

1 **II. LEGAL STANDARD**

2 15 U.S.C. § 1117 permits a court to award reasonable
3 attorneys' fees to the prevailing party in "exceptional" Lanham Act
4 cases, and the Ninth Circuit has held that a case is "exceptional"
5 where the defendant's behavior is malicious, fraudulent,
6 deliberate, or willful. See Sealy, Inc. v. Easy Living, Inc., 743
7 F.2d 1378, 1384 (9th Cir. 1984); Playboy Enters., Inc. v. Baccarat
8 Clothing Co., 692 F.2d 1272, 1276 (9th Cir. 1982). To determine a
9 reasonable amount of attorneys' fees, the court should "calculate
10 the 'lodestar figure' by taking the number of hours reasonably
11 expended on the litigation and multiplying it by a reasonable
12 hourly rate." Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1119 (9th
13 Cir. 2000) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)).
14 To determine a reasonable number of hours, the court must review
15 detailed time records to determine whether the hours claimed by the
16 applicant are adequately documented and whether any of the hours
17 claimed by the applicant were unnecessary, duplicative or
18 excessive. Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210
19 (9th Cir. 1986), reh'g denied, amended on other grounds, 808 F.2d
20 1373 (9th Cir. 1987). To determine a reasonable rate for each
21 attorney, the court must look to the rate prevailing in the
22 community for similar work performed by attorneys of comparable
23 skill, experience and reputation. Id. at 1210-11.

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25 **III. DISCUSSION**

26 The Court found that Defendants' activity was willful and
27 malicious. Default J. Order ¶ 10. Thus, attorneys' fees are
28 appropriate under 15 U.S.C. § 1117. See Ringcentral, Inc. v.

1 Quimby, No. 09-2693, 2010 WL 1459736, *15-16 (N.D. Cal. Apr. 8,
2 2010) (awarding attorneys' fees to a plaintiff in a Lanham Act
3 action where a default judgment had been entered against defendants
4 for failing to appear in and defend the action).

5 Plaintiff has the burden of proving its claimed fees are
6 reasonable. Northwest Adm'rs, Inc. v. AD Auto. Distribs., Inc.,
7 No. C-05-2880, 2006 WL 1626940, *3 (N.D. Cal. June 12, 2006). To
8 establish the reasonableness of these attorneys' fees, Plaintiff
9 attaches a declaration of Christopher Varas ("Varas"), counsel for
10 Plaintiff, who claims primary responsibility for managing the
11 litigation. Varas Decl. ¶ 3.¹ Varas declares that David Caplan
12 ("Caplan"), partner at Keats McFarland & Wilson LLP ("KMW"), spent
13 eight hours in obtaining the default judgment, and that Caplan's
14 billing rate is \$460 per hour. Id. ¶¶ 5, 12. Varas declares that
15 Dennis Wilson, a founding partner at KMW, spent 1.8 hours on the
16 case at an hourly rate of \$495. Id. ¶¶ 6, 13. Varas declares he
17 himself spent 61.6 hours on the issue at an hourly rate of \$350.
18 Id. ¶ 11.

19 While Plaintiff adequately documents the reasonableness of the
20 attorneys' billing rates by attaching surveys of hourly rates for
21 intellectual property attorneys, Varas Decl. Ex. 1 ("AIPLA 2009
22 Report"), and attorney biographies, id. Exs. 2 ("Varas Biog."), 3
23 ("Wilson Biog."), Plaintiff's documentation for the number of hours
24 claimed is inadequate. Plaintiff fails to attach actual billing
25 records. Billing records are particularly important in a case
26 where both Lanham Act and non-Lanham Act claims are brought,
27 because attorneys' fees are only available for the fees incurred in

28 ¹ ECF No. 50.

1 bringing the Lanham Act claims unless "it is impossible to
2 differentiate between work done on claims." Gracie v. Gracie, 217
3 F.3d 1060, 1069-79 (9th Cir. 2000). As presently documented, the
4 Court finds the number of hours worked to appear grossly excessive.

5 Plaintiff's documentation of costs incurred is similarly
6 inadequate. A plaintiff who prevails on a claim under 15 U.S.C. §
7 1125(a) is entitled to costs. 15 U.S.C. § 1117(a). Plaintiff
8 claims \$350.00 in fees of the Clerk, \$366.80 in fees and
9 disbursements for printing, and \$7,472.83 in "other costs." ECF
10 No. 49 ("Bill of Costs") at 1. The documentation supporting these
11 "other costs" is so heavily redacted that the Court has no way to
12 adduce the legitimacy and reasonableness of these costs. In
13 addition, Plaintiff includes as costs items such as telephone calls
14 and LexisNexis computer research which the Court considers overhead
15 rather than costs. See Cairns v. Franklin Mint Co., 115 F. Supp.
16 2d 1185, 1189 (C.D. Cal. 2000), Banta v. City of Merrill, No. 06-
17 3003-CL, 2007 WL 3543445, at *5 (D. Or. Nov. 14, 2007). The Court
18 also notes that many of the claimed fees -- such as more than \$2700
19 billed to "Corporate Legal Services," ostensibly for document
20 delivery -- appear grossly excessive.

21 Accordingly, Plaintiff's Motion for Attorneys' Fees and Costs
22 is DENIED for lack of clarity and specificity. Plaintiff shall
23 have thirty days to file a second motion. Should it choose to do
24 so, the motion should be supported by documentation sufficient for
25 the Court to determine if the fees and costs claimed are reasonable
26 and legitimate. This documentation could include detailed attorney
27 billing records; a table of costs identifying the date, amount,
28 payee, and description of each cost; a declaration from the lead

1 attorney explaining the costs incurred; and/or unredacted
2 documentation of costs for in camera review. Plaintiff should not
3 claim any fees or costs incurred beyond the date of this Order.
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5 **IV. CONCLUSION**

6 For the reasons stated above, the Motion for Attorney's Fees
7 brought by Plaintiff Zynga Game Network Inc. is DENIED for lack of
8 clarity and specificity. Plaintiff has thirty (30) days to file a
9 second motion for attorney's fees.
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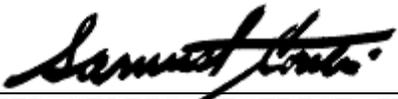
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11 IT IS SO ORDERED.

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13 Dated: August 31, 2010

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UNITED STATES DISTRICT JUDGE

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