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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERN, INC.,  
Plaintiff,  
v.  
SHINE BATHROOMS, INC.,  
Defendant.

Case No. [16-cv-00133-RS](#)

**ORDER GRANTING IN PART AND  
DENYING IN PART POST-  
JUDGMENT MOTIONS**

Pursuant to Civil Local Rule 7-1(b), plaintiff’s post-judgment motions (1) for attorney fees, (2) to amend the judgment to provide for interest, and (3) to amend the judgment to add an additional judgment debtor have been submitted without oral argument.

1. Attorney Fees

Plaintiff seeks attorney fees under 35 U.S.C. § 285 based on its contention that this was an “exceptional” case. “An express finding of willful infringement is a sufficient basis for classifying a case as ‘exceptional,’ and indeed, when a trial court denies attorney fees in spite of a finding of willful infringement, the court must explain why the case is not ‘exceptional’ within the meaning of the statute.” *Modine Mfg. Co. v. Allen Grp., Inc.*, 917 F.2d 538, 543 (Fed. Cir. 1990). Here, while the order granting plaintiff’s motion for default judgment did not expressly find the infringement to have been willful, it observed that most of the factors relevant to awarding enhanced damages—including those related to willfulness—weighed heavily against defendant,

1 and double damages were awarded.

2 The record amply supports the conclusion that the infringement was willful and that the  
3 matter therefore satisfies the “exceptional” requirement. While “even an exceptional case does not  
4 require in all circumstances the award of attorney fees,” *id.*, there is no basis to deny them here.  
5 Accordingly attorney fees will be awarded.

6 Plaintiff requests a total of \$278,880.36 in attorney fees and non-taxable expenses  
7 incurred, and has supported the request with invoices and summaries establishing the hours  
8 incurred on litigation tasks and the nature of the expenses. Plaintiff also provides evidence to  
9 establish the reasonableness of the billing rates charged. *See Hensley v. Eckerhart*, 461 U.S. 424,  
10 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983) (“The most useful starting point for  
11 determining the amount of a reasonable fee is the number of hours reasonably expended on the  
12 litigation multiplied by a reasonable hourly rate.”). While the total claim here appears high for a  
13 matter resolved by default judgment, allowance must be made for the fact that defendant initially  
14 appeared and defended, with the result that additional work was reasonably undertaken, including  
15 depositions and preparation of a motion for summary judgment.

16 That said, review of the record does not support a conclusion that the full fee and expense  
17 claim represents a reasonable amount, for purpose of shifting to defendant. Accordingly, the  
18 motion for an award of fees and expenses will be granted in the amount of \$250,992.32. *See*  
19 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)(“[T]he district court can  
20 impose a small reduction, no greater than 10 percent—a ‘haircut’—based on its exercise of  
21 discretion and without a more specific explanation.”)<sup>1</sup>

22  
23 2. Interest

24 Plaintiff moves to amend the judgment to include recovery for pre-judgment interest.<sup>2</sup>

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26 <sup>1</sup> Good cause appearing, the sealing motion submitted in connection with the motion for attorney  
fees is granted.

27 <sup>2</sup> Plaintiff also moves for post-judgment interest, while acknowledging that the amount of such  
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1 Plaintiff's motion for default judgment made no such request. Plaintiff has presented no grounds  
 2 for reconsidering the matter post-judgment. *See 389 Orange St. Partners v. Arnold*, 179 F.3d 656,  
 3 665 (9th Cir. 1999)(“ Under Rule 59(e), a motion for reconsideration should not be granted, absent  
 4 highly unusual circumstances, unless the district court is presented with newly discovered  
 5 evidence, committed clear error, or if there is an intervening change in the controlling law.”) The  
 6 motion is denied.

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 8 3. Additional judgment debtor

9 Plaintiff moves to amend the judgment to add “Shine Shower Doors & Supplies Inc” as an  
 10 additional judgment debtor on grounds that it allegedly is an alter ego of Shine Bathrooms, Inc.,  
 11 the existing defendant. “California Code of Civil Procedure §187 has been interpreted to grant  
 12 courts the authority to amend a judgment to add additional judgment debtors.” *Katzir's Floor &*  
 13 *Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1148 (9th Cir. 2004). Under Federal Rule of  
 14 Civil Procedure 69(a), district courts may follow the state procedure.


15 Plaintiff has not shown, however, that proceeding under §187 is appropriate in the context  
 16 of a judgment that has been obtained by default. Case authority suggests the contrary. *Katzir's*,  
 17 in fact, *reversed* a judgment adding certain parties to a previously-obtained default judgment. 394  
 18 at 1146; *see also, NEC Elecs. Inc. v. Hurt*, 208 Cal.App.3d 772, 781 (1989) (improper to add  
 19 CEO-sole shareholder to judgment against corporation, where corporation had not defended action  
 20 in light of imminent bankruptcy); *Motores De Mexicali v. Superior Court*, 51 Cal.2d 172, 176  
 21 (1958) (adding defendants to judgment obtained by default, “would constitute a denial of due  
 22 process of law.”). Although plaintiff argues the existing defendant and its principals controlled  
 23 the defense of litigation, including the decision to stop participating in it, amending the judgment  
 24 obtained by default is not warranted. The motion is denied.

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 26 interest cannot be calculated until the judgment is satisfied. While the law undisputedly provides  
 27 an entitlement to post-judgment interest, there is no basis or need to include such a provision in  
 28 the judgment.

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**IT IS SO ORDERED.**

Dated: January 28, 2019



RICHARD SEEBORG  
United States District Judge

United States District Court  
Northern District of California