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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KETAB CORP.,)	CV 14-7241-RSWL-MRWx
)	
Plaintiff,)	ORDER re: Melli
)	Defendants' Amended
v.)	Motion for Attorneys
)	Fees [295]
)	
MESRIANI LAW GROUP; RODNEY)	
MESRIANI; SEYED ALI)	
LIMONADI; STUDIO)	
CINEGRAPHIC LOS ANGELES dba)	
IRTV; MELLI YELLOW PAGES,)	
INC.; and DOES 1-10,)	
)	
Defendants.)	

Currently before the Court is Defendants Seyed Ali Limonadi ("Limonadi"), Studio Cinegraphic Los Angeles dba IRTV ("IRTV"), and Melli Yellow Pages, Inc.'s ("Melli") (collectively, "Melli Defendants") Amended Motion for Attorney's Fees [295] ("Motion"). Melli Defendants seek **\$295,133.50** in attorney's fees and **\$2,700.00** in costs.

1 Having reviewed all papers submitted pertaining to
2 this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**
3 the Court **GRANTS** the Motion and awards **\$292,202.00** in
4 attorney's fees and **\$1,080.71** in costs to Melli
5 Defendants.¹

6 **I. BACKGROUND**

7 **A. Factual Background**

8 Plaintiff Ketab Corporation's ("Plaintiff") action
9 alleged various claims related to trademark
10 infringement against five named defendants: Mesriani &
11 Associates, Rodney Mesriani,² Seyed Ali Limonadi, Studio
12 Cinegraphic Los Angeles, and Melli Yellow Pages, Inc.

13 Since 1981, Plaintiff has been in the business of
14 providing "directory and marketing services" "to the
15 Iranian community . . . around the world," including in
16 Southern California. Second Am. Compl. ("SAC") ¶ 12,
17 ECF No. 106. Plaintiff uses "several trade names and
18 marks to identify its services," including an "08" mark³

22 ¹ The Court **OVERRULES** Plaintiff's objections [306, 309] to
23 Melli Defendants' request for sanctions against Plaintiff's
24 counsel pursuant to 28 U.S.C. § 1927, as Melli Defendants' Motion
and Proposed Order was clear in requesting sanctions against
Plaintiff's counsel.

25 ² Collectively, Mesriani & Associates and Rodney Mesriani
26 are "Mesriani Defendants."

27 ³ Plaintiff's "08" mark is a federally registered design
28 mark that consists of the numbers "08" placed in a dark
rectangular box overlaid with horizontal lines that resemble
closed shutters. See SAC, Ex. 1 (Registration No. 3,271,704).

1 and "combinations of the '08' mark,"⁴ "Yellow Page-e
2 Iranian," and "Iranian Information Center" and its
3 Farsi translation "Markaze Ettelaat-e Iranian" (the
4 "Ketab Marks"). Id.

5 Plaintiff's action alleged the following claims
6 against Melli Defendants:

- 7 (1) Federal Trademark Infringement and
8 Counterfeiting;
- 9 (2) Federal Contributory Trademark Infringement;
- 10 (3) Federal Vicarious Trademark Infringement;
- 11 (4) Federal Unfair Competition & False Designation
12 of Origin;
- 13 (5) Federal Trademark Dilution;
- 14 (6) California Trademark Infringement;
- 15 (7) California Unfair Competition;
- 16 (8) Breach of Contract;
- 17 (9) Intentional Interference with Economic
18 Relations; and
- 19 (10) Negligent Interference with Economic
20 Relations.

21 **B. Procedural Background**

22 On September 16, 2014, Plaintiff filed its
23 Complaint [1].

24
25 ⁴ Plaintiff does not specifically identify the alleged marks
26 that it terms "combinations of the '08' mark," and Plaintiff does
27 not provide any examples or images of any marks that combine
28 anything with its registered "08" design mark. Plaintiff does
allege that it uses a telephone number (818-908-0808) and an
internet domain name (www.08.net) that contain the numbers "08."
SAC ¶ 12.

1 On November 7, 2014, Mesriani Defendants filed a
2 Motion to Dismiss Plaintiff's Complaint [29], which the
3 Court granted on February 6, 2015 [42]. The Court
4 dismissed with prejudice Plaintiff's claims against
5 Mesriani Defendants for federal and state trademark
6 infringement and unfair competition, and dismissed
7 without prejudice Plaintiff's claims for trademark
8 dilution, and intentional and negligent interference
9 with economic relations.

10 On March 2, 2015, Plaintiff filed its First Amended
11 Complaint [53]. Again, Mesriani Defendants moved to
12 dismiss under Federal Rule of Civil Procedure 12(b)(6)
13 [64]. Because Plaintiff failed to properly oppose the
14 motion, the Court granted the motion, and dismissed
15 Plaintiff's trademark dilution, and intentional and
16 negligent interference with economic relations claims
17 without prejudice.

18 On May 22, 2015, Plaintiff filed its Second Amended
19 Complaint [106]. For the third time, Mesriani
20 Defendants filed a motion to dismiss [108], which the
21 Court granted on August 26, 2015 [132]. The Court
22 dismissed all remaining claims against Mesriani
23 Defendants with prejudice.⁵

24 On December 7, 2015, Melli Defendants filed a
25 Motion for Judgment on the Pleadings [167], which the
26 Court granted in part [191]. The Court entered

27
28 ⁵ On October 23, 2015, the Court awarded Mesriani Defendants
\$35,875.00 in attorney's fees [149].

1 judgment in favor of Melli Defendants on Plaintiff's
2 claims for federal trademark dilution, federal
3 contributory trademark infringement, federal vicarious
4 trademark infringement, breach of contract, intentional
5 interference with economic relations, and negligent
6 interference with economic relations [191].

7 On February 1, 2016, Plaintiff filed a Motion for
8 Reconsideration of the Court's ruling on the Motion for
9 Judgment on the Pleadings [195] ("Motion for
10 Reconsideration"). On March 7, 2016, the Court denied
11 Plaintiff's Motion for Reconsideration [243] because
12 Plaintiff failed to comply with Local Rule 7-3 in
13 filing the motion, despite repeated warnings to comply
14 with the Local Rules. See Order 6:23-7:6, ECF No. 243.
15 The Court also found that denial of the Motion for
16 Reconsideration was warranted on substantive grounds.
17 Id. at 7:8-11.

18 The remaining claims against Melli Defendants for
19 (1) federal trademark infringement and counterfeiting;
20 (2) federal unfair competition and false designation of
21 origin; (3) California trademark infringement; and (4)
22 California unfair competition were tried before the
23 Court on May 3, 2016 [277]. At the close of
24 Plaintiff's case, the Court granted Melli Defendants'
25 Motion for Judgment as a Matter of Law [283].⁶

26 Melli Defendants' Amended Motion for Attorney's
27

28 ⁶ The Court issued its order granting Melli Defendants'
Motion for Judgment as a Matter of Law on May 18, 2016 [289].

1 Fees [295] was filed on June 15, 2016. After full
2 briefing, the Motion was taken under submission on July
3 14, 2016 [308].

4 II. DISCUSSION

5 A. Legal Standard

6 1. Exceptional Cases

7 "The court in exceptional [trademark] cases may
8 award reasonable attorney fees to the prevailing
9 party." 15 U.S.C. § 1117(a). The interpretation of
10 what constitutes an "exceptional case" is a question of
11 law. Earthquake Sound Corp. v. Bumper Indus., 352 F.3d
12 1210, 1216 (9th Cir. 2003).

13 Courts consider several factors to determine
14 whether "exceptional circumstances" exist. E & J Gallo
15 v. Proximo Spirits, Inc., No. CV-F-10-411 LJO JLT, 2012
16 WL 3639110, at *5 (E.D. Cal. Aug. 23, 2012). An action
17 may be exceptional where plaintiff's case is
18 "groundless, unreasonable, vexatious, or pursued in bad
19 faith." Stephen W. Boney, Inc. v. Boney Servs., 127
20 F.3d 821, 827 (9th Cir. 1997) (quoting Scott Fetzer Co.
21 v. Williamson, 101 F.3d 549 (8th Cir. 1996)).

22 However, the line separating "exceptional cases
23 from non-exceptional cases is far from clear,"
24 especially where "the defendant prevails due to
25 plaintiff's failure of proof." Secalt S.A. v. Wuxi
26 Shenxi Constr. Mach. Co., 668 F.3d 677, 687 (9th Cir.
27 2012). At the very least, "exceptional cases include
28 instances where plaintiff's case is frivolous or

1 completely lacking in merit." Id. at 687-88. In other
2 words, "an action is exceptional under the Lanham Act
3 if the plaintiff has no reasonable or legal basis to
4 believe in success on the merits." Id. at 687.

5 2. Reasonable Attorneys' Fees

6 When attorneys' fees are awarded under § 1117(a) of
7 the Lanham Act, the amount of the fee award is subject
8 to the court's discretion. Sealy, Inc. v. Easy Living,
9 Inc., 743 F.2d 1378, 1384 (9th Cir. 1984). When it
10 sets a fee, the district court must first determine the
11 presumptive lodestar figure by multiplying the number
12 of hours reasonably expended on the litigation by the
13 reasonable hourly rate. Intel Corp. v. Terabyte Int'l,
14 Inc., 6 F.3d 614, 622 (9th Cir. 1993) (internal
15 citation omitted) Next, in appropriate cases, the
16 district court may adjust the "presumptively
17 reasonable" lodestar figure based upon the factors
18 listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d
19 67, 69-70 (9th Cir. 1975),⁷ that have not been subsumed
20 in the lodestar calculation. Id.

21 / / /

22
23 ⁷ The Kerr factors are: (1) the time and labor required, (2)
24 the novelty and difficulty of the questions involved, (3) the
25 skill requisite to perform the legal service properly, (4) the
26 preclusion of other employment by the attorney due to acceptance
27 of the case, (5) the customary fee, (6) time limitations imposed
28 by the client or the circumstances, (7) the amount involved and
the results obtained, (8) the experience, reputation, and ability
of the attorneys, (9) the 'undesirability' of the case, (10) the
nature and length of the professional relationship with the
client, and (11) awards in similar cases. Kerr, 526 F.2d at
69-70.

1 **B. Discussion**

2 1. Whether Melli Defendants are precluded from
3 bringing their Motion

4 Plaintiff argues that Melli Defendants should be
5 precluded from presenting any evidence of attorney's
6 fees or costs pursuant to this Court's ruling on
7 Plaintiff's Motion *in Limine* No. 2, in which the Court
8 ruled that Melli Defendants were precluded from
9 presenting the information and witnesses contained in
10 their initial disclosures due to their failure to
11 timely make their initial disclosures pursuant to
12 Federal Rule of Civil Procedure 26(a). Order re: Pl.'s
13 Mots. in *Limine* 4:2-6:1, ECF No. 248.

14 When Congress enacted the fee provision of section
15 35, it had two classes of litigants in mind: (1) it
16 "envisioned 'make whole' compensation for certain
17 victims of infringement"; and (2) it "endeavored to
18 afford protection to defendants 'against unfounded
19 suits brought by trademark owners for harassment and
20 the like.'" Noxell Corp. v. Firehouse No. 1 Bar-B-Que
21 Rest., 771 F.2d 521, 524 (D.C. Cir. 1985) (citations
22 omitted). Even though Melli Defendants failed to
23 comply with their obligations under Rule 26(a), the
24 Lanham Act still affords protection to them against
25 unfounded suits. Melli Defendants do not seek fees as
26 damages, evidence of which was precluded at trial.
27 Rather, they seek fees pursuant to the Lanham Act.
28 Given the legislative history and purpose of the Lanham

1 Act's fee provision, the Court will consider the merits
2 of Melli Defendants' Motion.

3 2. Whether this case meets the "exceptional case"
4 requirement under the Lanham Act

5 Section 35(a) of the Lanham Act requires
6 exceptional circumstances to warrant an attorney's fee
7 award. Boney, 127 F.3d at 826-27. "When a plaintiff's
8 case is groundless, unreasonable, vexatious, or pursued
9 in bad faith, it is exceptional, and the district court
10 may award attorney's fees to the defendant. Id. at 827
11 (citation omitted).

12 In Secalt, the Ninth Circuit affirmed the district
13 court's finding that the case was "exceptional." Id.
14 at 689. In that case, plaintiff continued to prosecute
15 its claims for trade dress protection even after
16 another district court found an "utter failure of
17 evidence" to support a required element for trade dress
18 protection. Id. at 688. The court reasoned that the
19 case was exceptional because plaintiff presented "at
20 best . . . either unsupported or conclusory claims
21 about the design" and plaintiff's own witnesses
22 testified that the required element was not met. Id.
23 The court noted that if plaintiff had been "able to
24 provide some legitimate evidence of [the required
25 element], this case would likely fall on the
26 unexceptional side of the dividing line." Id.

27 In contrast, when the Ninth Circuit has affirmed a
28 denial of attorneys' fees based on a finding that the

1 case was not exceptional, the key factors are that the
2 party against whom attorneys' fees are sought "raised
3 debatable issues" and had a legitimate reason for
4 bringing its claims. Icebreaker Ltd. v. Gilmar S.p.A.,
5 No. 3:11-CV-00309-BR, 2013 WL 638926, at *3 (D. Or.
6 Feb. 20, 2013) (citing Applied Info. Sci. Corp. v.
7 eBay, Inc., 511 F.3d 966, 973 (9th Cir. 2007)).

8 In Applied Information Sciences, the Ninth Circuit
9 affirmed the district court's finding that the case was
10 not exceptional. 511 F.3d at 973. In that case,
11 plaintiff registered a trademark, "Smartsearch," and
12 was issued a registration by the Patent and Trademark
13 Office. Id. at 969-70. In 2000, defendant began using
14 "Smart Search" as a link on its homepage. Id. at 970.
15 The Ninth Circuit affirmed the district court's grant
16 of summary judgment because plaintiff failed to produce
17 "any admissible evidence tending to show a likelihood
18 of confusion, or address any of the Sleekcraft factors
19 required for a likelihood of confusion analysis." Id.
20 at 973. Despite this failure of proof, however, the
21 Ninth Circuit affirmed the district court's finding
22 that the case was not exceptional, agreeing that
23 "[plaintiff's] case was not frivolous and that
24 [plaintiff] raised debatable issues." Id. The court
25 "[found] no compelling proof that [plaintiff] acted
26 capriciously or pursued litigation to harass
27 [defendant], or that [plaintiff] intended to bring a
28 meritless or unreasonable case against [defendant]."

1 Id.

2 Here, in light of the totality of the
3 circumstances, this case falls on the "exceptional"
4 side of the dividing line.

5 This case is exceptional just as in Secalt, where
6 the plaintiff continued to prosecute its trade dress
7 claim despite another court's finding that the
8 plaintiff provided no evidence to support the required
9 elements of the claim. This Court previously held that
10 Plaintiff's claim for trademark dilution was inadequate
11 as a matter of law when it dismissed the claim against
12 Mesriani Defendants with prejudice. See Order re:
13 Mesriani Defs.' Mot. to Dismiss 10:11-17. Yet,
14 Plaintiff unreasonably continued to prosecute a claim
15 for trademark dilution against Melli Defendants, even
16 though this Court already held that Plaintiff's SAC
17 merely asserted conclusory allegations of famousness,
18 and Plaintiff's trademark dilution claim was completely
19 lacking in merit.

20 Similarly, when this Court dismissed Plaintiff's
21 claims of direct infringement against Mesriani
22 Defendants, Plaintiff had no reasonable factual or
23 legal basis to believe in success on the merits of its
24 claims for indirect infringement. See Petroliam
25 Nasional Berhad v. GoDaddy.com, Inc., 897 F. Supp. 2d
26 856, 857 (N.D. Cal. 2012) (holding that direct
27 infringement is a necessary element of a claim for
28 contributory infringement); cf. Boney, 127 F.3d at 827

1 (case is frivolous if it does not raise debatable
2 issues of law and fact). It is clear from the SAC that
3 Plaintiff's claims for indirect infringement are based
4 on Mesriani Defendants' alleged direct infringing acts.
5 Plaintiff cannot reasonably argue that the SAC alleges
6 that one or more of the Melli Defendants are indirectly
7 liable for acts of direct infringement by the other
8 Melli Defendants. Thus, Plaintiff's decision to
9 continue to pursue groundless contributory and
10 vicarious infringement claims against Melli Defendants
11 despite the dismissal of the requisite direct
12 infringement claims supports a finding of
13 exceptionality. See Secalt, 668 F.3d at 6871; see also
14 Cairns v. Franklin Mint Co., 292 F.3d 1139, 1156 (9th
15 Cir. 2002) (finding case to be exceptional when "claim
16 was groundless and unreasonable, because it had no
17 legal basis, having been based on [an] 'absurd' and
18 'just short of frivolous' contention").

19 Moreover, at the time of trial, Plaintiff was
20 unable to provide any evidence of Melli Defendants' use
21 of the "08" mark, which supports a finding that this
22 case is exceptional. At the time of trial, the parties
23 had been in discovery for over a year; yet, Plaintiff
24 could not produce any evidence or testimony regarding
25 Melli Defendants' alleged infringing use of the "08"
26 mark. Plaintiff's complete failure to offer any
27 evidence relating to this claim is sufficient to find
28 this claim to be groundless and unreasonably pursued.

1 For this additional reason, this case is "exceptional."

2 Plaintiff's claims for infringement of the terms
3 "Yellow Page-e Iranian" and "Iranian Information
4 Center" were similarly groundless, unreasonable, and
5 lacking a legal basis. Unlike Applied Information
6 Sciences, in which the plaintiff raised debatable
7 issues, Plaintiff's claims for infringement of the
8 terms "Yellow Page-e Iranian" and "Iranian Information
9 Center" did not raise debatable issues of fact or law,
10 and were completely lacking in merit. See Secalt, 668
11 F.3d at 687-88 ("[E]xceptional cases include instances
12 where plaintiff's case is frivolous or completely
13 lacking in merit.").

14 Specifically, Plaintiff failed to provide any
15 evidence that there was a debatable issue of law or
16 fact with regard to genericness. From its own
17 witnesses, Plaintiff's testimony established that the
18 Farsi-English term "Yellow Page-e Iranian," which
19 translates to "Iranian yellow pages," directly
20 describes the service to which the mark is affixed,
21 i.e., an Iranian yellow pages. Plaintiff described his
22 own publication as an Iranian yellow pages, and
23 Plaintiff's testimony established that other yellow
24 page companies in Texas, New York, and Canada used the
25 term "yellow page-e Iranian" to describe their Iranian
26 yellow pages directories. Plaintiff's argument that it
27 coined a unique and arbitrary Farsi-English phrase is
28 without merit, and Plaintiff failed to raise a

1 "debatable issue of law or fact."

2 Similarly, the term "Markaz-e Etelaate Iranian,"
3 which translates to "Iranian Information Center,"
4 describes what Plaintiff's service is: an information
5 center for Iranians. Plaintiff did not raise a
6 colorable claim that the marks at issue are not
7 generic, yet Plaintiff continued to litigate its
8 groundless action.⁸ For these reasons, this case is an
9 "exceptional case" for which attorney's fees are
10 warranted.

11 3. Whether Melli Defendants' requested fees are
12 reasonable

13 "In setting a reasonable attorney's fee, the
14 district court should make specific findings as to the
15 rate and hours it has determined to be reasonable."
16 Gracie v. Gracie, 217 F.3d 1060, 1070 (9th Cir. 2000).

17 The reasonable hourly rate corresponds to the
18 prevailing market rate in the relevant community,
19 considering the experience, skill, and reputation of
20 the attorney in question. Chalmers v. City of Los
21 Angeles, 796 F.2d 1205, 1210-11 (9th Cir. 1985).

22 "In determining reasonable hours, counsel bears the
23 burden of submitting detailed time records justifying
24

25 ⁸ The Court also does not find persuasive Plaintiff's
26 argument that the 1995 state court Order demonstrates that its
27 claims are reasonable. The 1995 Order merely prohibits
28 Defendants from infringing Plaintiff's marks. The 1995 Order
does not relieve Plaintiff from its obligation to assess the
merits of an action for infringement before pursuing its claims.

1 the hours claimed to have been expended." Id. at 1210.
2 Counsel must demonstrate that the time actually spent
3 was reasonably necessary to the effective prosecution
4 or defense of the claims. Sealy, Inc., 743 F.2d at
5 1385 n.4.

6 Here, Melli Defendants request **\$295,133.50** in
7 attorney's fees and **\$2,700.00** in costs. Reply 24:21-
8 25:2, ECF No. 304. Melli Defendants assert that Ben
9 Davidson ("Davidson") billed his time at a discounted
10 rate of \$450 per hour, and is seeking \$192,992.50 in
11 fees. Second Am. Decl. of Ben Davidson ("Second Am.
12 Davidson Decl.") ¶¶ 3, 10, ECF No. 299-1.⁹ Several
13 attorneys from Gordon & Rees represented Melli
14 Defendants in this matter, including Reid Dammann
15 ("Dammann"), Michael Kanach ("Kanach"), and Jason Aida
16 ("Aida"). Decl. of Reid E. Dammann ("Dammann Decl.") ¶
17 8, ECF No. 295-3. Dammann billed his time at a
18 discounted rate of \$320 per hour, and Kanach and Aida
19 billed at a discounted rate of \$280 per hour. Id.
20 Gordon & Rees seeks \$103,491 in fees. Second Am.
21 Davidson Decl. ¶ 10. The firm Music Peeler also
22 asserts that it billed \$2,000 in defending Melli
23

24 ⁹ Melli Defendants support their request with time sheets
25 that describe the matters worked on and estimate the time spent
26 on each matter. See Second Am. Davidson Decl., Exs. A-E. The
27 Court **VERRULES** Plaintiff's objection that the Second Amended
28 Davidson Declaration should be disregarded as untimely. Because
the Court independently calculated the fees to be awarded based
on Exhibits A through D to the Amended Davidson Declaration, the
Court did not rely on Davidson's summary of fees contained in
either the amended or second amended declarations.

1 Defendants against the Lanham Act claims in this
2 action. Id.

3 In opposition to the Motion for Attorney's Fees,
4 Plaintiff attaches the Declaration of Bernard Jasper
5 ("Jasper") in support of its argument that defense
6 counsel's time entries are unreasonable. Decl. of
7 Bernard Jasper ("Jasper Decl."), ECF No. 302-4. Jasper
8 asserts that defense counsel reasonably expended 277.25
9 hours at a rate of \$295, which amounts to total
10 reasonable attorney's fees of \$83,175 for Lanham Act
11 claims. Id. at ¶ 14. Jasper also asserts that several
12 time entries should be excluded from the lodestar
13 analysis because the entries are excessive and/or
14 duplicative. Jasper seeks to exclude several entries
15 under the following categories: entries related to
16 counterclaims, entries related to TTAB cancellation
17 proceedings against Plaintiff, entries related to
18 motions and discovery that were not filed or
19 propounded, internal communications between defense
20 counsel, continuing education and work on behalf of
21 third parties, and clerical work performed by
22 Davidson.¹⁰ Id. at ¶ 13, p. 8.

23
24 ¹⁰ Plaintiff also argues that Defendants' lack of diligence
25 in conducting discovery and failure to file a motion for summary
26 judgment led to unnecessary fees for which they should not be
27 awarded. Although Melli Defendants untimely filed their initial
28 disclosures pursuant to Federal Rule of Civil Procedure 26,
Plaintiff fails to demonstrate how the untimely disclosure led to
increased fees. Especially given the groundlessness of
Plaintiff's claims, the Court does not find Plaintiff's argument
to be persuasive.

1 The Court finds that Melli Defendants adequately
2 justify their hourly rates of \$450, \$320, and \$280 per
3 hour.¹¹ See Love v. Mail on Sunday, No. CV 05-7798 ABC
4 (PJWx), 2007 U.S. Dist. LEXIS 71086, at *10 (C.D. Cal.
5 Sept. 7, 2007) (noting that, in 2006, \$600 was a
6 reasonable hourly rate for a partner with 15 years of
7 legal experience at Morrison & Forster's Los Angeles
8 office). Davidson, owner of Davidson Law Group, has
9 over twenty years of experience as an intellectual
10 property litigator. Second Am. Davidson Decl. ¶ 3.
11 Dammann, a partner at Gordon Rees, has been practicing
12 law for over 12 years, with a focus on intellectual
13 property litigation and prosecution. Dammann Decl. ¶
14 3. Lastly, Gordon Rees attorneys Kanach and Aida
15 respectively have five and ten years of litigation
16

17 ¹¹ The Jasper Declaration submitted by Plaintiff is
18 speculative, as Jasper admits that he merely "reviewed the docket
19 and the pleadings . . . , scanned the correspondence, . . . and
20 reviewed the entries in the bills submitted" by Melli Defendants
21 to arrive at his conclusion regarding the reasonableness of the
22 requested fee amount. See Jasper Decl. ¶ 3. Jasper was not
23 intimately involved in the proceedings, and therefore, his
24 analysis of what constitutes a reasonable amount of time to spend
25 on the specific tasks involved in this litigation is entitled to
26 little weight. Instead, the Court gives credence to defense
27 counsel's declarations. See Horsford v. Bd. of Trs. of Cal.
28 State Univ., 33 Cal. Rptr. 3d 644, 673 (Cal. Ct. App. 2005)
("[T]he verified time statements of the attorneys, as officers of
the court, are entitled to credence in the absence of a clear
indication the records are erroneous."). In addition, the Court
disregards Jasper's contention that a "blended rate of \$295"
should be used because "much of the work [in the case] was
performed by associates and paralegals." The exhibits attached
to the Second Amended Davidson Declaration and the Dammann
Declaration specifically delineate which hours were performed by
associates and paralegals, as opposed to Davidson and Dammann.

1 experience. Id. at ¶ 8.

2 Having reviewed the Second Amended Davidson
3 Declaration, Dammann Declaration, and supporting
4 exhibits, the Court concludes that the entries
5 complained of in the Jasper Declaration were not
6 included in Melli Defendants' fee request in this
7 Motion. Melli Defendants properly deducted the work
8 done on non-Lanham Act claims from their fee request,¹²
9 and Melli Defendants do not seek fees in relation to
10 their counterclaims or TTAB proceedings.

11 The Court finds that the following time was
12 reasonably spent defending the Lanham Act claims:

13 Attorney or Paralegal	14 Hourly Rate	15 Number of Hours	16 Lodestar Figure
17 Davidson	\$450	422.1	\$189,945.00
18 Toni Gesin ¹³	N/A	20.6	N/A
19 Dammann (Gordan & Rees)	\$320	187.7	\$60,064.00
20 Kanach	\$280	29.4	\$8,120.00
21 Aida	\$280	92.9	\$26,012.00

22
23 ¹² Only items that were highlighted in yellow in the
24 exhibits to the Second Amended Davidson Declaration pertained to
25 the trademark causes of action, and were therefore included in
26 the requested fee amount. Second Am. Davidson Decl. ¶ 6. In
addition, only items included in the "Fee Amt" column of the
chart in Exhibit D pertaining to Gordan & Rees were included in
Melli Defendants' request for fees. See id., Ex. D.

27 ¹³ Because Melli Defendants do not provide support for Toni
28 Gesin's hourly rate, the Court does not include this time in the
lodestar calculation.

Gordan & Rees paralegals ¹⁴	\$190	31.9	\$6,061.00
Dammann (Music Peeler)	\$300	35.9	\$10,770.00 ¹⁵

Accordingly, the Court **GRANTS** Melli Defendants' Motion and awards the following fees to Melli Defendants:

Davidson Law Group:	\$189,945.00
Gordan & Rees:	\$100,257.00
Music Peeler:	\$2,000.00
Total Attorney's Fees:	\$292,202.00

This fee award is reasonable, especially given the history of this case, the contentious nature of the relationship between the parties, the customary fee awarded in trademark infringement suits, and the time and labor that was required to defend against Plaintiff's groundless claims. See Kerr, 526 F.2d at 70.

Lastly, Melli Defendants request \$2,700.00 in costs to be awarded for videotaped depositions, Mr. Khalili's

¹⁴ Melli Defendants provide sufficient support for reasonable hourly rates of \$190 for paralegals who assisted on this matter. See Dammann Decl. ¶ 8. Melli Defendants, however, do not state whether "Stubblefiel," "Sara, Ma," "Nusser," "Alvord," and "Andris" are paralegals. The Court applies a paralegal rate of \$190 for these individuals.

¹⁵ The invoices attached to support Dammann's fee amount while at Music Peeler do not adequately show which fees pertain to Lanham Act claims, as opposed to non-Lanham Act claims. However, Dammann only requests \$2,000 in fees for the work he performed while at Music Peeler. Because half of Plaintiff's claims were non-Lanham Act claims, this request is reasonable.

1 deposition, and messenger deliveries of chambers
2 copies. Second Am. Davidson Decl. ¶ 11. Melli
3 Defendants adequately demonstrate that they expended
4 **\$1,080.71** in costs for courier fees. See id., Ex. A.
5 They do not, however, adequately demonstrate the costs
6 incurred in conducting videotaped depositions and Mr.
7 Khalili's deposition. Accordingly, the Court awards
8 **\$1,080.71** in costs.

9 4. Whether sanctions are warranted against
10 Plaintiff's counsel pursuant to 28 U.S.C. §
11 1927

12 "Any attorney . . . who so multiplies the
13 proceedings in any case unreasonably and vexatiously
14 may be required by the court to satisfy personally
15 excess costs, expenses, and attorneys' fees reasonably
16 incurred because of such conduct." 28 U.S.C. § 1927.
17 "[S]ection 1927 sanctions must be supported by a
18 finding of subjective bad faith, which is present when
19 an attorney knowingly or recklessly raises a *frivolous*
20 argument, or argues a meritorious claim for the purpose
21 of harassing an opponent." B.K.B. v. Maui Police
22 Dept., 276 F.3d 1091, 1107 (9th Cir. 2002) (citation
23 and internal quotation marks omitted) (emphasis in
24 original).

25 Plaintiff's counsel's arguments with regard to
26 trademark dilution and indirect infringement against
27 Melli Defendants were rendered groundless when the
28 Court granted Mesriani Defendants' motion to dismiss.

1 The Court therefore finds that Plaintiff's counsel
2 knowingly pursued frivolous claims for dilution and
3 indirect infringement after the dismissal of Mesriani
4 Defendants, which supports an award of sanctions
5 pursuant to 28 U.S.C. § 1927.

6 **III. CONCLUSION**

7 For these reasons, the Court **GRANTS** Melli
8 Defendants' Motion for Attorney's Fees pursuant to 15
9 U.S.C. § 1117(a) and against Plaintiff's counsel
10 pursuant to 28 U.S.C. § 1927. The Court awards
11 **\$292,202.00** in attorney's fees and **\$1,080.71** in costs
12 to Melli Defendants.

13 **IT IS SO ORDERED.**

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15 DATED: August 17, 2016

s/ RONALD S.W. LEW

16 **HONORABLE RONALD S.W. LEW**
17 Senior U.S. District Judge
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