TENTATIVE RULINGS

DEPT C12

Judge Layne H. Melzer

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- Civil Court Reporter Pooling and, see also the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.

Tentative rulings: The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5212. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: Department C12 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to CCP §367.75 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at https://www.occourts.org/media-relations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") also available at https://www.occourts.org/media-relations/aci.html will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so pursuant to CCP §367.75 and OCLR 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

TENTATIVE RULINGS
May 9, 2024

#	Case Name	

1	2022-01263754 Al-Khatib vs. Haig Builders, Inc.	**Haigh Builders, Inc., A California Corporation** Motion to Designate Case as Complex The Court will not post a tentative but will instead hear from counsel.
2	2023-01368758 BETTER MORTGAGE CORPORATION vs. JONES	**Better Mortgage Corporation** Motion to Compel Arbitration Petitioner Better Mortgage Corporation's petition to compel respondent Desiree Jones to arbitrate her wage and hour claims, which are currently the subject of administrative proceedings before the Labor Commissioner, State of California, Department of Industrial Relations, Division of Labor Standards Enforcement ("DLSE") is **continued to 7/11/24 at 2PM** for further briefing on the issue of delegation of gateway issues to the arbitrator. Nine court days before the hearing, Respondent is to file a supplemental opposition of no more than 10 pages on that issue only. Five court days before the hearing, Petitioner may file a further reply brief of more than five pages on that issue only. In opposition to the petition, Respondent contends that her wage and hour claims before the DLSE (that is, her Berman Hearing claims) fall within this exception for administrative relief. *In reply, for the first time, Petitioner contends that determination of the issue of interpretation of the arbitration provisions is for the arbitrator*. As a general rule, under both federal law and California law, courts have found that the arbitrator decides gateway issues, such as arbitrability or scope of the agreement, only where the parties expressly provide for this in the arbitration agreement. *First Options of Chicago, Inc. v. Kaplan* (1995) 514, U.S. 938 944; *Parker v. Twentieth Century-Fox Film Corp.* (1981) 118 Cal. App. 3d 895, 901. **There are two prerequisites for a delegation clause to be effective**. First, **the language of the clause must be clear and unmistakable**. (*Rent-A-Center, supra,* 561 U.S. at p. 69, 70, fn. 1, 130 S.Ct. 2772.) Second, the delegation must not be revocable under state contract defenses such as fraud, duress, or unconscionability. (*Id.* at p. 68, 130 S.Ct. 2772; *Sonic II, supra,* 57 Cal.4th at pp. 1142–1143, 163 Cal.Rptr.3d 269, 311 P.3d 184.) We examine both of these prerequisites in connection with the delegation clause here.

		The requirement that the language of the delegation clause be clear is straightforward. **The law presumes that a delegation to an arbitrator of enforceability issues is ineffective absent clear and unmistakable evidence that the parties intended such a delegation**. (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944–945 [115 S.Ct. 1920, 131 L.Ed.2d 985] (*First Options*); *Ontiveros, supra,* 164 Cal.App.4th at p. 503, 79 Cal.Rptr.3d 471.) In *First Options,* the court observed that the question of who should determine such a challenge "is rather arcane," and "[**a] party often might not focus upon that question or upon the significance of having arbitrators decide the scope of their own powers**." (*First Options,* at p. 945, 115 S.Ct. 1920.) **Accordingly**, the court determined that a party seeking to enforce a delegation clause must show that it was clear and unmistakable, and **silence or ambiguity will be deemed insufficient**. (*Id.* at pp. 944–945, 115 S.Ct. 1920; see *Rent-A-Center, supra,* 561 U.S. at pp. 65, 69, 70, fn. 1, 130 S.Ct. 2772.) *Tiri v. Lucky Chances, Inc.* (2014) 226 Cal. App. 4th 231, 242 (emphasis added).
3	2020-01152866 Cagney Enterprises, LLC vs. The Landing M2, LLC	**The Landing M2, LLC** Motion for Attorney Fees Before the Court is Defendant/Cross-Complainant The Landing M2, LLC's Motion for attorney's fees against Plaintiffs Cagney Enterprises, LLC, Malarky's Irish Pub, Inc., Mario Marovic, and Ashlea Marovic (Malarkey Parties), jointly and severally. A. <u>The Malarky Parties do not dispute that The Landing is the prevailing party on the contract.</u> This case was about an easement in a parking lot and 13 parking spaces. The Malarky Parties asserted that the parking spaces are exclusively for their customers of Malarky's Irish Pub. All of their claims were dismissed on summary judgment or voluntarily excepting the declaratory relief and conversion claims. The case then proceeded to a bench trial on 8/16/23 for the first of several issue to be adjudicated in distinct stages. The bench trial determined the legal interpretation of the First Amended Reciprocal Easement Agreement ("FAREA"); this covered the declaratory relief claims in the Second Amended Complaint and Cross-Complaint. The Court found that the parking spaces were to be shared, finding against the Malarkey Parties and in favor of The Landing. (See ROA 372, 383.) This resolved the SAC. The Landing then dismissed the remainder of its claims in the Cross-Complaint. (ROA 387). Judgment was entered. The original Reciprocal Easement Agreement included the following attorneys' fees clause, which was not amended by the FAREA: "4. Attorneys' Fees. In the event any party shall institute an action or proceeding against the other party relating to this Agreement, the prevailing party in such action or proceeding shall be entitled to reimbursement from the non-prevailing party for the disbursements incurred by the prevailing party in connection therewith and for the reasonable attorneys' fees and costs of the prevailing party as fixed by the court. In addition to the foregoing award of attorneys' fees and costs to the prevailing party, the prevailing party in any

lawsuit on this Agreement shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive and merger of this Agreement into any judgment on this Agreement."

(Finkelstein Decl., ¶ 4, Ex. A).

Based on this attorneys' fees clause, Plaintiffs sought attorneys' fees on their first cause of action for breach of contract and their seventh cause of action for declaration relief (both claims were asserted by all Plaintiffs). (ROA 60, SAC, p. 12). The Landing sought attorneys' fees on its Cross-Complaint "as allowed by law and provided by the REA." (ROA 12, at p. 16.)

As part of the Judgment entered on February 23, 2023, the Court held that "The Landing is the prevailing party," and that "[a]ny motion for attorneys' fees will be determined separately." (ROA 395, at p. 4.)

Plaintiffs do not dispute that under the attorneys' fees provision of the FAREA, and under California Civil Code Section 1717(a), The Landing is the prevailing party and is entitled to recover attorneys' fees and costs against signatory Plaintiff Cagney Enterprises LLC.

The Landing argues that it is entitled to attorney's fees against all Plaintiffs jointly and severally because they asked for attorney's fees in the Second Amended Complaint. (See Motion, p. 8, "While the FAREA was only between Cagney and The Landing, each of the Plaintiffs brought claims under the FAREA for (1) breach of contract and (2) declaratory relief. See SAC, ROA # 60. Civil Code Section 1717 makes clear that parties that are not specified in the contract may nevertheless seek their attorneys' fees, which presumably is why each of the Plaintiffs pled entitlement to attorneys' fees as one of the remedies they were seeking.")

The Landing argues that because "each of the Plaintiffs sought—and could have recovered—their attorneys' fees had they prevailed, as the losing parties they are now each responsible for The Landing's attorneys' fees. *See Steve Schmidt & Co. v. Berry*, 183 Cal. App. 3d 1299, 1316-17 (1986) (finding that Section 1717 is intended to be reciprocal)." (Motion, p. 8.)

Stated another way, if defendants would have been liable for fees pursuant to a contractual fee provision had plaintiff prevailed, defendants will be entitled to fees pursuant to the statute when they prevail. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal. 3d 124 (nonsignatory defendant has right to receive attorney's fees from signatory plaintiff). However, a party claiming the right to receive fees must establish that the opposing party actually would have been entitled to receive fees if he or she had been the prevailing party. (*Leach v. Home Savings & Loan Assn*. (1986) 185 Cal. App. 3d 1295 (signatory defendant not entitled to fees from nonsignatory plaintiff who would have had no contractual or statutory right to receive fees if she had prevailed).

Here, it is not clear to the Court on what theory the non-signatory Plaintiffs would be entitled to attorney's fees on the contract.

B. Hourly Rates and Time Spent

		A party that is seeking attorney's fees as a prevailing party must present evidence of the time spent and the hourly rate of each attorney. (*Copenbarger v Morris Cerullo World Evangelism, Inc.* (2018) 29 Cal.App.5th 1, 14). This party bears the burden of proof on the reasonableness of the fees. (See CCP § 1033.5(c)(5).) In fixing a reasonable fee, the judge should first compute the lodestar figure, which is "the number of hours reasonably expended multiplied by the reasonable hourly rate" for each attorney. (*See PLCM Group, Inc. v Drexler* (2000) 22 Cal.4th 1084, 1095–1096; *Cavalry SPV I, LLC v Watkins* (2019) 36 Cal.App.5th 1070, 1100–1101). The judge may then adjust this figure upward or downward based on factors specific to the case that the judge did not consider in determining this figure, in order to fix the fee at the fair market value for the legal services provided. (*PLCM Group, Inc. v Drexler, supra*, 22 Cal.4th at 1095). Factors that a judge may consider include the nature and difficulty of the litigation, the necessity for the litigation, the amount involved, the skill required and employed to handle the case, the attention given, the success or failure, and other circumstances of the case. (*Id.* at p. 1096; *Cavalry SPV I, LLC v Watkins, supra,* 36 Cal.App.5th at 1101). When the lodestar amount is more than a reasonable amount, the judge must reduce it to a reasonable figure. (*EnPalm, LLC v Teitler Family Trust* (2008) 162 Cal.App.4th 770, 774.) Normally, a "reasonable" hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*See PLCM Group, Inc. v. Drexler* (2000) 22 C4th 1084, 1095; *see also Chacon v. Litke* (2010) 181 CA4th 1234, 1260—"reasonable market value" of counsel's services is measure of reasonable hourly rate.) However, the court may consider various other factors when determining a reasonable hourly rate—e.g., the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 CA4th 629, 632.) Two firms billed on this case: (1) Brown Neri Smith & Khan LLP asks for $50,312.70 in fees and costs, and (2) Umberg Zipser asks for $505,335.00 in attorneys' fees. Brown Neri Smith & Khan LLP provides the declaration of Todd A. Boock. (See Boock Decl.) The Court finds his rates reasonable. Another attorney Rowennakete Barnes appears to have billed some entries but the court is not provided any experience for this counsel. Umberg Zipser provides the declaration of Mark A. Finkelstein. (See Finkelstein Decl.) He testifies as to the rates of himself and his associate Ethan Feng. The Court finds their rates reasonable. Neither side briefed the issue of apportionment. Generally, fees must be apportioned to reflect counsel's services at trial on the separate contract vs. noncontract claims. (*Reynolds Metals Co. v. Alperson* (1979) 25 C3d 124, 129; *Casella v. SouthWest Dealer Services, Inc*. (2007) 157 CA4th 1127, 1161-1162; *Exxess Electronixx v. Heger Realty Corp*. (1998) 64 CA4th 698, 708-709.) If a cause of action is "on a contract," and the contract provides that the prevailing party shall recover attorneys' fees incurred to enforce the contract, then attorneys' fees must be awarded on the contract claim in accordance with Civil Code section 1717. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 615–617.) In a claim for declaratory relief,

		parties can request that the trial court determine the parties' rights and duties under the lease. Such a claim is "on a contract" for purposes of section 1717. (See *City and County of San Francisco v. Union Pacific R.R. Co.* (1996) 50 Cal.App.4th 987, 999–1000; *Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1259.) Accordingly, section 1717 governs whether attorneys' fees can be awarded on the claim for declaratory relief. (*See Exxess Electronixx v. Heger Realty Corp*. (1998) 64 Cal.App.4th 698, 707.) *Thus, the time spent adjudicating the respective declaratory relief claims are compensable as contract claims.* If the attorney fee clause is properly worded, fees may be recoverable in *a tort* action pursuant to CCP § 1021. (*Thompson v. Miller* (2003) 112 CA4th 327, 336—contractual language "any dispute under the [agreements]" broad enough to encompass tort action for fraud.) Other examples include provisions allowing for recovery of attorney fees "in any action arising out of the contract" (*Santisas v. Goodin* (1998) 17 Cal. 4th 599, 608, any action "relating to" the contract; *Moallem v. Coldwell Banker Com. Group, Inc*. (1994) 25 Cal. App. 4th 1827, 1831, "any legal action"; *Gonzales v. Personal Storage, Inc.* (1997) 56 Cal. App. 4th 464, 480, "any dispute".) Here, the language is in relevant part as follows: > In the event any party shall institute an action or proceeding against the other party *relating to this Agreement*… (Emphasis added) "Relating to" the Agreement is broad enough to include the tort claims alleged. Thus, no apportionment appears needed as to the complaint. But the Court notes that the The Landing dismissed all of its claims other than the one adjudicated for declaratory relief. (See ROA 387 for dismissal of breach of contract, breach of covenant of good faith and fair dealing, trespass, nuisance, conversion; and injunctive relief in the Cross-Complaint). In the Motion, The Landing cites *CDF Firefighters v. Maldonado* (2011) 200 Cal. App. 4th 158, 161, 165-67 to argue that the fact that other claims were voluntarily dismissed after trial is immaterial. (Motion, p. 7.) But *CDF Firefighters* looked at the issue of prevailing party, not apportionment. Thus, while The Landing is entitled to attorney's fees, issues remain. Is The Landing entitled to attorney's fees jointly and severally against all Plaintiffs? Must the Court apportion time spent on the Cross-Complaint, other than the declaratory relief claim? The Court will hear from the parties on these issues.

4	2024-01382041 Executive Guild - Costa Mesa Owners Association vs. Property Reserve, Inc.	Petition to Confirm Arbitration Award Petitioner Executive Guild – Costa Mesa Owners Association ("Petitioner") seeks an order confirming an arbitration award against respondent Property Reserve, Inc. ("Respondent"). No tentative ruling will be posted. Petitioner filed and served this petition prematurely. (Code Civ. Proc., § 1288.4.) The parties should be prepared to discuss whether an amended award was issued and whether the parties stipulate to allowing the petition be served less than 10 days after service of the arbitration award.
5	2023-01356518 Francy vs. Sweetwater Canyon Development, LLC	Christopher Francy, Derek Worden Motion for Attorney Fees Claimants Christopher Francy and Derek Worden (collectively, "Petitioners") seek a supplemental award of attorney's fees and interest. As an initial matter, the Court notes Petitioners' proofs of service for the notice of motion and moving papers did not include the server's email address. (Code Civ. Proc., § 1013b, subd. (b)(1).) Respondent Sweetwater Canyon Development ("Respondent") did not oppose or otherwise respond to this motion. Subject to any objections regarding service, the Court is inclined to grant the motion. There is no dispute that Petitioners are entitled to recover their attorneys' fees, costs, and prejudgment interest. (Code Civ. Proc., § 1293.2; *Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th 1242, 1264; *Tenzera, Inc. v. Osterman* (2012) 205 Cal.App.4th 16, 21; *County of Solano v. Lionsgate Corp.* (2005) 126 Cal.App.4th 741, 753.) There is no dispute that Petitioners are entitled to attorneys' fees, or that the hourly rates and time billed are reasonable. (Caspino Decl., ¶ 6, Exhibit A; Petition, Attachment 4(b).) Based on the Court's own review of the supporting papers and the procedural history of this case, the Court finds that Petitioners reasonably incurred $58,322.05 in attorneys' fees. Accordingly, Francy is awarded $29,161 in attorneys' fees and Worden is awarded $29,161 in attorneys' fees. Assuming the arbitrator did not serve any final award or amended award after the statement of decision was served, the Court awards prejudgment interest in the amount of $16,579.20 for Francy and $11,443.20 for Worden. (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901; *Hernandez v. Siegel* (2014) 230 Cal.App.4th 165, 171-172; *see,* Code Civ. Proc., §§ 680.300 and 685.090; *see, also, Chodos v. Borman* (2015) 239 Cal.App.4th 707, 715.) Accordingly, Petitioners' unopposed motion is granted and Francy is awarded $45,740.20 and Worden is awarded $40,604.20 in attorneys' fees, costs, and prejudgment interest. Moving party to give notice.

6	2019-01120497 Hanson vs. SBS Trust Deed Network	**Donna D Hanson** Motion to Enforce Settlement Plaintiffs Donna D. Hanson's, Harry Burke's, and Harry and Donna's unopposed motion to enforce the settlement entered into with Defendant SBS Trust Deed Network is granted. Code Civ. Proc., § 664.6 states "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." "A court ruling on a motion under CCP § 664.6 must determine whether the parties entered into a valid and binding settlement. A settlement is enforceable under section 664.6 only if the parties agreed to all material settlement terms. The court ruling on a motion may consider the parties' declarations and other evidence in deciding what terms the parties agreed to, and the court's factual findings in this regard are reviewed under the substantial evidence standard. If the court determines that the parties entered into an enforceable settlement, it should grant the motion and enter a formal judgment pursuant to the terms of the settlement. The statute expressly provides for the court to 'enter judgment pursuant to the terms of the settlement.'" (*Hines v. Lukes* (2008) 167 Cal. App. 4th 1174, 1182 (internal citations omitted). The parties settled this matter after attending a MSC on 8/13/21. (Carpenter Decl., ¶ 3, Ex. A.) The Settlement Agreement included the following clause: I. Consideration: In exchange for the releases and other terms of this Agreement, SBS shall pay to Plaintiff Harry and Donna, a California general partnership, or Plaintiffs' nominee, the following amounts: (1) the principal sum of the Proceeds in the amount of $874,499.00 shall be paid by cashier's check payable to Plaintiff and delivered to Cummins & White, counsel for Plaintiffs, by 5:00 pm on Friday, August 20, 2021; (2) the sum of $175,000 payable with 5% simple interest (interest to be paid on all outstanding balances) in 24 equal monthly installments, commencing on September 17, 2021. If the principal is not paid on time as specified herein, interest shall accrue at a rate of 5% simple interest until paid. For purposes of clarity, attached hereto as Exhibit "A" is an amortization schedule detailing the monthly payments due pursuant to this Agreement. Additionally, the parties stipulated for the Court to retain jurisdiction over this matter pursuant to Code Civ. Proc., § 664.6. Plaintiffs state that on 8/19/21, Plaintiff Donna Hanson received a check for the principal amount pursuant to the settlement agreement, but that she mistakenly shredded the check when she was trying to scan it. (Hanson Decl., ¶¶ 2-3.) On 8/20/21, Defendants' counsel was informed of this; the parties disagreed as to whether Defendants were required to wait for a year for a replacement check from the bank, or only 90 days. (Carpenter Decl., ¶¶ 6-7.) Regardless, Defendants never sent a

		replacement check. Plaintiffs have demonstrated the existence of a valid settlement agreement. There is no opposition to this motion. As a result, Plaintiffs' motion is granted. The Court additionally finds that Plaintiffs are entitled to their attorney fees incurred in bringing this motion, in the amount of $3,360.00 pursuant to ¶ 8 of the settlement agreement, as well as interest pursuant to ¶ 1 of the agreement. Plaintiffs shall prepare a proposed order and give notice.
7	2023-01358654 Health and Wellness Lifestyle Club, LLC. vs. Valentine	**Health And Wellness Lifestyle Club, LLC.** 1. Motion to Vacate **Grove Point LLC** 2. Petition to Confirm Arbitration Award (ROA#9 with OPP to Mtn to Vacate) **(1) PETITION TO VACATE THE ARBIRATION AWARD** The Court granted Respondents' motion to quash service of summons with respect to Petitioner Health & Wellness Lifestyle Club, LLC's Petition to vacate the arbitration award. (ROA 120.) Thus, said Petition is moot. **(2) MOTION TO CONFIRM ARBITRATION AWARD** Respondent Grove Point Investments, LLC's Cross-Petition to confirm the arbitration award entered against Petitioner Health and Wellness Lifestyle Club, LLC is granted. A petition to confirm an arbitration award must be served and filed at least 10 days, and no later than 4 years, after service of the award on the petitioner. (Code Civ. Proc. §§ 1288, 1288.4.) If a petition to confirm is duly filed, and unless the arbitration award is corrected or vacated, "the court shall confirm the award as made." (Code Civ. Proc. § 1286.) The petition shall (1) set forth the substance of the arbitration agreement or attach a copy thereof, (2) set forth the name of the arbitrator(s), and (3) set forth or attach a copy of the award and the written opinion of the arbitrator(s), if any. (Code Civ. Proc. § 1285.4.) "If an award is confirmed, judgment shall be entered in conformity therewith." (Code Civ. Proc. § 1287.4.) The Cross-Petition is timely. The award is dated 7/26/23, and the petition was filed and served more than 10 days but less than 4 years later, on 12/5/23. Petitioner has complied with Code Civ. Proc. § 1285.4, by setting forth the substance of the arbitration agreement, stating the names of the arbitrators (Mitchell Lathrop, Mark Lee, and George Najjar), and including a copy of the arbitration award. (ROA 11, Ex. A; ROA 9, Campo Decl., Ex. G.) Petitioner did not oppose the Cross-Petition and thus has not demonstrated grounds to vacate the award, as service of the Petition has been quashed.

		Respondent Grove Point Investments, LLC is ordered to give notice.
8	2023-01365544 Hogg vs. Travelers Casualty Insurance Company of America	**Gerald Hogg** Petition to Compel Arbitration **DISMISSED**
9	2023-01366077 Petition of Lotte Chemical California, Inc.	**Lotte Chemical California, Inc.** Motion to Compel Arbitration **DISMISSED**
10	2024-01379792 Powell vs. Hoag Memorial Hospital Presbyterian	**David Powell** Motion – Other **VACATED**

11	2019-01103254 Roic Cypress West, LLC vs. Lu	**Roic Cypress West, LLC** Motion for Attorney Fees Plaintiff ROIC Cypress West's Motion For An Order Fixing The Amount Of Attorneys' Fees On Appeal is granted. Defendants Xiao Feng Lu and Xiao Juan Xing objected to the entirety of the Stelzer Declaration on the grounds that it did not comply with CCP section 2015.5, because it was "unsigned." Plaintiff disputes that the declaration was "unsigned," but concedes the signature was "blurry and not clear." Plaintiff resubmitted a copy of the declaration with a visible signature. (ROA 248 [Not. of Errata, Exh. B].) In light of the "corrected" declaration, Defendants' evidentiary objections are overruled. The Court may properly consider the Stelzer Declaration and exhibits attached thereto. (*Gall v. Smith & Nephew, Inc.* (2021) 71 Cal.App.5th 117, 125.) Plaintiff moves, under Rules 8.278 and 3.1702, for an order fixing the amount of attorneys' fees on appeal, against Defendants, as an item of costs, and finding Plaintiff reasonably and necessarily incurred $20,023 in attorneys' fees. There is no dispute Plaintiff is entitled to costs on appeal as the prevailing party as expressly stated in the Opinion. (ROA 218.) "Unless the court orders otherwise, an award of costs neither includes attorney's fees on appeal nor precludes a party from seeking them under rule 3.1702." (Cal. Rules of Court, 8.278(d)(2).) CCP section 1033.5 allows for the recovery of attorneys' fees, as an item of costs under section 1032, when such fees are authorized by a contract, statute or law. (Code Civ. Proc., § 1033.5(a)(10).) The general rule is: "[F]ees, if recoverable at all—pursuant either to statute or parties' agreement—are available for services at trial *and on appeal*." (*Morcos v. Board of Retirement* (1990) 51 Cal.3d 924, 927, citations omitted; *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 250.) Here, Plaintiff appears to be claiming a right to attorneys' fees under a contract—the subject lease agreement. This court previously found that the subject lease agreement "states in Section 33, subsection C, subsection 2 that: 'If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to recover from the losing party reasonable attorney's fees and costs of suit.'" (ROA 186 [02/17/2022 Minute Order].) Defendants do not dispute that there is a valid fee provision in the lease agreement, nor do they dispute that Plaintiff is the "prevailing party" under that provision. Thus, pursuant to Civil Code section 1717, Plaintiff is entitled to recover its fees, "whether incurred at trial or on appeal," as the prevailing party under the lease agreement. (*Starpoint Properties, LLC v. Namvar* (2011) 201 Cal.App.4th 1101, 1111.) The court employs the lodestar method in determining the reasonableness of fees on appeal. (See *Highland Springs Conference & Training Center v. City of Banning* (2019) 42 Cal.App.5th 416, 430, citations omitted.) A court assessing attorney fees begins with a touchstone or lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) Where a fee motion is supported with declarations from counsel and billing records to establish the

		hours of work, the party opposing the motion can either "attack the itemized billings with evidence that the fees claimed were not appropriate or obtain the declaration of an attorney with expertise in the procedural and substantive law to demonstrate that the fees claimed were unreasonable." "In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 563–564.) Plaintiff has supported its request to fix fees at $20,023 with a declaration from its counsel, Cynthia Stelzer. (ROA 238.) Ms. Stelzer attests that the attorneys who worked on this appeal billed at hourly rates ranging from $295 to $450. (Stelzer Decl. at ¶ 3.) The Court finds these rates are reasonable. Defendants have not opposed the motion on the grounds that the fees sought are unreasonable, nor have they challenged any of the itemized billings in the records attached to the declaration. Further, the Court has reviewed the records and has not found any specific items that appear "excessive, duplicative, or unrelated" to the appeal. Accordingly, the Court finds Plaintiff reasonably incurred $20,023 in attorneys' fees, as an item of costs, on appeal. Plaintiff shall give notice of the ruling.