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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Spirit Master Funding X LLC,  
10 Plaintiff,

11 v.

12 BCB Holdings Incorporated, et al.,  
13 Defendants.  
14

No. CV-18-00957-PHX-DLR

**ORDER**

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16 This action concerns Defendants’ breach of a commercial lease and related  
17 guaranties. The Court previously granted summary judgment for Plaintiff. (Docs. 68, 70.)  
18 Plaintiff had requested that the Court include in the total damages award its reasonable  
19 attorneys’ fees and costs pursuant to fee-shifting provisions in the lease and guaranties, but  
20 Defendants opposed the request—not because of a disagreement over the applicability of  
21 the fee-shifting provisions or over the reasonableness of the fees and costs sought, but  
22 because Defendants believed Plaintiff’s request should be made in a separate fee motion  
23 pursuant to Local Rule of Civil Procedure (“LRCiv”) 54.2. After noting some ambiguity  
24 about whether such fees and costs may be considered an element of damages (and therefore  
25 exempt from LRCiv 54.2), the Court declined to award Plaintiff its fees and costs at  
26 summary judgment and instead directed Plaintiff to file a separate, LRCiv 54.2-compliant  
27 application.

28 On May 22, 2020, Plaintiff filed an application for attorney’s fees and costs pursuant

1 to LRCiv 54.2. (Docs. 72-73.) Plaintiff seeks attorneys’ fees in the amount of \$288,435.50  
2 and non-taxable costs in the amount of \$22,376.20. Although they previously insisted that  
3 Plaintiff file this separate application, Defendants chose not to respond to it. The Court  
4 may deem Defendants’ failure to respond as a consent to the granting of the motion. LRCiv  
5 7.2(i). Nonetheless, the Court has reviewed Plaintiff’s application and finds it well-taken.

6 Plaintiff is entitled to recover its attorneys’ fees and costs pursuant to the fee-shifting  
7 provisions in the lease and guaranties. (Doc. 73 at 4.) When attorneys’ fees are sought  
8 pursuant to a contractual provision, a fee award must be supported by proof of what is  
9 reasonable. *Schweiger v. China Doll Rest., Inc.*, 673 P.2d 927, 931 (Ariz. Ct. App. 1983).  
10 “A fee award calculated by a lodestar method—multiplying a reasonable hourly rate by the  
11 number of hours expended—is presumptively reasonable.” *Flood Control Dist. of*  
12 *Maricopa Cty. v. Paloma Inv. Ltd. P’ship*, 279 P.3d 1191, 1212 (Ariz. Ct. App. 2012).  
13 “[I]n corporate and commercial litigation between fee-paying clients, there is no need to  
14 determine the reasonable hourly rate prevailing in the community for similar work because  
15 the rate charged by the lawyer to the client is the best indication of what is reasonable under  
16 the circumstances of the particular case.” *Schweiger*, 673 P.2d at 931-32. However, “upon  
17 the presentation of an opposing affidavit setting forth the reasons why the hourly billing  
18 rate is unreasonable, the court may utilize a lesser rate.” *Id.* at 932.

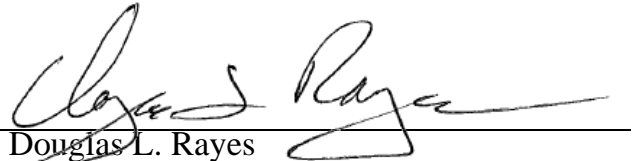
19 Once the prevailing party makes a *prima facie* case that the fees requested are  
20 reasonable, the burden shifts to the party opposing the fee request to establish that the  
21 amount requested is clearly excessive. If that party fails to make such a showing of  
22 unreasonableness, the prevailing party is entitled to full payment of the fees. If, however,  
23 the party opposing the award shows that the otherwise *prima facie* reasonable fee request  
24 is excessive, the Court has discretion to reduce the fees to a reasonable level. *Geller v.*  
25 *Lesk*, 285 P.3d 972, 976 (Ariz. Ct. App. 2012).

26 Here, Plaintiff has met its *prima facie* burden by submitting detailed, task-based  
27 itemizations of the fees and costs incurred prosecuting this action. The burden therefore  
28 shifts to Defendants to present specific objections to the reasonableness of the fees and

1 costs requested. Defendants, by failing to respond, have not done so.<sup>1</sup> Accordingly,

2 **IT IS ORDERED** that Plaintiff's motion for attorneys' fees and non-taxable costs  
3 (Docs. 72-73) is **GRANTED**. Plaintiff is awarded attorneys' fees in the amount of  
4 \$288,435.50 and non-taxable costs in the amount of \$22,376.20.

5 Dated this 26th day of June, 2020.

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11 Douglas L. Rayes  
12 United States District Judge  
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27 <sup>1</sup> Notably, the parties consulted before Plaintiff filed its motion in an effort to resolve  
28 the attorneys' fees and costs issues without Court intervention. According to Plaintiff, "the  
parties were unable to reach any agreement on the amount of attorneys' fees to which Spirit  
is entitled." (Doc. 73-14.) This is surprising, given that whatever objections Defendants  
might have had during this consultation, they did not raise with the Court through a  
responsive pleading.