

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHANY CO., LTD.,

No. 2:11-CV-01112-KJM-EFB

Plaintiff,

V.

ORDER

CRAIN WALNUT SHELLING, INC., et al.,

Defendants.

A petition to confirm arbitration award (Def.’s Pet., ECF No. 58. (Pet.)) and a motion for attorneys’ fees (Mot. for Att’y Fees, ECF No. 55), both filed by defendant Crain Walnut Shelling, Inc. (defendant or Crain), are currently pending before the court. Finding the matters suitable for disposition on the papers, the court submitted them without argument. As explained below, the court GRANTS defendant’s petition to confirm arbitration; and GRANTS in part and DENIES in part defendant’s motion for attorneys’ fees.

I. RELEVANT BACKGROUND

This case arises out of an alleged breach of a promise by Crain to deliver walnuts to Shany for Shany's confectionary products. (First Am. Compl. ¶¶ 6–9, ECF No. 17 (Compl.)) Plaintiff Shany Co., Ltd. (plaintiff or Shany) is a Korean corporation with a principal place of business in the Republic of Korea. (*Id.* ¶ 4.) Crain is a California corporation with a principal place of business in Los Molinos, California. (*Id.* ¶ 5.)

1 On February 7, 2011, Crain filed a request for arbitration with the International
2 Chamber of Commerce’s International Court of Arbitration (ICC court) against Shany to recover
3 the difference between the alleged contract price for walnuts and the cover price.¹ (Reynoso
4 Decl., Ex. 1 (Arb. Award ¶¶ 4 & 18, ECF No. 58-2.) Shany challenged the arbitrator’s authority
5 to determine the arbitrability of the claims and alleged it never entered into an arbitration
6 agreement. (Arb. Award ¶ 18 & ECF No. 51 at 5.) On April 25, 2011, Shany commenced this
7 action, seeking (1) a declaration that the “Terms and Conditions” incorporated by reference into
8 the contract, including the arbitration clause, were not enforceable against it; and (2) to enjoin the
9 arbitration. (FAC ¶¶ 15, 18.) On July 13, 2011, Shany filed a motion for preliminary injunction,
10 seeking an order restraining Crain from proceeding with the arbitration. (ECF No. 8.) The
11 parties agreed to stay the arbitration pending a ruling on that motion. (Arb. Award ¶ 24.) On
12 June 1, 2012, the court denied Shany’s motion and concluded, “the ICC rules, incorporated into
13 Crain’s terms and conditions, give the arbitrator the authority to determine arbitrability.” (ECF
14 No. 51 at 15.)

15 The arbitration hearing was held September 12–13, 2013, in San Francisco,
16 California by a videoconference. (Arb. Award ¶ 49.) Shany did not participate. (*Id.*) The
17 arbitrator issued its final award on March 18, 2014. (*Id.* at 76.) In the final award, the arbitrator
18 ruled and ordered, in part, as follows:

(b) Respondent Shany is liable to [Crain] for breach of the Disputed Contract.

(c) Respondent Shany shall pay to [Crain] damages in the amount of \$726,023.50.

(d) Respondent Shany shall pay to [Crain] pre-award interest in the amount of \$258,384.09.

(e) Respondent Shany shall pay to [Crain] the sum of \$332,507.19 for its costs and legal fees incurred in connection with this arbitration.

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¹ The ICC court case number is 17730/CYK/RD.

1 (f) Respondent Shany shall bear the full costs of the arbitration
2 fixed at \$75,000. Since [Crain] has paid this entire sum in the form
3 of an advance on costs, Respondent Shany shall reimburse [Crain]
4 in the amount of \$75,000.

5 (g) All other requests and claims are rejected.

5 (*Id.* ¶ 299.)

6 Crain filed its petition to confirm arbitration award and motion for attorneys' fees
7 in this court on April 15, 2014. (ECF Nos. 55, 56, & 58.) Shany did not oppose either filing.
8 Crain filed its replies on May 16, 2014 (ECF Nos. 59 & 60), and on the same day, Shany's
9 counsel applied to be relieved as counsel. (ECF No. 62.) The court granted the request and
10 ordered Shany to engage new counsel of record within thirty days of the filing of the order. (ECF
11 No. 65 at 2.) The court also denied Crain's petition and motion without prejudice and directed
12 Crain to re-notice them upon the close of the thirty-day period. (*Id.*) Shany did not comply with
13 the court's order, and on July 10, 2014, the court ordered Shany to show cause why sanctions,
14 including monetary penalties and preclusion from opposing any re-noticed motions, should not be
15 imposed. (ECF No. 67.) The order to show cause was mailed to Shany in South Korea on July
16 16, 2014. (ECF No. 71.)

17 Crain re-noticed its amended petition to confirm arbitration award and motion for
18 attorneys' fees on July 11, 2014. (ECF Nos. 68, 69.) The court issued another order to show
19 cause on August 7, 2014. (ECF No. 71.) Shany again did not respond. On October 30, 2014, the
20 court issued an order precluding Shany from opposing Crain's petition and motion and
21 sanctioning Shany in the amount of \$500. (ECF No. 74.) As of the date of this order, Shany has
22 not remitted that amount and has not retained counsel.

23 II. DISCUSSION

24 A. Confirmation of Arbitration Award

25 Crain seeks to confirm the arbitration award under the Federal Arbitration Act
26 (FAA), 9 U.S.C. § 9. (Pet. at 11, ECF No. 58.)

27 Section 9 of the FAA provides, "any time within one year after the award is made
28 any party to the arbitration may apply to the court so specified for an order confirming the award,

1 and thereupon the court must grant such an order unless the award is vacated, modified, or
2 corrected as prescribed in sections 10 and 11 of this title.” 9 U.S.C. § 9. The FAA gives courts
3 “only limited authority to review arbitration decisions, because broad judicial review would
4 diminish the benefits of arbitration.” *Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d
5 1010, 1012 (9th Cir. 2004). Indeed, judicial confirmation of an award is required “even in the
6 face of erroneous findings of fact or misinterpretations of law.” *French v. Merrill Lynch, Pierce,*
7 *Fenner & Smith, Inc.*, 784 F.2d 902, 906 (9th Cir. 1986) (internal quotation marks omitted). “An
8 arbitrator’s decision must be upheld unless it is completely irrational, or it constitutes a manifest
9 disregard of the law.” *Id.* (internal citations and quotation marks omitted); *see also Todd*
10 *Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1060 (9th Cir. 1991). Thus, confirmation
11 of an arbitration award typically “is a summary proceeding that merely makes what is already a
12 final arbitration award a judgment of the court.” *Romero v. Citibank USA, Nat’l Ass’n*,
13 551 F. Supp. 2d 1010, 1014 (E.D. Cal. 2008) (quoting *Florasynth, Inc. v. Pickholz*, 750 F.2d 171,
14 175-76 (2d Cir. 1984)).

15 Here, the court finds confirming the arbitrator’s decision appropriate. Despite
16 additional time granted by this court, Shany did not file an opposition to Crain’s petition or
17 otherwise move to vacate, modify, or correct the arbitration award. Nor has Shany engaged new
18 counsel of record, as ordered by this court. (ECF No. 74.) The court has reviewed the record in
19 this matter, the applicable case law, the partial and final arbitration awards, and the declarations
20 and memoranda submitted by Crain. Applying the deferential standard of review required, this
21 court concludes the arbitrator’s decision was rational, within the scope of his powers, and was not
22 based on manifest disregard for the law. *See French*, 784 F.2d at 906. Based on these findings,
23 the court grants Crain’s petition to confirm the arbitration award.

24 B. Attorneys’ Fees

25 Crain claims it is entitled to attorneys’ fees under its contract with Shany and
26 California Civil Code section 1717. (Def.’s Mem. in Support of Mot. for Atty’s Fees (Mem.) at
27 2, ECF No. 56.) Crain seeks \$158,989.00, the total amount of attorneys’ fees incurred in this
28 action through July 10, 2014. (Supp. Reynoso Decl. ¶ 6, ECF No. 70.)

6 California courts liberally construe the term “on a contract” in section 1717. *Dell*
7 *Merk, Inc. v. Franzia*, 132 Cal. App. 4th 443, 455 (2005). “As long as the action ‘involve[s]’ a
8 contract it is ‘on [the] contract’ within the meaning of [s]ection 1717.” *Id.* The Ninth Circuit
9 emphasizes this language “is interpreted liberally,” and an action is “on a contract” whenever “the
10 underlying contract between the parties is not collateral to the proceedings but plays an integral
11 part in defining the rights of the parties.” *Barrientos v. 1801–1825 Morton LLC*, 583 F.3d 1197,
12 1216 (9th Cir. 2009) (internal quotation marks omitted). Where a contract is silent as to the
13 meaning of the term “prevailing party,” California courts look to whether a party has prevailed in
14 the “ordinary and popular sense” and whether a party has “realized its litigation objectives.”
15 *Santisas v. Goodin*, 17 Cal. 4th 599, 608 (1998).

16 Here, the action is “on a contract” within the meaning of section 1717 because the
17 entire action was based on the allegations that the parties entered into a contract to buy and sell
18 walnuts. (Compl. ¶¶ 6–9.) The “Terms and Conditions,” which are incorporated into the
19 disputed contract between Crain and Shany, provide as follows:

23 (Arb. Award ¶ 102.) Crain is the prevailing party in this action because this court denied Shany's
24 motion to enjoin the arbitration, Crain received a judgment from the arbitration tribunal in its
25 favor, and, as set forth above, the court grants Crain's petition to confirm the arbitration award.
26 See *Latinamerican Theatrical Grp., LLC v. Swen Int'l Holding*, No. 13-01270, 2013 WL
27 5563749, at *1 (C.D. Cal. Oct. 7, 2013).

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1 To calculate attorneys' fees, California courts use the lodestar approach. *Ketchum*
2 *v. Moses*, 24 Cal. 4th 1122, 1132 (2001). The court arrives at the lodestar figure by multiplying
3 the number of hours reasonably expended by a reasonable hourly rate. *Id.* The party seeking
4 attorneys' fees bears the burden of showing the requested rate is reasonable. *Gorman v.*
5 *Tassajara Dev. Corp.*, 178 Cal. App. 4th 44, 98 (2009). To make this determination, the court
6 should consider "such factors as the nature of the litigation, the complexity of the issues, the
7 experience and expertise of counsel, and the amount of time involved." *Wilkerston v. Sullivan*,
8 99 Cal. App. 4th 443, 448 (2002) (citations omitted). After the court has performed the lodestar
9 calculation, "it shall consider whether the total award so calculated under all of the circumstances
10 of the case is more than a reasonable amount and, if so, shall reduce the section 1717 award so
11 that it is a reasonable figure." *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095–96 (2000).
12 "A fee request that appears unreasonably inflated is a special circumstance permitting the trial
13 court to reduce the award or deny one altogether." *Serrano v. Unruh*, 32 Cal. 3d 621, 635 (1982).

14 1. Hours Expended

15 Crain seeks attorneys' fees its counsel incurred since the inception of this action in
16 April 2011, including attorneys' fees incurred in connection with the pending petition. (Mem. At
17 12, ECF No. 56.) Through July 10, 2014, the total amount of time Crain's attorneys expended on
18 this action is 391.9 hours. (Supp. Decl. of Gabriel Reynoso ¶ 5 & Ex. 1, ECF No. 70 (Supp.
19 Reynoso Decl.).) Shany has not filed an opposition to Crain's motion for attorneys' fees.

20 Crain argues it has been forced to incur a significant amount of attorneys' fees in
21 defending this action because of "Shany's uncooperative conduct in this lawsuit." (Mem. At 7, 8,
22 ECF No. 56.) Crain submits its attorneys' fees were both reasonable and necessary for its
23 representation in this action. (*Id.* at 12.)

24 In making its determination of reasonableness, the court considers a number of
25 factors, including "the nature of the litigation, its difficulty, the amount involved, the skill
26 required in its handling, the skill employed, the attention given, the success or failure, and other
27 circumstances in the case." *PLCM Group*, 22 Cal. 4th at 1096 (quoting *Melnyk v. Robledo*,
28 64 Cal. App. 3d 618, 623–24 (1976)). In addition, in determining a prevailing party's attorneys'

1 fees, the court must consider as a “crucial factor” the extent of the party’s success. *Chavez v. City*
2 *of Los Angeles*, 47 Cal. 4th 970, 989 (2010).

3 Substantial evidence must support the fee award. *Kearney v. Foley & Lardner*,
4 553 F. Supp. 2d 1178, 1185 (S.D. Cal. 2008) (citing *Macias v. Hartwell*, 55 Cal. App. 4th 669,
5 676 (1997)). “The party petitioning for attorneys’ fees necessarily bears the burden of persuasion
6 on the elements of that claim.” *Kearney*, 553 F. Supp. 2d at 1185. The party opposing the fee
7 application has “a burden of rebuttal that requires submission of evidence to the district court
8 challenging the accuracy and reasonableness of the hours charged or the facts asserted by the
9 prevailing party.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397–98 (9th Cir. 1992); *see also*
10 *Premier Med. Mgmt., Inc. v. Cal. Ins. Guar. Ass’n*, 163 Cal. App. 4th 550, 564 (2008) (“In
11 challenging attorney fees as excessive because too many hours or work are claimed, it is the
12 burden of the challenging party to point to the specific items challenged, with a sufficient
13 argument and citations to the evidence.”).

14 Absent specific objections by Shany, and considering the documentation provided
15 by Crain in support of its fees and the record in this matter, the court finds the total time expended
16 by Crain’s counsel was reasonable. *See Quinones v. Chase Bank USA, N.A.*, No. 09-2748, 2011
17 WL 6325880, at *3 (S.D. Cal. Dec. 16, 2011); *see also Latinamerican Theatrical Grp., LLC*,
18 2013 WL 5563749, at *2.

19 **2. Reasonable Hourly Rate**

20 Crain seeks the following hourly rates for its attorneys and paralegals:

21 Attorney, Paralegal, Law 22 Clerk or Case Clerk	2011	2012	2013	2014
23 Richard Rogan (partner)	635.00	N/A	N/A	N/A
24 Paul Warner (partner)	625.00	650.00	685.00	710.00
25 Gabriel Reynoso (associate)	395.00	415.00	435.00	455.00
26 Edita Pereira (paralegal)	275.00	290.00	N/A	N/A
27 Lara Nather (paralegal)	250.00	265.00	285.00	290.00

1	Matthew Kaminski (law clerk)	190.00	N/A	N/A	N/A
2	Tanya Tilghman (case clerk)	N/A	N/A	N/A	150.00
3	Imelda Patts (case clerk)	155.00	135.00 ²	140.00	N/A

6 (Warner Decl., Ex. 2 at 16, ECF No. 56-3.)

7 In support of its attorneys' rates, Crain submits the declaration of Paul L. Warner,
8 where Mr. Warner states he has been "a civil trial lawyer for approximately 40 years, all spent
9 practicing in the Bay Area, and ha[s] tried over 100 cases to conclusion." (Warner Decl. ¶ 5, ECF
10 No. 56-1.) Mr. Warner is "familiar with rates charged by attorneys for similar commercial
11 cases," and based on his experience, "the rates charged by [his law firm] are consistent with the
12 rates charged by other firms in the Bay Area for similar legal services." (*Id.*) Attached to
13 Mr. Warner's declaration are the bios of each attorney and legal professional who billed time in
14 this matter. (*Id.* Ex. 2.) The bios set forth that Mr. Rogan is a partner whose practice emphasizes
15 financial transactions, bankruptcy, and commercial law, (*Id.* Ex. 2 at 9–12) and that Mr. Reynoso
16 is a litigation associate with ten years of experience. (*Id.* at 3–8).

17 A reasonable hourly rate is "that prevailing in the community for similar work."
18 *PLCM Group*, 22 Cal. 4th at 1095. In this case, the forum is the Eastern District of California,
19 Sacramento Division. In the "unusual circumstances that local counsel is unavailable a trial court
20 may consider out-of-town counsel's higher rates." *Rey v. Madera Unified School Dist.*,
21 203 Cal. App. 4th 1223, 1241 (2012) (citations omitted). The use of such higher rates "requires a
22 sufficient showing that local counsel was impracticable." *Id.* (citing *Nichols v. City of Taft*,
23 155 Cal. App. 4th 1233, 1244 (2007)).

24 Here, the same counsel represented Crain in the arbitration before the
25 commencement of this action in April 2011. (See Arb. Award ¶¶ 7, 18; ECF No. 1.) Crain could
26 not be expected to hire new counsel to represent it in this action, which sought declaratory and

27 ² Ms. Patt's hourly rate was \$165.00 for work performed in January 2012. For all other
28 billing statements in that year, her hourly rate was \$135.00. (Warner Decl. Ex. 2.)

1 injunctive relief in connection with the same arbitration. Therefore, it is appropriate to apply the
2 prevailing rates for the community in which Crain's counsel is located, San Francisco. *See*
3 *Yenidunya Invs., Ltd. v. Magnum Seeds, Inc.*, No. 11-1787, 2012 WL 538263, at *7 (E.D. Cal.
4 Feb. 17, 2012) (applying prevailing rates in San Francisco, where the defendant's counsel was
5 based, and not the forum district of Sacramento because counsel had extensive first-hand
6 familiarity with the dispute between the parties (citing *PLCM Group*, 22 Cal. 4th at 1096)).

7 A review of prevailing market rates in the San Francisco area as found by other
8 sister courts supports the reasonableness of Crain's requested rates. *See Echague v. Metro. Life*
9 *Ins. Co.*, No. 12-00640, 2014 WL 4746115, at *3 (N.D. Cal. Sept. 24, 2014) (\$650 per hour
10 reasonable rate for attorney with extensive experience); *Iguacu, Inc. v. Filho*, No. 09-0380, 2014
11 WL 3668574, at *3 (N.D. Cal. July 23, 2014) (\$625, \$550, and \$485 per hour reasonable for
12 partners and \$295 reasonable for associate); *Gutowski v. McKesson Corp.*, No. 12-6056, 2013
13 WL 3242265, at *3 (N.D. Cal. June 25, 2013) (\$584 per hour reasonable for experienced
14 attorney); *Minor v. Christie's, Inc.*, Nos. 08-05445, 09-00471, 2011 WL 902235, at *7 (N.D. Cal.
15 Jan. 28, 2011) (\$600–700 per hour reasonable for partners and \$500 for associates in breach of
16 contract action).

17 However, the rates Crain requests for the paralegals, case clerks, and the law clerk
18 significantly exceed prevailing market rates in the Bay Area. *See Iguacu*, 2014 WL 3668574, at
19 *3 (approving \$200 rate for paralegal); *Echague*, 2014 WL 4746115, at *2 (\$150 rate reasonable
20 for paralegal); *Jackson v. City of Pittsburg*, No. 09-01016, 2013 WL 3187326, at *5 (N.D. Cal.
21 June 21, 2013) (approving \$125 rate for paralegal); *Transbay Auto Serv., Inc. v. Chevron U.S.A.*,
22 Inc., No. 09-04932, 2013 WL 843036, at *2 (N.D. Cal. Mar. 6, 2013) (\$75 per hour rates for law
23 clerk and paralegal reasonable). Considering the tasks performed, \$200 is a reasonable rate for
24 Ms. Pereira and Ms. Nather, and \$75 for Mr. Kaminski, Ms. Tilghman, and Ms. Patts.

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3. Adjustments

Based on the adjusted rates for the paralegals, case clerks, and the law clerk, the court makes the following deductions:

Ms. Pereira \$ 471.00

Table 1: Amounts sought by Crain for paralegals, case clerks and law clerk

Timekeeper	2011	2012	2013	2014	Total billed
Pereira	4.6 hours <u>x \$275 rate</u> \$1,265	1.4 hours <u>x \$290 rate</u> \$ 406	0	0	6 hours \$1,671.00
Nather	23.8 hours <u>x \$250 rate</u> \$6,902	35.7 hours <u>x \$265 rate</u> \$9,460.50	0	56 hours <u>x \$290 rate</u> \$16,240	115.5 hours \$32,602.50

Ms. Nather - \$ 9,502.50

Mr. Kaminski \$ 402.50

Ms. Tilghman \$ 30.00

Ms. Patts \$ 524.50

TOTAL: \$10,930.50

These deductions, compared to the amounts requested, are calculated as follows:

Kaminski	3.5 hours <u>x \$190 rate</u> \$665	0	0	0	3.5 hours \$665.00
Tilghman	0	.4 hours <u>x \$150 rate</u> \$60			.4 hours \$60.00
Patts	4.2 hours <u>x \$155 rate</u> \$651	.2 hours <u>x \$165 rate</u> \$33 1 hour <u>x \$135 rate</u> \$135	0	1.7 hours <u>x \$140 rate</u> \$238	7.1 hours \$1,057.00
					\$36,055.50

Table 2: Allowable amounts for paralegals, case clerks and law clerk based on adjusted rates

Timekeeper	Total billed	Adjusted rate	Allowable amount
Pereira	6 hours	\$200	\$ 1,200.00
Nather	115.5 hours	\$200	\$23,100.00
Kaminski	3.5 hours	\$75	\$ 262.50
Tilghman	.4 hours	\$75	\$ 30.00
Patts	7.1 hours	\$75	\$ 532.50
TOTAL			\$25,125.00

Deducting the total deductions from the total attorneys' fees sought by Crain, \$158,989, the court awards Crain \$148,058.50 in attorneys' fees.

C. Prejudgment Interest

Crain requests prejudgment interest on the arbitration award from the date it was issued until the date of this judgment. (Pet. at 13, ECF No. 58.)

Because this is a diversity action, state law determines the rate of prejudgment interest. *Am. Tel. & Tel. Co.*, 98 F.3d at 1209. Article 12 of the terms and conditions of the disputed contract between the parties provides that “[t]he contract shall be governed by the laws of the State of California including the Uniform Commercial Code as enacted in California.” (Arb. Award ¶ 14.) California Civil Code section 3287 governs prejudgment interest. Section 3287(a) provides for recovery of prejudgment interest “whenever the amount of money due is liquidated—i.e., when the damages are certain, or capable of being made certain by calculation.”

1 *Marine Terminals Corp. v. Paceco, Inc.*, 145 Cal. App. 3d 991, 994 (1983) (internal quotations
2 omitted). Under section 3287(a), “[p]rejudgment interest must be granted as a matter of right if
3 damages are certain or ascertainable, and the interest runs from the date when the damages are
4 certain or ascertainable and when the sum due is made known to the defendant.” *E.L. White, Inc.*
5 *v. City of Huntington Beach*, 138 Cal. App. 3d 366, 377 (1982).

6 Here, Crain’s damages are liquidated because they are certain or ascertainable.
7 Specifically, Crain seeks the damages awarded in the arbitration award: \$726,023.50 in damages
8 (contract price – cover price + bagging costs). (Arb. Award at 73, ECF No. 58-2.) Accordingly,
9 the court finds section 3287(a) applies, and Crain is entitled to prejudgment interest after March
10 18, 2014, the date the award was issued.

11 The court next considers the rate of prejudgment interest. California Civil Code
12 section 3289 governs the rate of prejudgment interest in contract cases. *See* Cal. Civ. Code §
13 3289; *UBS Fin. Servs., Inc. v. Martin*, No. 13-1498, 2014 WL 2159280, at *8 (S.D. Cal. May 23,
14 2014). Section 3289 states in relevant part:

15 (a) Any legal rate of interest stipulated by a contract remains
16 chargeable after a breach thereof as before, until the contract is
 superseded by a verdict or other new obligation.

17 (b) If a contract entered into after January 1, 1986, does not
18 stipulate a legal rate of interest the obligation shall bear interest at a
 rate of 10 percent per annum after a breach.

19 Cal. Civ. Code § 3289. Here, the contract does not stipulate a rate of interest. Therefore, the
20 interest rate is 10 percent per annum.

21 III. CONCLUSION

22 For the foregoing reasons, Crain’s petition to confirm the arbitration award is
23 GRANTED. Crain is entitled to prejudgment interest at a rate of 10 percent. Crain’s motion for
24 attorneys’ fees is GRANTED IN PART and DENIED IN PART. Crain is awarded attorneys’

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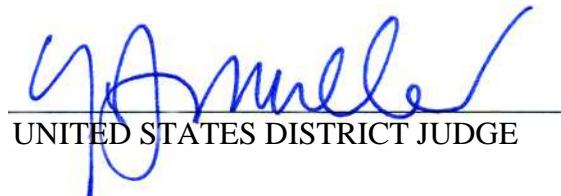
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1 fees in the amount of \$148,058.50. Judgment shall be entered in favor of Crain. The Court Clerk
2 is ordered to close the case.

3 IT IS SO ORDERED.

4 DATED: January 23, 2015.

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UNITED STATES DISTRICT JUDGE