.”
2 L.R. 7-18. Consistent with Local Rule 7-18, a “motion
3 for reconsideration should not be granted, absent
4 highly unusual circumstances, unless the district court
5 is presented with newly discovered evidence, committed
6 clear error, or if there is an intervening change in
7 the controlling law.” Carroll v. Nakatani, 342 F.3d
8 934, 945 (9th Cir. 2003).⁴ “Whether to grant a motion
9 for reconsideration under Local Rule 7-18 is a matter
10 within the court’s discretion.” Daghlian v. DeVry
11 Univ., Inc., 582 F. Supp. 2d 1231, 1251 (C.D. Cal.
12 2007).

13 **B. Discussion**

14 1. Local Rule 7-3

15 The parties met and conferred regarding Plaintiff’s
16 Motion for Reconsideration on the same day that
17 Plaintiff filed its Motion. This Court has already
18 warned Plaintiff that, if a motion is filed less than
19 seven days after the Local Rule 7-3 conference, the
20 court may, in its discretion, refuse to consider the
21 motion for that reason. See, e.g., Reed v. Sandstone
22 Properties, L.P., No. CV 12-05021 MMM (VBKx), 2013 WL
23 1344912, at *6 (C.D. Cal. Apr. 2, 2013); see Order re:
24 Pl.’s Mot. Dismiss Defs.’ Sec. Am. Countercl. 8:7-10,
25

26 ⁴ Local Rule 7-18 is narrower than the standard articulated
27 in Carroll and the standards for reconsideration under Rule 59 or
28 Rule 60 of the Federal Rules of Civil Procedure. See Fed. R.
Civ. P. 59(e); 60. Plaintiff’s Motion for Reconsideration is
governed by Local Rule 7-18.

1 ECF No. 166 ("[T]he Court admonishes Plaintiff of the
2 seriousness of its failure to comply with the Local
3 Rules and cautions Plaintiff to comply with Local Rule
4 7-3 in the filing of any future motions."). On this
5 ground alone, the Court **DENIES** Plaintiff's Motion for
6 Reconsideration.

7 2. Motion for Reconsideration

8 In any case, Plaintiff does not show that the Court
9 failed to consider material facts alleged in the SAC,
10 Answer, and Counterclaims,⁵ and reconsideration of the
11 Court's Order is not warranted.

12 a. *Existence of a Valid Contract*

13 To support the existence of a valid contract

14 _____
15 ⁵ In ruling on a motion for judgment on the pleadings, the
16 Court may not go beyond the pleadings, and must rely on the
17 complaint, answer, materials properly attached as exhibits to the
18 complaint, and matters that are subject to judicial notice.
19 Thomas v. Fin. Recovery Servs., No. EDCV 12-1339 PSG (Opx), 2013
20 WL 387968, at *2 (C.D. Cal. Jan. 31, 2013); Hal Roach Studios,
21 Inc. v. Richard Feiner and Co., Inc., 896 F.2d 1542, 1550 (9th
22 Cir. 1989). Plaintiff argues that the allegations made in
23 Limonadi Defendants' Counterclaims should be taken as admissions.
24 Pl.'s Reply 9:5-6. However, the cases cited by Plaintiff, Romero
25 Reyes v. Marine Enters., Inc., 494 F.2d 866, 868 (1st Cir. 1974),
26 and Roberts v. Babkiewicz, 582 F.3d 418, 419 (2d Cir. 2009), do
27 not support the proposition that counterclaims serve as
28 admissions. In fact, under Federal Rule of Civil Procedure
8(e)(2), "a pleading should not be construed as an admission
against another alternative or inconsistent pleading in the same
case." Molsbergen v. United States, 757 F.2d 1016, 1019 (9th
Cir. 1985). Thus, Defendants' reference to a "Settlement
Agreement" in their Counterclaims does not serve as an admission
or stipulation to the existence of a valid contractual
relationship between the parties, especially when Defendants'
Answer expressly denies that the Settlement Order is a valid and
enforceable contract. See Defs.' Answer to SAC ¶ 101, ECF No.
115. Moreover, the Court considered Defendants' Counterclaims in
ruling on the MJP. Even considering the Counterclaims, Plaintiff
fails to state a claim for breach of contract.

1 between the parties, Plaintiff's Opposition to the MJP
2 relied on several allegations. First, Plaintiff relied
3 on Defendants' denial that they "negligently,
4 intentionally, or both negligently and intentionally
5 [are] responsible in some manner for the occurrences
6 herein alleged, and the injuries and damages suffered
7 by Plaintiff." See Defs.' Answer to FAC ¶ 11, ECF No.
8 105; Defs.' Answer to SAC, ECF No. 115; SAC ¶ 11, ECF
9 No. 106. Plaintiff's Opposition also relied on the
10 allegation that "Melli Yellowpages and Ketab are the
11 only two competitors who provide telephone directory
12 and marketing services, electronic marketing and
13 directory services and publishing Yellow Page
14 directories to the Iranian community in the Los Angeles
15 area." See Defs.' Second Am. Countercl. ¶ 12, ECF No.
16 137. Lastly, Plaintiff's Opposition relied on the
17 portion of Defendants' Answer in which Defendants admit
18 that "Ketab filed a lawsuit against [Limonadi
19 Defendants] in 1995 for infringement of certain Ketab
20 Marks, including 'Yellow-Page Iranian,' 'Iranian-
21 Information-Center' and the latter's Farsi translation
22 . . . , and a '08 Combination' phone number." See SAC ¶
23 30; Defs.' Answer to SAC ¶ 30. None of these
24 references are sufficient to adequately plead the
25 existence of a valid contract between the parties.

26 The remaining portions of the SAC also do not
27 demonstrate sufficient facts to allege the existence of
28 a valid and enforceable contract between the parties.

1 For example, Plaintiff does not allege sufficient
2 factual allegations besides bare reference to a
3 "settlement agreement" in its SAC. See Harris v.
4 Rudin, Richman & Appel, 87 Cal. Rptr. 2d 822, 828 (Cal.
5 Ct. App. 1999) ("If the action is based on alleged
6 breach of a written contract, the terms must be set out
7 verbatim in the body of the complaint or a copy of the
8 written agreement must be attached and incorporated by
9 reference.") (citation omitted).⁶ Plaintiff merely
10 alleges that the "Settlement Order constitutes a
11 Contract between Ketab and Limonadi and IRTV, which
12 contract is valid and enforceable." SAC ¶ 101. These
13 allegations are insufficient to plead the existence of
14 a valid contract between the parties, as a "formulaic
15 recitation of the elements" of a claim will not survive
16 a motion to dismiss or motion for judgment on the
17 pleadings. See Bell Atlantic Corp. v. Twombly, 550
18 U.S. 544, 555 (2007).

19 As this Court has already held, the Settlement
20 Order is a court order, and not a contract. Plaintiff
21 does not cite any legal authority to support its
22 position that an alleged violation of the court-entered
23 Settlement Order and injunction can be treated as a
24 claim for breach of contract. The Court considered
25

26 ⁶ Contrary to Plaintiff's assertion that the Settlement
27 Order was attached to the Complaint, neither the Settlement Order
28 nor the underlying settlement agreement were attached to the
Complaint, First Amended Complaint, or SAC. See Pl.'s Opp'n to
MJP 19:27-20:1; Compl., ECF No. 1; SAC, ECF No. 106.

1 Plaintiff's allegations and found that these
2 allegations were insufficient to allege the existence
3 of a valid contract. Thus, this Court did not fail to
4 consider material facts presented, and reconsideration
5 of the Court's Order is not warranted.

6 b. *Plaintiff's Additional Allegations*

7 Plaintiff now seeks to highlight different portions
8 of the SAC, Answer, and Counterclaims. Plaintiff
9 argues that this Court failed to consider the following
10 allegations:

11 (1) Defendants' Answer admits that "In 1997 the
12 parties reached a settlement agreement and the
13 court entered Judgment and Permanent Injunction
14 orders incorporating the parties' settlement."
15 See Compl. ¶ 27; Answer ¶ 27.

16 (2) Defendants' Answer denies Plaintiff's
17 allegations that "Defendants' acts and
18 omissions harmed Ketab financially and induced
19 Ketab's customers to sever their business
20 relationship with Ketab." See Compl. ¶ 102;
21 Answer ¶ 103.

22 (3) Defendants' Answer to Plaintiff's FAC denies
23 the allegations in paragraph 31 of the FAC that
24 "In 1997 the parties reached a settlement
25 agreement and the court entered Judgment and
26 Permanent Injunction orders incorporating the
27 parties' settlement." See FAC ¶ 31; Answer to
28 FAC ¶ 31.

1 (4) Defendants' Answer "admits a Settlement Order
2 is a Contract," but "denies the remaining
3 allegations of [the Complaint]," which state
4 that the "Settlement Order constitutes a
5 Contract between Ketab and Limonadi and IRTV,
6 which contract is valid and enforceable." See
7 FAC ¶ 103; Answer to FAC ¶ 103; First Am.
8 Answer to FAC ¶ 103; SAC ¶ 101; Answer to SAC ¶
9 101.

10 (5) Allegations of damages asserted under
11 Plaintiff's other claims in the SAC. See SAC
12 ¶¶ 52, 54, 60, 66, 73, 74, 76, 77, 84, 89, 90,
13 96.

14 (6) Allegations asserted in Limonadi Defendants'
15 Second Amended Counterclaims.⁷ See Second Am.
16 Countercl. ¶¶ 23, 24, 29, 41, ECF No. 137. See
17 also ECF Nos. 65, 105, 115.

18 As an initial matter, a motion for reconsideration
19 "may not be used to raise arguments or present evidence
20 for the first time when they could reasonably have been
21 raised earlier in the litigation." Carroll v.
22 Nakatani, 342 F.3d 934, 945 (9th Cir. 2003).

23 In opposition to Defendants' MJP, Plaintiff stated
24

25 ⁷ In Defendants' Counterclaims, Defendants refer to a
26 "Settlement Agreement" between the parties, and argue that
27 Plaintiff attempts to "expand the scope" of the "Settlement
28 Agreement" to "force [Limonadi] Defendants to expend financial
resources in defending what Ketab knows are unprotectable and
unregistrable trademarks." See Second Am. Countercl. ¶¶ 23-24,
41, 47.

1 that Defendants "blatantly misrepresent[ed] the record
2 as they previously admitted specifically, in no less
3 than 3 different pleadings, that the Settlement **indeed**
4 **constitutes** a contract." Pl.'s Opp'n to MJP 19:14-20
5 (emphasis in original). However, Plaintiff did not
6 expressly argue that Defendants' alleged admission
7 established that the first element for the breach of
8 contract claim was adequately pled, and Plaintiff cited
9 no legal support for its argument. Plaintiff now
10 raises arguments that an admission is considered a
11 stipulation, and that stipulations between the parties
12 "stand as fully determined as if adjudicated at the
13 trial." Pl.'s Mot. 5:10-6:17. Plaintiff did not raise
14 these arguments in opposition to Defendants' MJP, and
15 Plaintiff may not raise them on a motion for
16 reconsideration.

17 In any case, although Defendants admit in their
18 Answer to the SAC that a Settlement Order is a
19 Contract, Defendants expressly deny that the contract
20 between the parties is valid and enforceable. See
21 Answer to SAC ¶ 101. Thus, Defendants do not stipulate
22 that a valid contract exists between the parties, and
23 Plaintiff's argument fails for that reason.

24 c. *Plaintiff's Performance or Excuse for Non-*
25 *Performance*

26 Plaintiff argues that it properly alleged the
27 second element of a breach of contract claim - that
28 Plaintiff performed or its performance was excused. In

1 its SAC, Plaintiff alleges that the parties "reached a
2 settlement agreement and the court entered Judgment and
3 Permanent Injunction orders incorporating the parties'
4 settlement." SAC ¶ 31. Plaintiff alleges that the
5 Settlement Order precluded Limonadi Defendants from
6 infringing Ketab's Marks, and that Limonadi breached
7 the Settlement Order by using Plaintiff's Marks in
8 Melli to advertise and market its services. See id. at
9 ¶¶ 100-102.

10 From these allegations, Plaintiff argues that it
11 can be inferred that Plaintiff performed under the
12 contract by "not suing Defendants." See Pl.'s Opp'n to
13 MJP 19:27-20:1. However, this inference is not
14 supported, as Plaintiff does not state what its
15 obligations under the purported contract were, nor does
16 Plaintiff suggest how it performed those obligations.

17 Accordingly, the Court considered these facts, and
18 reconsideration of the Court's Order is unwarranted.
19 Assuming all factual allegations in Plaintiff's SAC to
20 be true, it cannot be inferred from the facts pled in
21 the SAC that Plaintiff performed or was excused from
22 performing under the alleged contract.

23 d. *Leave to Amend*

24 "[L]iberality in granting leave to amend is subject
25 to several limitations," including undue prejudice to
26 the opposing party, futility, and undue delay.

27 Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.,
28 637 F.3d 1047, 1058 (9th Cir. 2011). "[T]he district

1 court's discretion to deny leave to amend is
2 particularly broad where plaintiff has previously
3 amended the complaint." Id.; see also Dutciuc v.
4 Meritage Homes of Ariz., Inc., 462 F. App'x 658, 660
5 (9th Cir. 2011).

6 Plaintiff seeks leave to amend the breach of
7 contract cause of action because this was Limonadi
8 Defendants' first challenge to the cause of action, and
9 therefore, Plaintiff argues that it has not been given
10 multiple chances to cure the deficiencies in the SAC.

11 Plaintiff's argument is not persuasive. Even
12 though Mesriani Defendants did not challenge the breach
13 of contract claim, Plaintiff was put on notice that its
14 Complaint, FAC, and SAC did not adequately allege the
15 existence of a valid contract, an element that is
16 required to plead a breach of contract cause of action.
17 See, e.g., Order re: Mesriani Defs.' Mot. Dismiss SAC
18 20:3-5 ("While a settlement agreement is arguably a
19 valid contract, a Settlement Order is not a contract,
20 but, rather, a court order."). Plaintiff was,
21 therefore, on notice that its breach of contract claim
22 was deficient. However, Plaintiff subsequently failed
23 to cure this deficiency in its pleadings.

24 Plaintiff also does not provide any facts to
25 suggest that Plaintiff can allege the existence of an
26 contract other than the Settlement Order, or identify
27 its performance under that contract. Thus, Plaintiff
28 has not demonstrated that its breach of contract claim

1 could be saved by amendment.

2 Moreover, the final pretrial conference order in
3 this case has already been issued, and trial in this
4 matter is set for March 22, 2016. At this late hour,
5 Defendants would be prejudiced in having to prepare for
6 trial on a breach of contract claim.

7 **III. CONCLUSION**

8 In light of the above discussion, the Court, in its
9 discretion, finds that reconsideration of the Court's
10 ruling on Defendants' MJP is unwarranted, and thus
11 **DENIES** Plaintiff's Motion for Reconsideration [195].

12

13 **IT IS SO ORDERED.**

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15 DATED: March 7, 2016

/s/ RONALD S.W. LEW

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HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

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