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**United States District Court
Central District of California**

INTERNATIONAL FRUIT GENETICS,
LLC,

Plaintiff,

v.

P.E.R. ASSET MANAGEMENT TRUST,
PIETER EDUARD RETIEF
REDELINGHUYS N.O., IN HIS
CAPACITY AS TRUSTEE FOR THE
TIME BEING OF THE P.E.R. ASSET
MANAGEMENT TRUST, and
DEBORAH MARY REDELINGHUYS
N.O., IN HER CAPACITY AS TRUSTEE
FOR THE TIME BEING OF THE P.E.R.
ASSET MANAGEMENT TRUST,

Defendants.

PIETER EDUARD RETIEF
REDELINGHUYS N.O., IN HIS
CAPACITY AS TRUSTEE FOR THE
TIME BEING OF THE P.E.R. ASSET
MANAGEMENT TRUST,

Counter-Claimant,

v.

INTERNATIONAL FRUIT GENETICS,

Case No. 2:14-cv-05273-ODW-MRW

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES
[88]**

1 LLC, and ROES 1 through 10, inclusive,

2 Counter-Defendant.
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5 **I. INTRODUCTION**

6 Plaintiff's request for attorneys' fees stems from a dispute regarding licensing
7 of proprietary plant material.¹ (ECF No. 88.) Plaintiff/Counter-Defendant
8 International Fruit Genetics, LLC ("IFG") seeks \$687,004.75 in attorneys' fees
9 incurred throughout the course of this litigation. (Reply 12, ECF No. 94.)

10 Plaintiff filed its initial Complaint on July 8, 2014, and, over two years later,
11 this Court issued a judgment in Plaintiff's favor and order of permanent injunction
12 against Defendants/Counter-Claimants Pieter Eduard Retief Redelinghuys and
13 Deborah Mary Redelinghuys on July 25, 2016. The judgment entitles Plaintiff to
14 recover its costs and attorneys' fees to the extent permitted by law. Provisions within
15 the three licensing agreements at issue in this case also authorize an award of
16 attorneys' fees and costs to the prevailing party. (Motion for Attys' Fees ("Mot"),
17 Exs. A–C, ECF No. 88.)

18 For the following reasons, the Court **GRANTS** Plaintiff's Motion for
19 Attorneys' Fees and **AWARDS** Plaintiff **\$684,358.75** in attorneys' fees.
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21 **II. LEGAL STANDARD**

22 Federal courts apply state law in interpreting and enforcing fee shifting
23 agreements such as licensing agreement provisions providing for attorneys' fees. *See*
24 *Ford v. Baroff*, 105 F.3d 438, 442 (9th Cir. 1997). California law provides two
25 separate frameworks governing fee shifting agreements. California Code of Civil
26 Procedure § 1021 provides that, except where otherwise specified by statute, parties
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28 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 are free to enter their own agreements regarding payment of fees. Similarly, a
2 prevailing party may ordinarily recover costs, and parties may contractually designate
3 fees as recoverable costs. §§ 1021, 1032(b), 1033.5(a)(10). In sum, “[p]arties may
4 validly agree that the prevailing party will be awarded attorney fees incurred in any
5 litigation between themselves, whether such litigation sounds in tort or in contract.”
6 *Santisas v. Goodin*, 17 Cal. 4th 599, 608 (Cal. 1998) (quoting *Xuereb v. Marcus &*
7 *Millichap, Inc.*, 3 Cal. App. 4th 1338, 1341 (Cal. Ct. App. 1992)).

8 Where the contract at issue provides specific provisions for attorneys’ fees and
9 costs, California Civil Code § 1717 builds on the general framework provided by the
10 Code of Civil Procedure. *Santisas*, 951 P.2d at 407 (citing § 1717(a)). In order to
11 recover attorneys’ fees under Section 1717, the party must show: (1) the agreement
12 specifically provides for the award of attorneys’ fees; (2) the party is the prevailing
13 party; and (3) that the attorneys’ fees request is reasonable. *See Caldwell v. Wells*
14 *Fargo Bank, N.A.*, No. 13-cv-01344-LHK, 2014 WL 789083, at *3 (N.D. Cal. 2014).

16 III. DISCUSSION

17 Defendants do not dispute that the licensing agreements specifically provide for
18 the award of attorneys’ fees or that IFG is the prevailing party. (*See* Def. Opp’n 1-2.)
19 Instead, Defendants argue that the requested award of attorneys’ fees should be
20 reduced because: (1) the computed amount includes “block-billed” fees; (2) some of
21 the fees sought are unripe because they are related to Defendants’ appeal; (3) some of
22 the fees sought are unrecoverable because they were incurred by IFG’s President, Jay
23 Behmke; (4) there should be a reduction in fees for travel time billed; (5) some of the
24 fees sought in the Motion for Attorneys’ Fees are “double-counted” because they were
25 also listed in Plaintiff’s Application to Tax Costs; and finally (6) there is no evidence
26 to support some of the fees sought.² (Def. Opp’n 1-2.)

27 ² Defendants also urge this Court to deny Plaintiff’s Motion based on a failure to meet and confer
28 prior to filing the Motion. (Def Opp’n 1.) Having considered Plaintiff’s Reply detailing the
communication between the parties prior to filing post-judgment motions on both sides, the Court

1 On the whole, the Court disagrees with Defendants’ arguments and finds for
2 Plaintiff. However, a discrepancy on IFG’s attorney billing statements regarding
3 unripe fees related to Defendants’ appeal requires that the Court reduce the overall
4 award to IFG accordingly.

5 **A. BLOCK-BILLING OF FEES**

6 Defendants argue that this Court should reduce the amount of attorneys’ fees
7 awarded to IFG because of IFG’s practice of “block-billing” fees. While Defendants
8 cite *Bell v. Vista School District*, 82 Cal. App. 4th 672, 689 (2000) and *Christian*
9 *Research Institute v. Alnor*, 165 Cal. App. 4th 1315, 1325 (2008) as support for the
10 assertion that block-billing is unreasonable in calculating attorneys’ fees, they misstate
11 the holdings of these cases. The *Christian Research Institute* Court states, to the
12 contrary, that block-billing is *not* per se unreasonable in computing attorneys’ fees,
13 but that it can exacerbate underlying vagueness in a fee request. *See also Bell*, 82 Cal.
14 App. 4th at 689 (finding block-billing impermissible only where it made it impossible
15 to distinguish between tasks for which fees could be recovered and those for which
16 fees could not be recovered).

17 Having reviewed the schedules of fees included as Exhibits in Plaintiff’s
18 Motion, this Court finds no pervasive vagueness in the billing or a blending of
19 permissible and impermissible fees within the block-billed portions. (*See Declaration*
20 *of Richard O’Hare (“O’Hare Decl.”)*, Ex. E, ECF No. 88.) As such, the Court rejects
21 Defendants’ block-billing arguments.

22 **B. UNRIPE FEES RELATED TO PENDING APPEAL**

23 As Plaintiff acknowledges, some of the fees initially listed in the Motion are not
24 ripe because they were incurred in connection with Defendant’s pending appeal in this
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26 declines to deny the Motion on the suggested grounds. Similarly, this Court declines to exercise its
27 discretion to stay its decision regarding the Motion for Attorneys’ Fees due to Defendants’ pending
28 appeal. The Court has already concluded that Plaintiff is the prevailing party and is entitled to
recover its attorneys’ fees. (ECF No. 82.) No further proceedings are needed to determine
Plaintiff’s entitlement to attorneys’ fees, and staying this motion will not conserve judicial resources.

1 case. (Reply 11.) Defendants’ and Plaintiff’s filings agree that \$1,988.75 of the
2 amount initially claimed in Plaintiff’s Motion should be withdrawn and deemed
3 unripe. (*Id.*; Opp’n 10.) However, the Court has reviewed Exhibit E of Richard
4 O’Hare’s Declaration, which details the attorneys’ fees billed to IFG, and determines
5 that two additional entries, not noted by Defendants or Plaintiff, appear to be fees for
6 appellate work. (O’Hare Decl., Ex. E, ECF No. 88.) In their Opposition, Defendants
7 note the following entries as being related to appellate work:

Attorney Name	Hours Billed Related to Appellate Work	Date(s)
Richard O’Hare	2.9	July 27, 2016
John B. Dawson	1.55	July 27-29, 2016
Kimberly Corcoran	0.9	July 27, 2016

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16 (See Opp’n 10; O’Hare Decl. 136.)

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18 Yet the Court finds that two additional entries, for 3.9 hours billed by Richard
19 O’Hare on July 28, 2016, for “Teleconference with G. Alexander and E. Totino
20 regarding motion for stay; Research regarding grounds for motion to stay pending
21 appeal; Communication with client,” and 4.5 hours billed by Mr. O’Hare on July 29,
22 2016, for “Continued research and begin draft of opposition to motion for stay
23 pending appeal,” are appellate related. (O’Hare Decl. 136.) As such, the amount of
24 those fees should also be withdrawn from the total to be awarded. Mr. O’Hare’s
25 stated hourly rate during July 2016 was \$350 per hour. (O’Hare Decl. 5.) Thus, the
26 overall award of fees is reduced by that amount times 8.4 hours, less 10% (reflecting
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1 the discount already applied to the total attorneys' fees billed to IGF),³ totaling a
2 reduction of \$2,646.00. (*See id.* 136.)

3 **C. FEES INCURRED BY IFG'S PRESIDENT, JAY BEHMKE**

4 The Court disagrees with Defendants' contention that a prevailing party cannot
5 recover fees incurred by its own employee acting in a legal capacity, such as a general
6 counsel or President. (Def. Opp'n 11.) *Turner v. Secretary of the Air Force*, which
7 Defendants cite as support here, actually allows for the recovery of attorneys' fees
8 where the billing lawyer was general counsel for the prevailing party. 944 F.2d 804,
9 808 (11th Cir. 1991). *Turner* merely stands for the rule that the awarded fees must go
10 to the prevailing party, and not paid directly to the lawyer representing that party, as is
11 the case in all awards of attorneys' fees. *Id.* at 808. Fees billed by a lawyer in Mr.
12 Behmke's position are thus recoverable by the prevailing party. Therefore, the Court
13 declines to reduce the fees on these grounds.

14 **D. FEES FOR TRAVEL TIME**

15 Travel time is generally compensable. *See Zuniga v. W. Apartments*, No. CV
16 13-04637-JFW, 2014 WL 6655997, at *4 (C.D. Cal. Nov. 24, 2014) (travel time
17 usually compensatory unless the use of out-of-town attorneys was unnecessary or
18 unreasonable). Here the Court is satisfied that the retention of a Santa Rosa firm
19 specializing in representation of grapevine nurseries and grape development
20 companies was necessary, and therefore fees related to the firm's travel are
21 recoverable. (*See Reply* 10.)

22 **E. "DOUBLE-COUNTED" FEES ALLEGEDLY ALSO LISTED IN**
23 **APPLICATION TO TAX COSTS**

24 Having reviewed the records of costs and fees submitted, the Court finds that
25 Plaintiffs did not "double-count" costs in both the Motion for Attorneys' Fees and the

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27 ³ Plaintiff's attorneys' general practice in billing for this litigation was to discount fees by 10%.
28 (Mot. 9.) This is reflected in the invoices for attorneys' fees. (*See generally* O'Hare Decl., Ex. E.)
The fees related to appellate work, included on invoice # 63846 dated August 8, 2016, were reduced
by a 10% discount, so the amount to be withdrawn is accordingly reduced. (*See id.* 136.)

1 Application to Tax Costs. (See O’Hare Decl., Ex. E; ECF No. 87.) Some of the costs
2 listed on the Application to Tax Costs are merely repeated on the invoices used to
3 support the amount requested in Plaintiffs’ Motion for Attorneys’ Fees, but they are
4 not included in the calculation of the amount of fees requested.

5 **F. EVIDENTIARY SUPPORT FOR FEES SOUGHT**

6 The Court accepts Plaintiff’s Supplemental Declaration of Richard O’Hare,
7 submitted with its Reply, as sufficient proof that the challenged entry lacking
8 evidentiary support does, in fact, reflect compensable work done in the course of this
9 litigation. (Supp. O’Hare Decl. ¶¶ 6–7, ECF No. 94.)

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11 **IV. CONCLUSION**

12 As the prevailing party in the underlying action, IFG has a right to attorneys’
13 fees under both California Civil Code § 1717 and the terms of the parties’ licensing
14 agreement. (See Mot. Ex. A—C.)

15 After reviewing the records submitted, the Court finds that the amount
16 requested is a reasonable and, minus a slight reduction for appellate work, an accurate
17 reflection of the legal services expended in this matter.

18 For the reasons discussed above, the Court **GRANTS** Plaintiff’s Motion for
19 Attorneys’ Fees and **AWARDS \$684,358.75** for attorneys’ fees to Plaintiff
20 International Fruit Genetics, LLC, and against Defendants P.E.R. Asset Management
21 Trust, Pieter Eduard Retief Redelinghuys N.O., in His Capacity as Trustee for the
22 Time Being of the P.E.R. Asset Management Trust, and Deborah Mary Redelinghuys
23 N.O., in Her Capacity as Trustee for the Time Being of the P.E.R. Asset Management
24 Trust. (ECF No. 88.)

25 **IT IS SO ORDERED.**

26
27 September 16, 2016

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OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE