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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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THE NATIONAL GRANGE OF THE  
ORDER OF PATRONS OF  
HUSBANDRY, a District of  
Columbia nonprofit  
corporation,

Plaintiff,

v.

CALIFORNIA STATE GRANGE d/b/a  
"CSG," a California  
corporation,

Defendant.

CIV. NO. 2:14-676 WBS AC

MEMORANDUM AND ORDER RE: MOTION  
FOR ATTORNEY'S FEES

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Plaintiff the National Grange of the Order of Patrons  
of Husbandry brought this action against defendant California  
State Grange, currently known as the California State Guild, for  
violations of the Lanham Act. Presently before the court is  
plaintiff's motion for attorney's fees in the amount of  
\$154,230.80 pursuant to the Lanham Act and this court's Order of  
April 20, 2016. (Docket No. 142.)

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1 I. Factual and Procedural Background

2 A detailed factual background of this case is set forth  
3 in the court's April 20, 2016 Order granting plaintiff's motion  
4 for an injunction. Nat'l Grange of the Order of Patrons of  
5 Husbandry v. Cal. State Grange, Civ. No. 2:14-676 WBS AC, 2016 WL  
6 1587193 (E.D. Cal. Apr. 20, 2016). It is therefore unnecessary  
7 to repeat that background in full here.

8 In July 2015, the court granted summary judgment in  
9 favor of plaintiff on its claims for (1) trademark infringement,  
10 15 U.S.C. § 1114; and (2) unfair competition and false  
11 designation of origin, 15 U.S.C. § 1125(a). (Docket No. 60.)<sup>1</sup>  
12 In September 2015, the court entered an Order permanently  
13 enjoining "[d]efendant and its agents, affiliates, and assigns,  
14 or any party acting in concert with [them] from using marks  
15 containing the word 'Grange.'" (Docket No. 86.) Defendant  
16 appealed the court's July and September 2015 Orders; that appeal  
17 is currently pending before the United States Court of Appeals  
18 for the Ninth Circuit. (Docket Nos. 87, 89, 95.) In January  
19 2016, this court denied defendant's motion to stay the September  
20 2015 permanent injunction pending defendant's appeal. (Docket  
21 No. 108.)

22 In February 2016, plaintiff moved for an order to show  
23 cause why defendant should not be held in contempt for violating  
24 the court's September 2015 injunction (the "Contempt Motion").  
25 (Docket No. 109.) The court denied that motion without prejudice

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<sup>1</sup> Plaintiff dismissed its remaining two claims against  
defendant with prejudice. (Id.)

1 to plaintiff filing a motion for further injunctive relief based  
2 on the issues that were litigated in this case. (Docket No.  
3 117.) The court additionally denied plaintiff's motion for  
4 clarification of the September 2015 injunction. (Docket No.  
5 125.)

6 On April 20, 2016, the court granted in part  
7 plaintiff's motion for further injunctive relief based on the  
8 issues that were litigated in this case (the "Injunction  
9 Motion"). (Apr. 20, 2016 Order (Docket No. 138).) In its April  
10 20, 2016 Order, the court held that plaintiff was entitled to  
11 reasonable attorney's fees under section 1117(a) of the Lanham  
12 Act in connection with (1) plaintiff's Injunction Motion; (2)  
13 plaintiff's Contempt Motion; (3) Ed Kowski's February 1, 2016  
14 declaration filed in support of plaintiff's Contempt Motion,  
15 (Docket No. 109-1); and (4) Kowski's December 28, 2015  
16 declaration filed in support of plaintiff's opposition to  
17 defendant's motion to stay the court's September 2015 injunction  
18 pending defendant's appeal, (Docket Nos. 99-2 to 99-43).  
19 Pursuant to the court's April 20, 2016 Order, plaintiff now moves  
20 for attorney's fees in the amount of \$154,230.80. (Mot. (Docket  
21 No. 142); Mem. at 2 (Docket No. 142-1).)

## 22 II. Discussion

### 23 A. Entitlement to Fees

24 Section 1117(a) of the Lanham Act authorizes reasonable  
25 attorney's fees to the prevailing party in an exceptional case.  
26 See 15 U.S.C. § 1117(a); Horphag Research Ltd. v. Garcia, 475  
27 F.3d 1029, 1039 (9th Cir. 2007). In its April 20, 2016 Order,  
28 the court held that plaintiff was the prevailing party on its

1 Injunction and Contempt Motions for purposes of a fee award  
2 because it obtained the relief it sought in those motions. (Apr.  
3 20, 2016 Order at 32-33.)

4 The court also found that this was an "exceptional  
5 case" within the meaning of § 1117(a) because there was  
6 "significant evidence" that defendant willfully and deliberately  
7 continued to infringe plaintiff's trademark rights and engage in  
8 unfair competition against plaintiff following the court's  
9 September 2015 injunction. (See id. at 33-36 ("The court is hard  
10 pressed to find that defendant's acts were anything other than  
11 deliberate and willful.")); see also Fifty-Six Hope Rd. Music,  
12 Ltd. v. A.V.E.L.A., Inc., 778 F.3d 1059, 1078 (9th Cir. 2015)  
13 (stating that a trademark case is exceptional for purposes of a  
14 fee award under § 1117(a) where the defendant's conduct "is  
15 malicious, fraudulent, deliberate, or willful," and neither  
16 egregious conduct nor bad faith is required for such a finding).

17 B. Amount of the Fee Award

18 The determination of a reasonable fee involves a two-  
19 step inquiry. Intel Corp. v. Terabyte Int'l, Inc., 6 F.3d 614,  
20 622 (9th Cir. 1993). First, "the district court applies the  
21 lodestar method" by "multiplying the number of hours reasonably  
22 expended by a reasonable hourly rate." Ryan v. Editions Ltd. W.,  
23 Inc., 786 F.3d 754, 763 (9th Cir. 2015) (citing Hensley v.  
24 Eckerhart, 461 U.S. 424, 433 (1983)). "The resulting number is  
25 frequently called the 'lodestar' amount." McCown v. City of  
26 Fontana, 565 F.3d 1097, 1102 (9th Cir. 2009). "The party seeking  
27 the award should provide documentary evidence to the court  
28 concerning the number of hours spent, and how it determined the

1 hourly rate(s) requested." Id. (citing Hensley, 461 U.S. at  
2 433).

3           Second, "in appropriate cases, the district court may  
4 adjust the 'presumptively reasonable' lodestar figure based upon  
5 the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d  
6 67, 69-70 (9th Cir. 1975), that have not been subsumed in the  
7 lodestar calculation." Intel, 6 F.3d at 622. "The lodestar  
8 amount presumably reflects the novelty and complexity of the  
9 issues, the special skill and experience of counsel, the quality  
10 of representation, and the results obtained from the litigation."  
11 Id. "The court need not consider all [of the Kerr] factors, but  
12 only those called into question by the case at hand and necessary  
13 to support the reasonableness of the fee award." Cairns v.  
14 Franklin Mint Co., 292 F.3d 1139, 1158 (9th Cir. 2002) (citation  
15 omitted).

16           1. Reasonable Rate

17           a. Prevailing Market Rate

18           To determine a reasonable hourly rate, the court must  
19 look to the prevailing rates in the relevant legal community "for  
20 similar work performed by attorneys of comparable skill,  
21 experience, and reputation." Ingram v. Oroudjian, 647 F.3d 925,  
22 928 (9th Cir. 2011) (citation omitted). "Generally, the relevant  
23 community is the forum in which the district court sits." Barjon  
24 v. Dalton, 132 F.3d 496, 500 (9th Cir. 1997). The parties agree  
25 that the relevant community in this case is the Eastern District  
26 of California. See id. at 502. The "burden is on the fee  
27 applicant to produce satisfactory evidence--in addition to the  
28 attorney's own affidavits--that the requested [hourly] rates are

1 in line with those prevailing in the community for similar  
2 services by lawyers of reasonably comparable skill, experience  
3 and reputation." Blum v. Stenson, 465 U.S. 886, 896 n.11 (1984).

4 Plaintiff requests the following hourly rates here:

5 (1) \$530 for James Bikoff, a partner at Smith, Gambrell and  
6 Russell, LLP ("SGR") with 40 years of experience in trademark  
7 litigation; (2) \$450 for Bruce McDonald, a partner at SGR with 35  
8 years of experience in intellectual property litigation; (3) \$330  
9 for Holly Lance, an associate at SGR with 5 years of experience  
10 in intellectual property litigation; and (4) \$720 for Michael  
11 Turrill, a partner at Arent Fox, LLP with 20 years of experience  
12 in commercial litigation, including intellectual property  
13 disputes. (Bikoff Decl. ¶¶ 3, 6-8, Exs. D-F (Docket No. 142-2);  
14 Turrill Decl. ¶ 5 (Docket No. 142-5).) Defendant does not  
15 dispute the reasonableness of the rates that Bikoff,  
16 McDonald, or Lance seek and thus the court will award fees at  
17 those undisputed rates. Defendant contends that Turrill's  
18 rate of \$720 is not reasonable for trademark litigation work  
19 in Sacramento, and the court agrees. Defendant suggests that  
20 Turrill's rate should be no greater than \$550 per hour.

21 Notably, none of the declarations submitted in this  
22 case state that \$720 is the prevailing rate in Sacramento for a  
23 lawyer of Turrill's experience. Moreover, none of the sources  
24 plaintiff relies on in support of the requested rates  
25 establish prevailing rates in Sacramento or support a rate  
26 \$720 for a partner with 20 years of legal experience. For  
27 example, the American Intellectual Property Law Association's  
28 2015 Report of the Economic Survey ("AIPLA survey") provides only

1 national average billing rates for intellectual property  
2 attorneys and indicates that the average rate for law firm  
3 partners with 20 years of experience like Turrill is \$475 per  
4 hour. (Bikoff Decl. ¶ 5, Ex. C); see also Schwarz v. Sec'y of  
5 Health & Human Servs., 73 F.3d 895, 908 (9th Cir. 1995) (holding  
6 that "a couple of published surveys of ranges of fees charged by  
7 various law firms based in Seattle, Washington, and other cities  
8 across America . . . told the district court nothing about the  
9 prevailing rate in [the relevant communities of] Portland or  
10 Phoenix for similarly qualified lawyers working on a similar type  
11 of case").

12 Plaintiff also relies on the Laffey Matrix, which is  
13 "an inflation-adjusted grid of hourly rates for lawyers of  
14 varying levels of experience in Washington, D.C." Prison Legal  
15 News v. Schwarzenegger, 608 F.3d 446, 454 (9th Cir. 2010)  
16 (citations omitted). "The Laffey matrix has been regularly  
17 prepared and updated by the Civil Division of the United States  
18 Attorney's Office for the District of Columbia and used in fee  
19 shifting cases, among others." Craigslist, Inc. v. Naturemarket,  
20 Inc., 694 F. Supp. 2d 1039, 1067 (N.D. Cal. 2010). Although  
21 courts have relied on the Laffey Matrix and attempted to adjust  
22 its rates to account for legal communities outside of Washington,  
23 D.C., this court has criticized the use of the Laffey Matrix  
24 without a reliable method to adjust the rates to account for the  
25 difference between the prevailing market rates in Washington,  
26 D.C. and Sacramento. See Johnson v. Wayside Prop., Inc., Civ.  
27 No. 2:13-1610 WBS, 2014 WL 6634324, at \*7 (E.D. Cal. Nov. 21,  
28 2014). Nonetheless, even the Laffey Matrix provides that

1 attorneys with 20 years of experience like Turrill bill \$504 per  
2 hour in Washington, D.C.

3 Turrill also submits a 2014 National Law Journal survey  
4 of billing rates charged by partners in the nation's 350  
5 largest firms (the "NLJ survey"). (Turrill Decl. ¶ 6, Ex. 1.)  
6 Turrill, who is a partner at Arent Fox, states that his firm "is  
7 ranked number 117 in the AmLaw 200 and has offices in Washington,  
8 D.C., New York City, San Francisco, and Los Angeles." (Id. ¶ 4.)  
9 Turrill contends that a rate of \$720 per hour is reasonable  
10 because it "is consistent with the market rate for partners with  
11 [20 years] of experience" in "law firms of similar size and  
12 reputation and which are either based in Los Angeles or have Los  
13 Angeles offices." (Id. ¶¶ 5-6.) Turrill also contends that a  
14 rate of \$720 per hour is in line with the "prevailing rates in  
15 Southern California." (Id. ¶ 7.) He submits a Los Angeles  
16 County Superior Court ruling on a fee motion brought under  
17 California Government Code section 12965(b) where the Superior  
18 Court found that "each attorney's hourly rate (\$700 and \$400) is  
19 a reasonable rate for comparable legal services in the L.A. metro  
20 area for noncontingent employment litigation." (Id. ¶ 7, Ex. 2);  
21 Hancock v. Time Warner Cable Servs., LLC, 2015 WL 5923311 (Cal.  
22 Super. Ct. Sept. 1, 2015). This evidence is unhelpful because  
23 the relevant community here is Sacramento, and not Los Angeles or  
24 Southern California. See Barjon, 132 F.3d at 499-500 (holding  
25 that the district court correctly "appl[ie]d the rates of the  
26 local forum--the Sacramento area--rather than the rates of  
27 Wallace's place of business--the San Francisco area" because  
28 "Sacramento, not San Francisco, was the relevant market").



1           The fee award in Hancock also involved a state law  
2 employment discrimination action litigated in Los Angeles and the  
3 fee request there was analyzed under California law. (See  
4 Turrill Decl. Ex. 2.) By contrast, this action involves federal  
5 claims under the Lanham Act, was litigated in Sacramento, and  
6 federal law governs the present fee motion pursuant to § 1117(a).  
7 See Jadwin v. County of Kern, 767 F. Supp. 2d 1069, 1135 n.76  
8 (E.D. Cal. 2011) (Wanger, J.) (observing that the lodestar  
9 analysis under federal law is different from that under state  
10 law); see also 99 Only Stores v. 99 Cent Family Sav., Civ. No.  
11 1:10-1319 LJO MJS, 2011 WL 2620983, at \*3 (E.D. Cal. June 29,  
12 2011) (“[C]osts of practicing law, and hence legal fees, can be  
13 significantly higher in Southern California where Plaintiff’s  
14 firm is located than in the Central Valley of California.”). As  
15 a result, neither the NLJ survey nor the Superior Court’s fee  
16 award establishes that Turrill’s \$720 hourly rate is a reasonable  
17 rate in Sacramento for comparable trademark litigation services  
18 performed by attorneys with Turrill’s skill and experience.

19           In sum, the court is not persuaded that the reasonable  
20 rate in Sacramento for an attorney of Turrill’s skill and  
21 experience is \$720. The court will therefore award Turrill \$550  
22 per hour because defendant does not object to that rate for him.

## 23           2. Reasonable Number of Hours

24           “A district court, using the lodestar method to  
25 determine the amount of attorney’s fees to award, must determine  
26 a reasonable number of hours for which the prevailing party  
27 should be compensated.” Gonzalez v. City of Maywood, 729 F.3d  
28 1196, 1202 (9th Cir. 2013). “Ultimately, a ‘reasonable’ number

1 of hours equals the number of hours which could reasonably have  
2 been billed to a private client." Id. (alterations and quotation  
3 marks omitted). "[T]o determine whether attorneys for the  
4 prevailing party could have reasonably billed the hours they  
5 claim to their private clients, the district court should begin  
6 with the billing records the prevailing party has submitted."  
7 Id.

8 "The fee applicant bears the burden of documenting the  
9 appropriate hours expended in the litigation and must submit  
10 evidence in support of those hours worked." Gates v. Deukmejian,  
11 987 F.2d 1392, 1397 (9th Cir. 1992) (citing Hensley, 461 U.S. at  
12 433, 437). A fee applicant must "make a good faith effort to  
13 exclude from a fee request hours that are excessive, redundant,  
14 or otherwise unnecessary." Hensley, 461 U.S. at 434; see Sealy,  
15 743 F.2d at 1384-85 (applying this standard to fee requests under  
16 the Lanham Act). "By and large, the district court should defer  
17 to the winning lawyer's professional judgment as to how much time  
18 he or she was required to spend on the case." Ryan, 786 F.3d at  
19 763 (alterations and citation omitted).

20 "The party opposing the fee application has a burden of  
21 rebuttal that requires submission of evidence to the district  
22 court challenging the accuracy and reasonableness of the hours  
23 charged or the facts asserted by the prevailing party in its  
24 submitted affidavits." Gates, 987 F.2d at 1397-98 (citing Blum,  
25 465 U.S. at 892 n.5). "The district court may reduce the amount  
26 of requested fees to reflect a party's limited degree of success,  
27 to account for block billing, or to deduct those hours the court  
28 deems excessive." Ryan, 786 F.3d at 763 (citations omitted).

1 Although “[t]here is no precise formula or methodology that the  
2 district court is obligated to follow” when reducing fees, id. at  
3 765, “a more specific articulation of the court’s reasoning is  
4 expected” the greater the “disparity between the requested fees  
5 and the district court’s award,” id. at 764.

6 Counsel submitted billing statements indicating the  
7 following hours spent on the matters for which plaintiff is  
8 entitled to attorney’s fees here: Bikoff (79.9 hours); McDonald  
9 (188.7 hours); Lance (68.2 hours); and Turrill (37.4 hours).  
10 (See Bikoff Decl. ¶ 3, Ex. B; Turrill Decl. ¶ 8, Ex. 3.) SGR  
11 also proposes a 15% reduction to the total fees billed by Bikoff,  
12 McDonald, and Lance. (Bikoff Decl. ¶¶ 3-4.)

13 a. Fees for Unrelated Matters

14 The court held in its April 20, 2016 Order that  
15 plaintiff was entitled to attorney’s fees associated with its  
16 Injunction Motion, its Contempt Motion, and Komski’s two  
17 declarations. (Apr. 20, 2016 Order at 38-39.) Any attorney time  
18 that counsel billed for matters unrelated to those four items  
19 must be excluded. Plaintiff requests fees for the time that  
20 counsel worked on plaintiff’s motion for clarification, which it  
21 filed on March 11, 2016. (Mot. for Clarification (Docket No.  
22 122); see Opp’n at 7-8 (Docket No. 146).) The court’s April 20,  
23 2016 Order did not hold that plaintiff was entitled to attorney’s  
24 fees associated with its motion for clarification. (See Apr. 20,  
25 2016 Order at 31-39.) The court will thus reduce the following  
26 hours billed by counsel for working on plaintiff’s motion for  
27 clarification: Bikoff (1 hour on March 18, 2016); Lance (0.2  
28 hours on March 8, 2016); and Turrill (4 hours on March 17-18,

1 2016). (Bikoff Decl. Ex. B at 30; Turrill Decl. Ex. 3 at 32).

2 Plaintiff is also not entitled to fees for the 1 hour  
3 billed by Bikoff for attending a lunch conference on April 6,  
4 2016 with a University of California representative to discuss  
5 the University's rental payments under a 2002 lease agreement  
6 with defendant. (Bikoff Decl. Ex. B at 35; Opp'n at 9-10.)  
7 Because that issue is unrelated to the four matters for which  
8 plaintiff was granted fees, the court will reduce Bikoff's billed  
9 time by 1 hour.

10 b. Block Billing

11 Defendant contends that "substantially all time entries  
12 for each counsel [a]re block-billed." (Opp'n at 10.) "Block  
13 billing is the time-keeping method by which each lawyer . . .  
14 enters the total daily time spent working on a case, rather than  
15 itemizing the time expended on specific tasks." Welch, 480 F.3d  
16 at 945 n.2 (citations omitted). As a result, "the amount of time  
17 spent by an attorney on each discrete task is not identified, but  
18 instead all hours spent during the course of a day on multiple  
19 tasks are billed together." Yeager v. Bowlin, Civ. No. 2:08-102  
20 WBS JFM, 2010 WL 1689225, at \*1 (E.D. Cal. Apr. 26, 2010).  
21 Counsel's billing statements indeed contain significant block  
22 billing; over 80% of counsel's billing entries are in block  
23 format. Defendant argues that the extent of counsel's block-  
24 billing makes it "hopelessly impossible to tell the amount of  
25 time spent on each task" and thus requests a 40% reduction in  
26 plaintiff's fee award. (Opp'n at 10.)

27 District courts may not account for block billing by  
28 applying an across-the-board reduction to all hours claimed in a

1 fee petition; rather, courts may apply a percentage reduction  
2 only to those hours that are actually block-billed. Deocampo v.  
3 Potts, Civ. No. 2:06-1283 WBS, 2014 WL 788429, at \*4 (E.D. Cal.  
4 Feb. 25, 2014). "Courts in the Ninth Circuit have reduced up to  
5 thirty percent of the hours that are block-billed." Id.; see,  
6 e.g., Welch, 480 F.3d at 948 (affirming district court's  
7 authority to reduce block-billed hours by 10% to 30%); Willis v.  
8 City of Fresno, Civ. No. 1:09-1766 BAM, 2014 WL 3563310, at \*18-  
9 19 (E.D. Cal. July 17, 2014) (reducing impermissibly block-billed  
10 entries by 30%).

11 "The court also retains discretion not to reduce hours  
12 that are purportedly block billed if those time entries 'are  
13 detailed enough for the court to assess the reasonableness of the  
14 hours billed.'" Deocampo, 2014 WL 788429, at \*4 (alterations  
15 omitted) (quoting Campbell v. Nat'l Passenger R.R. Corp., 718 F.  
16 Supp. 2d 1093, 1103 (N.D. Cal. 2010)); see also Trulock v. Hotel  
17 Victorville, 92 F. App'x 433, 434 (9th Cir. 2004) (stating that  
18 the "use of block billing" is only one factor in determining  
19 whether the number of hours claimed are reasonable). "Although  
20 it is true that the fee applicant bears the burden of submitting  
21 'evidence supporting the hours worked and rates claimed,' the  
22 Supreme Court has also stated that plaintiff's counsel 'is not  
23 required to record in great detail how each minute of his time  
24 was expended.'" Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1121  
25 (9th Cir. 2000) (quoting Hensley, 461 U.S. at 433, 437 n.12).  
26 "Instead, plaintiff's counsel can meet [the] burden" of  
27 adequately documenting the number of hours billed "by simply  
28 listing [the] hours and identifying the general subject matter of

1 [the] time expenditures." Id. (quotations and alterations  
2 omitted).

3 In Fischer, for example, the Ninth Circuit held that  
4 counsel's block-billed time records were sufficient even though  
5 they provided summaries of time spent on broad categories of  
6 tasks such as pretrial motions and court appearances. Id.  
7 Similarly, in Secalt S.A. v. Wuxi Shenxi Construction Machinery,  
8 668 F.3d 677 (9th Cir. 2012), the Ninth Circuit held in reviewing  
9 a fee award under the Lanham Act that even when "billing entries  
10 list numerous tasks performed over multi-hour spans, it [is] not  
11 an abuse of discretion for the district court to award the  
12 associated fees because counsel 'is not required to record in  
13 great detail how each minute of his time was expended.'" Id. at  
14 690 (quoting Hensley, 461 U.S. at 437 n.12)). A block-billed  
15 entry is only "a problem where it obscures the nature of some of  
16 the work claimed." Willis, 2014 WL 3563310, at \*18 (quotations  
17 and alterations omitted).

18 Although a majority of the entries submitted here are  
19 in block-billed format, the billing entries identify the  
20 particular tasks performed with great detail and specificity.  
21 For example, McDonald billed 6.5 hours on December 16, 2015 for  
22 the following activities:

23 Examine documents received from Mr. Kowski including  
24 correspondence dated 12/15/2015 from McFarland "Regards,  
25 Boutin Jones Inc. by Robert D. Swanson," to Annie Waters,  
26 President, Little Lake Grange, Willits, CA; email circa  
27 11/25/2015 from McFarland to Woodbridge Grange Members;  
28 investigation and research re cause of action by National  
Grange for contempt of September 30 injunction; new and  
independent acts of trademark infringement, unfair  
competition, false advertising, trade libel, interference  
in contractual relations, copyright infringement, with

1 availability of exemplary damages and award of costs and  
2 attorney's fees, supported by motion for TRO or  
3 preliminary injunction under Federal Rule 65; memorandum  
4 to Mr. Bikoff re above; draft memo to Messrs. Komski,  
5 Jensen, Riordan and Skinner in response to inquiries re  
6 availability of relief; continued work on Komski  
7 Declaration; memorandum to Mr. Komski re terminology and  
8 contents of declaration; memorandum to Ms. Lance with  
9 instructions re Huber Declaration; memorandum to Mr.  
10 Bikoff and Ms. Lance re problems with use of word  
11 "chartered" whereas there is only one California State  
12 Grange, recommending amendment of case caption to avoid  
13 confusing appearance that California State Grange is  
14 defendant; memorandum to Messrs. Bikoff, Komski, Skinner  
15 et al. with final declaration; examine comments from Mr.  
16 Skinner; examine Shaw Declaration and Komski Declarations  
17 filed last week in state court action; conference with  
18 Mr. Komski re same; examine and respond to Mr. Komski re  
19 exhibit used to document McFarland's statements at  
20 December 8 meeting; add content to declaration re  
21 rearrangement of Ranchito Grange and new evidence for  
22 independent causes of action; memoranda to Mr. Skinner re  
23 new additions to declaration; examine and incorporate  
24 further comments[.]

15 (Bikoff Decl. Ex. B at 11.) The remaining time entries submitted  
16 here are similarly detailed and specific.

17 Counsel's billing statements here are thus sufficiently  
18 detailed for the court to assess the reasonableness of the hours  
19 billed. Accord Willis, 2014 WL 3563310, at \*18; Gucci America,  
20 Inc. v. Pieta, Civ. No. 04-9626 ABC MCX, 2006 WL 4725707, at \*2  
21 (C.D. Cal. July 17, 2006). Accordingly, no reduction is  
22 warranted on the ground that the billing entries submitted here  
23 are block-billed.

24 c. Komski's December 28, 2015 Declaration

25 Defendant next argues that the court should exclude any  
26 fees associated with Komski's December 28, 2015 declaration  
27 because plaintiff filed the declaration in support of its  
28 opposition to defendant's motion to stay the court's injunction

1 pending appeal. (Opp'n at 5-6, 12-14.) Defendant argues that  
2 the declaration did not relate to the Contempt or Injunction  
3 Motions and should thus be excluded from the fee award.  
4 Defendant also argues that any time spent on Komski's December  
5 declaration before defendant filed its motion to stay pending  
6 appeal should be excluded because defendant's motion to stay is  
7 what triggered the December declaration. (Id. at 5.)

8           These arguments are unavailing. Plaintiff submitted  
9 Komski's December declaration "to describe the public confusion,  
10 mistake and deception created by the actions of the Defendant  
11 . . . subsequent to this Court's injunction issued on September  
12 30, 2015." (Komski Decl. ¶ 2, Dec. 28, 2015.) The declaration  
13 described defendant's actions from the entry of the September  
14 2015 injunction until December 28, 2015. (Id.) Thus, Komski's  
15 December declaration was relevant to more than just defendant's  
16 motion to stay pending appeal. Plaintiff's Contempt Motion, for  
17 example, relied on "the Declaration of Ed Komski dated December  
18 28, 2015." (Komski Decl. ¶ 2, Feb. 1, 2016.) Plaintiff's  
19 Injunction Motion was "based on exhibits and evidence that  
20 plaintiff had submitted with its contempt motion," including  
21 Komski's December declaration. (Apr. 20, 2016 Order at 33.)

22           The court also relied on Komski's December declaration  
23 in its April 20, 2016 Order in finding that the California Grange  
24 Foundation was bound by the September 2015 injunction because it  
25 was defendant's agent or affiliate, (id. at 20); that defendant  
26 had some control over the contents of its online business  
27 directory listings, (id. at 28); and that defendant willfully  
28 deceived the public after the September 2015 injunction was



1 issued, (id. at 34-36). Accordingly, the court declines to  
2 reduce plaintiff's attorney's fees associated with Komski's  
3 December 28, 2015 declaration.

4 d. Time Spent on the Contempt Motion

5 Defendant argues that time spent on the Contempt Motion  
6 should be excluded because counsel started work on the Contempt  
7 Motion prematurely and did so while simultaneously communicating  
8 with defendant about its compliance with the September 2015  
9 injunction. (Opp'n at 4-6.) The court declines to reduce  
10 plaintiff's fee award on that ground because "the Court will not  
11 second guess attorney efforts to conduct the litigation strategy  
12 for the case," including when to start work on a motion. E-Pass  
13 Techs., Inc. v. 3Com Corp., Civ. No. C-00-2255 DLJ, 2007 WL  
14 4170514, at \*8 (N.D. Cal. Nov. 14, 2007).

15 Defendant also argues that fees associated with the  
16 Contempt Motion should be excluded because the motion was denied.  
17 (Opp'n at 11-12.) Defendant does not provide any authority to  
18 support this argument. Plaintiff's Contempt Motion here was  
19 denied without prejudice to plaintiff bringing its subsequent  
20 Injunction Motion. (Apr. 20, 2016 Order at 4.) In granting  
21 plaintiff's Injunction Motion, the court held that plaintiff was  
22 entitled to fees associated with its Contempt Motion because the  
23 Injunction Motion was "based on exhibits and evidence that  
24 plaintiff had submitted with its contempt motion" and the  
25 Contempt Motion "sought much of the same relief the court"  
26 granted in the Injunction Motion. (Id. at 33:8-14.) It was  
27 apparent to the court that the time expended on the Contempt  
28 Motion was utilized in the Injunction Motion.

1 Defendant further requests that the court exclude any  
2 fees for the Contempt Motion incurred between the Contempt  
3 Motion's filing on February 1, 2016 and plaintiff's receipt of  
4 defendant's opposition to that motion on February 22, 2016,  
5 because counsel had no need to continue working on the Contempt  
6 Motion until plaintiff received defendant's opposition. (Opp'n  
7 at 7, Attach. 3.) The billing records indicate, however, that  
8 after plaintiff filed its Contempt Motion, plaintiff's counsel  
9 continued to investigate, analyze, and document new information  
10 regarding defendant's violations of the September 2015  
11 injunction. (Bikoff Decl. Ex. B at 23-24.) In addition, because  
12 plaintiff obtained the relief it sought in its Contempt Motion,  
13 the court must "defer to the winning lawyer's professional  
14 judgment as to how much time he or she was required to spend on  
15 the case." Ryan, 786 F.3d at 763 (citation and alterations  
16 omitted). Accordingly, the court declines to reduce the hours  
17 requested by counsel on these grounds.

18 e. McDonald's Fees for Attending Hearings

19 Defendant argues that the court should exclude  
20 McDonald's billed hours for attending the March 7, 2016 Contempt  
21 Motion hearing and April 18, 2016 Injunction Motion hearing  
22 because McDonald did not argue at those hearings. (Opp'n at 9.)  
23 "[I]t is not uncommon to have co-counsel in litigation, and fees  
24 are commonly awarded to multiple counsel." Stonebrae, L.P. v.  
25 Toll Bros., Civ. No. C-08-0221 EMC, 2011 WL 1334444, at \*12 (N.D.  
26 Cal. Apr. 7, 2011), aff'd, 521 F. App'x 592 (9th Cir. 2013). The  
27 court has direction, however, to reduce a fee award "due to  
28 unreasonable inefficiencies and duplicative efforts engendered by

1 multiple counsel and law firms." Id.

2 McDonald billed 6.50 and 6 hours, respectively, on  
3 March 7 and April 18, 2016 for the following activities:  
4 conferring with Bikoff to prepare for the Contempt and Injunction  
5 Motion hearings; attending those hearings; conferring with  
6 plaintiff, co-counsel, and opposing counsel following the  
7 hearings; and drafting follow-up memoranda, reports, and  
8 recommendations relating to the motion hearings. (Bikoff Decl.  
9 Ex. B at 29, 38.) It is not unreasonable "for two attorneys to  
10 work together on such activities, especially when they are  
11 working on different components of a brief or working together on  
12 a motion." Garcia, 2012 WL 3778852, at \*7; see Chabner v. United  
13 of Omaha Life Ins. Co., Civ. No. 95-0447 MHP, 1999 WL 33227443,  
14 at \*4 (N.D. Cal. Oct. 12, 1999) (finding it "reasonable that the  
15 lead attorneys chose to be present during two pivotal points" in  
16 the litigation). The general rule against overstaffing cases  
17 "does not prevent two attorneys from working together on certain  
18 tasks that are divisible, or conferencing together to determine  
19 strategy." De-Occupy Honolulu v. City & County of Honolulu, Civ.  
20 No. 12-668 JMS KSC, 2015 WL 1013834, at \*12 (D. Haw. Mar. 9,  
21 2015). "Common sense dictates that . . . a number of people  
22 might contribute to one end product." Chabner, 1999 WL 33227443,  
23 at \*4.

24 Given plaintiff's ultimate success in obtaining much of  
25 the relief that it sought in its Contempt and Injunction Motions,  
26 McDonald's billed time for attending the motion hearings is  
27 reasonable. See Ryan, 786 F.3d at 763 ("[T]he district court  
28 should defer to the winning lawyer's professional judgment as to

1 how much time he or she was required to spend on the case."  
2 (alterations and citation omitted)). Accordingly, the court  
3 finds that the hours billed by McDonald for attending the  
4 hearings on plaintiff's Contempt Motion and Injunction Motions  
5 are reasonable.

6 f. Travel Time

7 Defendant also seeks to exclude McDonald's travel time  
8 to the motion hearings. (Opp'n at 8-9.) McDonald billed 4.5  
9 hours on April 17, 2016 for time spent reviewing case files,  
10 conducting research, and conferring with co-counsel in  
11 preparation for the hearing on plaintiff's Injunction Motion and  
12 "travel to California with Mr. Bikoff" to attend that hearing.  
13 (Bikoff Decl. Ex. B at 37-38.) This is the only billing entry  
14 that mentions travel time in counsel's billing statements.  
15 Plaintiff states that the inclusion of the "travel to California"  
16 language in McDonald's billing entry was a clerical error and no  
17 travel time was actually billed to plaintiff. (Reply at 8-9.)

18 The court finds plaintiff's explanation credible. Had  
19 McDonald actually billed plaintiff for his travel time, he would  
20 have billed at least 6 hours for traveling from Washington, D.C.  
21 to Sacramento. As for the 4.5 hours that McDonald billed on  
22 April 17, 2016, the court finds that 4.5 hours is a reasonable  
23 amount of time for conferring with co-counsel, conducting legal  
24 research, and reviewing case files in preparation for the  
25 Injunction Motion hearing on April 18, 2016. Accordingly,  
26 because counsel did not bill any travel time to plaintiff, the  
27 court declines to reduce plaintiff's fee award on this ground.

28 g. Fees Incurred after April 18, 2016

1 Defendant argues that any fees incurred after the  
2 Injunction Motion hearing on April 18, 2016 should be excluded  
3 because "the briefing and hearing were concluded." (Opp'n at 8.)  
4 The court's April 20, 2016 Order, however, granted plaintiff  
5 "attorney's fees associated with its motion for an injunction  
6 [and] its motion for an order to show cause why defendant should  
7 not be held in contempt." (Apr. 20, 2016 Order at 38 (emphasis  
8 added).) Plaintiff is thus entitled to any fees incurred in  
9 preparing the Injunction and Contempt Motions, attending the  
10 hearings on those motions, conferring with plaintiff and co-  
11 counsel after the hearings, and reviewing the court's subsequent  
12 Orders on those motions.

13 Bikoff and McDonald billed 7 and 3 hours, respectively,  
14 on April 19 and 20, 2016 on time spent conferring with co-counsel  
15 and communicating with plaintiff regarding the Injunction Motion  
16 hearing and the court's subsequent April 20 Order on that motion.  
17 (Bikoff Decl. Ex. B at 38.) These tasks are clearly "associated  
18 with" plaintiff's Injunction Motion and are thus recoverable.  
19 The court thus declines to exclude the attorney's fees that  
20 plaintiff incurred after the April 18, 2016 hearing.

21 3. Lodestar Calculation

22 Accordingly, the final lodestar figure for purposes of  
23 this fee motion is \$144,715.70, calculated as follows:

24	Bikoff:	\$530	x	77.9	=	41,287.00	-15%	=	\$ 35,093.95
25	McDonald:	\$450	x	188.7	=	84,915.00	-15%	=	\$ 72,177.75
26	Lance:	\$330	x	68	=	22,440.00	-15%	=	\$ 19,074.00
27	Turrill:	\$550	x	33.4	=	15,030.00			\$ <u>18,370.00</u>
28							TOTAL =		\$144,715.70

1 C. Adjustments to the Lodestar

2 A "strong presumption" exists that the lodestar figure  
3 represents a "reasonable fee" and should therefore be enhanced or  
4 reduced only in "rare and exceptional cases." Pennsylvania v.  
5 Del. Valley Citizens' Council for Clean Air, 478 U.S. 546, 565  
6 (1986) (quotations omitted); see also Gates, 987 F.2d at 1402  
7 (stating "a district court may make upward or downward  
8 adjustments to the presumptively reasonable lodestar" in "rare  
9 cases"); Cunningham v. County of Los Angeles, 879 F.2d 481, 488  
10 (9th Cir. 1988) ("[D]istrict courts [must] treat the lodestar  
11 figure as presumptively reasonable and adjust it only in rare or  
12 exceptional cases."). The court does not find that any  
13 exceptional circumstances warrant an enhancement to the lodestar  
14 here.


15 Defendant argues that a reduction to the fee award is  
16 warranted here because defendant did not willfully violate the  
17 court's September 2015 injunction and because this is not an  
18 exceptional case under § 1117(a) of the Lanham Act. (See Opp'n  
19 at 1-2, 12-14.) The court has already found that plaintiff is  
20 entitled to attorney's fees under § 1117(a). (See Apr. 20, 2016  
21 Order at 36 ("[D]efendant has willfully and deliberately  
22 continued to deceive the public by infringing plaintiff's  
23 trademark and engaging in unfair competition against  
24 plaintiff.")) Defendant's arguments challenge the merits of the  
25 court's April 20, 2016 Order, and not the reasonableness of the  
26 fee amount. The court thus declines to reduce plaintiff's fee  
27 award on these grounds.

28 IT IS THEREFORE ORDERED that plaintiff's motion for

1 attorney's fees, (Docket No. 142), be, and the same hereby is,  
2 GRANTED; and (2) defendant is directed to pay plaintiff  
3 \$144,715.70 in attorney's fees and file an affidavit with the  
4 court confirming payment within fourteen (14) business days from  
5 the date this Order is signed.

6 IT IS SO ORDERED.

7 Dated: September 9, 2016

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WILLIAM B. SHUBB  
10 UNITED STATES DISTRICT JUDGE  
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