No. 24-

IN THE

Supreme Court of the United States

V.V.V. & SONS EDIBLE OILS LIMITED,
A PUBLIC LIMITED COMPANY,

Petitioner,

v.

MEENAKSHI OVERSEAS LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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ISSUES PRESENTED

1.) May an appellate court award damages for an appeal they find frivolous when a test is espoused that is neither supported by the case precedence of the Circuit and is in contravention to 28 U.S.C. 2106, Supreme Court precedence and violation the Lanham Act?

2.) Must a Court consider arguments as to the non-frivolity of an appeal when determining an amount to award in monetary damages?

3.) Is the Ninth Circuit's refusal to apportion an award of joint and several sanctions pursuant to Fed R. App. P. 38 against the attorney and the client a violation of the Due Process Clause of the Fifth Amendment of the United States Constitution?

LIST OF PARTIES

All Parties appeal in the caption of the case on the cover page.

CORPORATE DISCLOSURE

There is no parent or publicly held company owning 10% or more of the V.V.V. & Sons Edible Oils, Ltd.

RELATED CASES

V.V.V. & Sons Edible Oils, Ltd. v. Meenakshi Overseas, LLC, No. 14-cv-02961, U. S. District Court for the Eastern District of California. Judgment entered March 3, 2023.

V.V.V. & Sons Edible Oils, Ltd. v. Meenakshi Overseas, LLC, No. 18-16071, Ninth Circuit Court of Appeals. Judgment December 27, 2019.

V.V.V. & Sons Edible Oils, Ltd. v. Meenakshi Overseas, LLC, No. 23-15532, Ninth Circuit Court of Appeals. Judgment February 1, 2024.

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OPINIONS BELOW

The Order of the Ninth Circuit granting an award pursuant to Fed R. App. P. 38 is reported at 2024 U.S. App. LEXIS 9180. The Order of the Commissioner establishing the amount of the award pursuant to 9th Cir. R. 39-1.9 is unreported (OOC).

JURISDICTIONAL STATEMENT

The OOC was entered on July 29, 2924. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art. III sec. 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Amend. V United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any

person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. § 2106

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

INTRODUCTION AND STATEMENT OF THE CASE

Petitioner is an Indian based company that sells Indian food-oil products, specifically sesame oils. Petitioner labels its products with the word IDHAYAM and sells them throughout several countries, including the United States. Petitioner adopted the mark "IDHAYAM" to brand its sesame oil products in 1986. Meenakshi Overseas LLC, the Defendant in the District Court Action (MOL) is a New Jersey based company that also sells Indian food products in the United States.

Petitioner's initial Complaint filed with the District Court alleged five counts: (1) a violation of unfair competition under § 43(a) of the Lanham Act; (2) federal dilution of a famous mark under § 43(c) of the Lanham Act;

(3) common law trademark infringement; (4) California dilution in violation of California Business and Professions Code § 14247; and (5) violation of California's unfair competition under California Business and Professions Code § 17200. Petitioner alleges all five counts against each of the marks that are the subject of the '654 Registration, '172 Registration and '000 Registration. MOL filed a motion to dismiss (MTD1) Petitioner's complaint under Rule 12(b)(6). MOL argued the claims are barred under statute of limitations and res judicata, and therefore should be dismissed. The District Court issued an order staying the motion as to mark '654 and denying the motion as to marks '172 and '000. The parties filed a joint stipulation on May 5, 2016, to lift the stay on mark '654 and reevaluate MOL's motion to dismiss. On May 5, 2016, the Court ordered the stay lifted and decided to reconsider MOL's motion to dismiss as to mark '654. The Court granted MOL's motion to dismiss the claims raised in the Complaint against the mark that is the subject of the '654 Registration. Then MOL filed a Motion to Dismiss and Request for Attorney Fees (MTD2) seeking, *inter alia*, dismissal of the claims against the marks that were the subject of the '000 Registration and the '172 based upon the superior rights that this Court has found that MOL had in the mark that is the subject of the '654. Petitioner filed a Notice of Non-Opposition to the Motion to Dismiss and opposed the request for attorney fees. On May 7, 2018, the District Court filed an Order To Dismiss (OTD) in which, *inter alia*, it granted the dismissal of all remaining claims. A notice of appeal was timely filed by Petitioner.

The Appeal was heard on December 4, 2019 and on December 27, 2019, the Ninth Circuit issued its opinion in this case and the corresponding mandate was issued on

January 22, 2020. The Ninth Circuit reversed the district court's dismissal with prejudice of Petitioner's claims with regard to the '654 Mark but affirmed the district court's dismissal of Petitioner's claims with regard to the '172 Mark and '000 Mark. *V.V.V. & Sons Edible Oils Limited v. Meenakshi Overseas, LLC*, 946 F.3d 542 (9th Cir. 2019) (VVV1). In its opinion the Ninth Circuit stated, *inter alia*, that:

> VVV's non-opposition to the later motion to dismiss waived any challenge to the dismissal of its claims based on the '000 and '172 marks. "In order to preserve an issue for appeal, a party must make known to the court any objection to the court's action." *Mendoza v. Block*, 27 F.3d 1357, 1360 (9th Cir. 1994). VVV made no such objection. We therefore affirm the district court's order dismissing VVV's claims as to the '000 and '172 marks. *Jenkins v. Cty. of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (claims can be abandoned if their dismissal is unopposed). (Doc. No. 62 p. 11.)

Pursuant to the Ninth Circuit mandate, the District Court reopened this case on February 26, 2020, and permitted Petitioner to "file an amended complaint to add a fraud-based claim as to the '654 Mark only." On July 23, 2020, Petitioner filed the operative first amended complaint ("FAC"), adding a fraud-based claim, but Petitioner again alleged claims based on the '172 and '000 Marks. On August 13, 2020, MOL filed a motion to dismiss, which the court granted in part on January 26, 2022. In that order, the court explained that "the claims regarding the '000 and '172 marks in the FAC are contrary

to the Ninth Circuit mandate," which "explicitly affirmed the dismissal of all claims against the '000 and '172 marks because Petitioner's non-opposition to MOL's motion to dismiss waived any challenge to dismissal." Thus, the court ordered that "all claims against '172 and '000 marks stand as dismissed with prejudice pursuant to the Ninth Circuit decision and mandate." On May 9, 2022, MOL filed a Rule 54(b) motion for entry of final judgment as to the claims based on the '172 and '000 Marks, which have been dismissed with prejudice. Despite Petitioner's opposition to the motion the District Court granted it on March 3, 2023. Petitioner appealed the judgment alleging, that the VVV1 Mandate was misinterpreted by the District Court. This Panel issued a Memorandum Opinion on February 2, 2024 affirming the District Court's dismissal of the claims related to the '172 and '000 Marks finding that the District Court had to "strictly comply" with the VVV 1 Mandate. *See V.V.V. & Sons Edible Oils Limited v. Meenakshi Overseas, LLC*, 2024 U.S. App. LEXIS 2220 (VVV2).

Petitioner filed a combined petition for rehearing and rehearing *en banc*. Addressing the Ninth Circuit's Memorandum Opinion Petitioner pointed out that the Ninth Circuit's "strict compliance" strict compliance with an appellate court mandate was not supported by the case upon which the Ninth Circuit relied for the rule: *Creech v. Tewalt*, 84 F. 4th 777 (9th Cir. 2023) and that such a standard was in contravention to 28 U.S.C. section 2106 and the Supreme Court's interpretation thereof as set forth in *Lawrence v. Chater*, 516 U.S. 163, 178 (1996). Petitioner made clear that there was a split within the Ninth Circuit as to the Rule of Mandate and that the Circuits are split as to law on the Rule of Mandate amongst the circuit courts of the United States. The motion for

rehearing/rehearing *en banc* was denied without opinion on March 26, 2024.

Subsequently, the Ninth Circuit entertained a motion for sanctions filed against Petitioner and found that the foregoing arguments were frivolous and awarded sanctions to be determined by a neutral. Fees were awarded and at no time during the pendency of VVV2, up to and including the argument against frivolity and the award of fees did the Ninth Circuit provide an analysis of the argument of the limit on its authority by Congress pursuant to 28 U.S.C. § 2106 or this Court's interpretation of that provision in so far as it acts as a limit upon the Ninth Circuits inherent powers.

REASONS FOR GRANTING THE PETITION

The petition should be granted, because the reasoning of the Ninth Circuit is completely silent with respect to the application of 28 U.S.C. 2106, which is counter to the Supreme Court opinion in *Stutson v. United States*, 516 U.S. 193 (1996), especially considering that it leaves in place a split amongst the circuit courts, as well as an internal split in Ninth Circuit Precedent, resulting in a test, "strictly comply", for determining a District Court's power to deviate from a Mandate. The aforementioned test is devoid of support in the case law making the same arbitrary and capricious. *Stutson* made clear it is important to have clarification of the Ninth Circuit's reasoning, especially when it is ambiguous and there appears to be a split in the circuit. *See id.* at 196 *citing Lawrence v. Chater*, 516 U.S. 163, 170 (1996). In the instant situation the ambiguity of the case law in the Ninth Circuit, not to mention the split amongst the circuit courts, paved the way for Ninth Circuit

to punish the Petitioner for simply attempting to get clarity on the issue of a District Court's power to deviate from a Mandate. Despite the Ninth Circuit recognizing that the split should be addressed. *See United States v. Thrasher*. 483 F.3d 977, 982 (9th Cir. 2007) (recognizing a split amongst the circuit courts on the Rule of Mandate and the degree a District Court could deviate from the same). As a result, the Ninth Circuit is left free to flaunt its contempt of Congressional control over its jurisdiction pursuant to 28 U.S.C. 2106 and Supreme Court precedent interpreting the same, while chilling attorneys' attempts to address these issues.

It is submitted that the acts of the Ninth Circuit Court of Appeal in VVV2 in failing to address Congress' authority to limit is power and ignoring precedence of the United States Supreme Court amounts to a constitutional error under Article III of the United States Constitution. This leaves in place a split amongst the Circuit Courts concerning the power of a District Court in interpreting a mandate from a higher tribunal in view of 28 U.S.C. § 2106 and the Supreme Court interpretation thereof. More problematic in the Ninth Circuit, there is no consistent test for the Rule of Mandate, as there is a split within the circuit resulting it any litigant proceeding before the Ninth Circuit of having to guide by which to determine whether an appeal should be undertaken in a case already being remanded from a higher tribunal. Finally, the strict compliance standard, on these facts, results in violation of the Lanham Act.

The reliance of the Memorandum Opinion of VVV2 upon the jurisdictional nature of the VVV1 Mandate requiring strict compliance is non-existent. This petition

provides an opportunity for this Court to clarify its position concerning the power of a District Court to deviate from a mandate issued by this Court pursuant to 28 U.S.C. section 2106 that defines the authority of appellate courts to issue mandates albeit by addressing the impropriety of the Ninth Circuit liquidating the damages based upon the appeal filed by Petitioner in this action as being frivolous, which it was not. Moreover, it is without question that the "strictly comply" language set forth in support of VVV2 Memorandum Opinion is in contravention with established precedent of this Court, as well as the Ninth Circuit.

The VVV2 Memorandum Opinion relies upon *Creech v. Tewalt*, 84 F.4th 777 (9th Cir. 2023) in support of the strict compliance rule. This is not supported by earlier Ninth Circuit precedent. *See Lindy Pen Co. v. Bic Pen Corp.*, 982 F.2d 1400, 1404 (9th Cir. 1993)(finding that an "order issued after remand may deviate from the mandate, however, if it is not counter to the spirit of the circuit court's decision.") (superseded on other grounds by statute). The result of the incorrect analysis for interpreting of a mandate by the District Court on these facts creates a violation of the Lanham Act based upon the three trademarks at issue not being co-owned that would cause public confusion without affording Petitioner recourse in the District Court to rectify that situation.

An earlier Panel of the Ninth Circuit recognized the inconsistency within the Ninth Circuit and recommended empaneling an *en banc* hearing clarify the divergent rulings concerning the Rule of Mandate. *See United States v. Thrasher*. 483 F.3d 977 (9th Cir. 2007) *Thrasher* recognized the same split amongst the circuit courts on the Rule of Mandate and the degree a District Court could deviate from the same. *See id.* at 982 ("We cannot change

the position of our court absent *en banc* reconsideration."). Moreover, adopting the *Lindy Pen Co. v. Bic Pen Corp.* standard of allowing a District Court to deviate from a Mandate in certain circumstances allow more expeditious adjudication of civil actions, prevent Federal Law from being violated and bring uniformity amongst the circuit courts not to mention clarify the law of the Ninth Circuit on the Rule of Mandate.

As a result, Petitioner filed, in good faith, an Appeal allowing the Ninth Circuit to bring into line an interpretation of the VVV1 Mandate so as to be commensurate with the Statutory Law, i.e., the Lanham Act and the other Circuit Courts in the United States. As made clear the by this Court:

> "Title 28 U.S.C. § 2106 appears on its face to confer upon this Court a broad power to GVR: 'The Supreme Court or any other court of appellate jurisdiction may . . . vacate . . . any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and . . . require such further proceedings to be had as may be just under the circumstances.' In his dissent issued today in this case and in *Stutson v. United States, post*, 516 U.S. 163 at 193, another case in which we issue a GVR order, JUSTICE SCALIA contends that "traditional practice" and "the Constitution and laws of the United States" impose "implicit limitations" on this power. Post, blish . . . inferior Courts," Art. III, S 1, and to make at 178. We respectfully disagree. We perceive no textual basis for

> such limitations. The Constitution limits our "appellate Jurisdiction" to issues of "[federal] Law and Fact,' *see* Art. III, § 2, but leaves to Congress the power to "ordain and establish . . . inferior Courts," Art. III, § 1, and to make "Exceptions" and "Regulations' limiting and controlling our appellate jurisdiction. . . ." *Lawrence v. Chater*, 516 U.S. 163, 166 (1996).

However, the Ninth Circuit DID NOT exercise its jurisdiction pursuant to 28. U.S.C. 2106 and therefore, caused the Lanham Act to be violated that will cause substantial confusion to the ordinary buyer in the market place. This results in the Ninth Circuit disregarding the jurisdictional constraints placed upon it by Congress through the enactment of 28. U.S.C. 2106. More problematic is that given substantial opportunity to clarify its ruling in light of 28 U.S.C. 2106, the Ninth Circuit refused to do so. As this Court pointed out in *Stutson v. United States*, 516 U.S. 193 (1996) it is important to have clarification of the Ninth Circuit's reasoning, especially when it is ambiguous and there appears to be a split in the circuit. *See id.* at 196 *citing Lawrence v. Chater*, 516 U.S. 163, 170 (1996).

Finally, based upon the foregoing arguments it becomes salient that Petitioner's appeal was not frivolous because multiple points raised were arguably meritorious. *Anders v. California* (1967) 386 U.S. 738, 744 (finding appeals are without frivolity where any of the legal points are arguable on their merits); *cf. Blixseth v. Yellowstone Mountain Club, LLC* (9th Cir. 2015) 796 F.3d 1004, 1007 (holding that an appeal is frivolous when the result is obvious or the appellant's arguments are wholly without

merit) *citing* Fed. R. App. P. 38. This is simply not the case. Rather, it is clear that the Ninth Circuit never considered these arguments and, therefore, is ignoring Congressional control over its jurisdiction.

Additionally, this Petition should be granted, because requiring an attorney and client to determine amongst themselves who is liable for sanctions operated to deny the Petitioner property without Due Process of Law. Apart from the inherent conflict between the Attorney and the Petitioner requiring the two to undertake the adjudicatory functions of the Court by determining the apportionment of the award, it operates as requiring time and effort on the Petitioner's part to surrender the same, and money depending upon how the negotiations between the Petitioner and Attorney evolve or devolve.

The reasoning recited in the OOC relied upon at footnote in the case of *Int'l Union of Bricklayers Local 20 v. Martin Jaska, Inc.* 752 F. 2d 1401, 1407 n. 8 (9th Cir. 1985) for the proposition that an attorney and client are in the best position between them to determine who caused the frivolous appeal to be taken. However, neither the footnote nor the cases referred to therein address the constitutionally infirm rule or its impact upon the Attorney-Client relationship or the property rights violated by such a rule. It is submitted that the Ninth Circuit's refusal to make such a determination violates Petitioner's Due Process rights secured by the Fifth Amendment of the United States Constitution. *See, e.g., Bd. of Regents v. Roth*, 408 U.S. 564 (1972) (finding that the requirements of procedural due process under the Fourteenth Amendment requires a hearing when deprivation of property rights are

implicated). In the instant matter not only did the Ninth Circuit refuse to make such a determination, it failed to provide a hearing on the same.

CONCLUSION

Based upon the foregoing it is respectfully contended that a petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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Attorney for Petitioner

Dated: October 28, 2024

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JULY 29, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-15532

D.C. No. 2:14-cv-02961-DJC-CKD
Eastern District of California, Sacramento

V.V.V. & SONS EDIBLE OILS LIMITED,
A PUBLIC LIMITED COMPANY,

Plaintiff-Appellant,

v.

MEENAKSHI OVERSEAS, LLC,
A NEW JERSEY LIMITED LIABILITY COMPANY,

Defendant-Appellee.

ORDER

Before: Lisa B. Fitzgerald, Appellate Commissioner.

I. Introduction

The court granted appellee Meenakshi Overseas, LLC's motion for attorneys' fees, and referred to the appellate commissioner the determination of an appropriate amount. *See* 9th Cir. R. 39-1.9.

Appendix A

Meenakshi requests $20,718.00 in fees for 30.1 hours of work by Cowan, Liebowitz & Latman, P.C., of New York, New York.

Timekeeper	*Position*	*Admitted*	*Year*	*Rate*	*Hours*	*Total*
Richard Mandel	Shareholder	1986	2024	$760	10.0	$ 7,600.00[1]
Richard Mandel	Shareholder	1986	2023	$740	14.1	$10,434.00
Raphael Nemes	Sr. Assoc.	2011	2023	$460	5.2	$ 2,392.00
Richard Claverie	Sr. Paralegal	N/A	2023	$365	0.8	$ 292.00
Total					30.1	$20,718.00

Appellant V.V.V. & Sons Edible Oils Limited objects to the requested rates, but not to the requested hours.

Meenakshi is awarded 29.1 hours and $19,926.00 in fees.

1. Meenakshi deducted from the invoices 6.3 hours of travel time that was not devoted to oral argument preparation. *See* Mandel Decl. ¶ 5, Docket Entry No. 40-2, at 2; Mandel Decl. Ex. A, Docket Entry No. 40-2, at 15.

Appendix A

II. Discussion

A. Hourly Rates

V.V.V. argues that Meenakshi's New York law firm's billing rates are not in line with prevailing rates in the Eastern District of California, and that Meenakshi provides no evidence of prevailing Eastern District rates. *See Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984) (stating that rate is reasonable if in line with prevailing market rates); *Nat'l Fam. Farm Coal. v. EPA*, 29 F.4th 509, 512 (9th Cir. 2022) (quoting *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997) for general rule that in appeals from district court decisions "the relevant community [for calculating market rates] is the forum in which the district court sits").

V.V.V. does not propose alternate rates to be awarded or offer rebuttal evidence as to prevailing market rates. *See Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992) ("The party opposing the fee application has a burden of rebuttal that requires submission of evidence . . . challenging the accuracy and reasonableness of . . . the facts asserted by the prevailing party.").

1. Attorneys

Contrary to V.V.V's contention, Meenakshi cites several Eastern District rate determinations that support the requested rates for attorneys Mandel and Nemes, and the requested rates for the attorneys are awarded. *See United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) ("[R]ate determinations in

other cases . . . are satisfactory evidence of the prevailing market rate.").

a. Mandel

Meenakshi cites $720 and $750 rate determinations for pre-2023 work by partners with less experience than 1986-admittee Mandel. *See Arredondo v. Sw. & Pac. Specialty Fin., Inc.*, No. 1:18-cv-01737-DAD-SLO, 2022 WL 2052681, at * 14 (E.D. Cal. June 7, 2022) (approving $720 for Joseph Sutton, admitted in 2010, and $750 for Marco Palau, admitted in 2006); *Singh v. Roadrunner Intermodal Servs., LLC*, No. 1:15-cv-01497-DAD-BAM, 2019 WL 316814, at *10 (E.D. Cal. Jan. 24, 2019) (approving $720 for partners admitted in 1991, 1997, and 2006). The requested $740 and $760 rates for Mandel's 2023 and 2024 work here reflect reasonable increases over those rates. *See Bell v. Clackamas Cty.*, 341 F.3d 858, 869 (9th Cir. 2003) (holding that it was an abuse of discretion to apply market rates in effect more than two years before the work was performed).

b. Nemes

Meenakshi cites rate determinations of at least $550 for pre-2022 work by associates with experience comparable to 2011-admittee Nemes. *See Cooks v. TNG GP*, No. 2:16-cv-01160-KJM-AC, 2021 WL 5139613, at *6 (E.D. Cal. Nov. 4, 2021) ("Associates with ten to twenty years of experience have been awarded rates between $550 and $575."). The $720 rate for 2010-admittee Sutton in *Arredondo*, 2022 WL 2052681, at *14, also supports Nemes's $460 rate for 2023 work here.

2. Paralegal

Meenakshi cites a Central District rather than an Eastern District rate determination to support the requested $365 rate for the paralegal. *See Perfect 10, Inc. v. Giganews, Inc.*, No. CV-11-07098-AB (SHx), 2015 WL 1746484, at *21, *29 (C.D. Cal. Mar. 24, 2015) (awarding rates of $285 and $345 for paralegals with 16 and 23 years of experience, respectively, for pre-2016 work in intellectual property case), *aff'd*, 847 F.3d 657 (9th Cir. 2017). The paralegal here has more than 20 years of experience. *See* Mandel Decl. ¶ 7, Docket Entry No. 40-2, at 2-3.

In two Eastern District cases Meenakshi cites regarding attorney rates, $120 and $260 rates were approved for pre-2023 work by paralegals of unstated experience levels. *See Arredondo*, 2022 WL 2052681, at *14 n.9; *Cooks*, 2021 WL 5139613, at *7 n.3. The paralegal rate for the 2023 work here should reflect a reasonable increase since those rates were in effect. *See Bell*, 341 F.3d at 869. A $300 paralegal rate is in line with prevailing Eastern District rates, and is awarded. *See Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (court may also rely on its own knowledge of customary rates).

B. Number of Hours

Mandel's 4.4 hours on August 9-14, 2023, include block-billed time for printing, filing, and submitting paper copies of the brief. *See* Mandel Decl. Ex. A, Docket Entry No. 40-2, at 10-11. An estimated 1 hour of this time is

disallowed for clerical work. *See Trs. of Constr. Indus. & Laborers Health & Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006) (stating that clerical tasks should not be billed at attorney rate, regardless of who performs them).

Meenakshi's remaining 29.1 hours for defending against the appeal are awarded. The attorneys and paralegal prepared an answering brief, and Mandel presented oral argument in Pasadena. Meenakshi does not request fees for the fee litigation.

C. Summary

After the adjustments in bold below, Meenakshi is awarded $19,926.00 in fees:

Timekeeper	*Position*	*Admitted*	*Year*	*Rate*	*Hours*	*Total*
Richard Mandel	Shareholder	1986	2024	$760	10.0	$ 7,600.00
Richard Mandel	Shareholder	1986	2023	$740	**13.1**	**$ 9,694.00**
Raphael Nemes	Sr. Assoc.	2011	2023	$460	5.2	$ 2,392.00
Richard Claverie	Sr. Paralegal	N/A	2023	**$300**	0.8	**$ 240.00**
Total					**29.1**	**$19,926.00**

D. Joint and Several Liability

V.V.V. objects that Meenakshi fails to identify the party against whom fees are sought. The court has the inherent power to award fees against appellant and counsel jointly and severally. *See Int'l Union of Bricklayers Local 20 v. Martin Jaska, Inc.*, 752 F.2d 1401, 1407 n.8 (9th Cir. 1985) (stating that attorney and client are in the best position between them to determine who caused the frivolous appeal to be taken).

III. Conclusion

Attorneys' fees in the amount of $19,926.00 are awarded in favor of appellee Meenakshi Overseas, LLC, and against appellant V.V.V. & Sons Edible Oils Limited and appellant's counsel, Kenneth C. Brooks, jointly and severally. *See* 9th Cir. R. 39-1.9. This order amends the court's mandate.

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED APRIL 16, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-15532

D.C. No. 2:14-cv-02961-DJC-CKD
Eastern District of California, Sacramento

V.V.V. & SONS EDIBLE OILS LIMITED,
A PUBLIC LIMITED COMPANY,

Plaintiff-Appellant,

v.

MEENAKSHI OVERSEAS, LLC, A NEW JERSEY
LIMITED LIABILITY COMPANY,

Defendant-Appellee.

Filed April 16, 2024

ORDER

Before: BOGGS,* RAWLINSON, and H.A. THOMAS, Circuit Judges.

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* The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

Appendix B

Appellee's Motion for Attorneys' Fees on Appeal Under Circuit Rule 39-1.6 and Fed. R. App. P. 38, filed March 28, 2024, is GRANTED and referred to the court's special master, Appellate Commissioner Lisa Fitzgerald, who shall conduct whatever proceedings she deems appropriate, and who shall have the authority to enter an order regarding the amount of fees and related considerations. *See* 9th Cir. R. 39-1.9. The Commissioner's order is subject to reconsideration by the panel. *Id.*