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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TCF INVENTORY FINANCE, INC.,
Plaintiff,
v.
MARKER OIL COMPANY, INC., AND
BILLY LEON MARKER, JR.,
Defendants.

No. 2:17-cv-1768-JAM-DB

**ORDER RE: PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND NONTAXABLE
EXPENSES**

Plaintiff TCF Inventory Finance, Inc., ("Plaintiff") seeks attorneys' fees and related nontaxable expenses pursuant to Federal Rule of Civil Procedure 54(d)(2).¹ Defendants Marker Oil Company, Inc., and Billy Leon Marker, Jr., did not oppose.

This litigation concerned Defendants' breach of an agreement between the parties—the Inventory Security Agreement—and resulted in a judgment for Plaintiff. As such, Plaintiff is the prevailing party. The Inventory Security Agreement contains express language requiring Marker Oil to pay reasonable attorneys' fees and legal expenses incurred by Plaintiff "in connection with establishing, perfecting, maintaining perfection

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for July 10, 2018.

1 of, protecting and enforcing its security interest in the
2 Collateral and collecting indebtedness[.]” See Inventory Security
3 Agreement, ECF No. 1-1, ¶ 20(c). The Guaranty provides that Mr.
4 Marker agrees to pay “on demand all costs and expenses, including
5 reasonable attorneys’ fees, incurred by [Plaintiff] in enforcing
6 this Guaranty.” See Guaranty, ECF No. 1-4.

7
8 I. ATTORNEYS’ FEES

9 Plaintiff seeks \$130,825.50 in attorneys’ fees. Mot. at 2.
10 This amount includes the \$15,000 in fees the Court awarded to
11 Plaintiff in the April 12, 2018, Order Granting Motion for
12 Contempt. Mot. at n.1; Order, ECF No. 51. This amount does not
13 include the additional \$12,912.50 in attorneys’ fees that
14 Plaintiff sought but the Court denied. Mot. at n.1. Plaintiff’s
15 attorneys’ fees motion and the accompanying affidavit of counsel
16 substantially comport with Local Rule 293.

17 When evaluating requests for attorneys’ fees, a court begins
18 by calculating the lodestar amount, which involves multiplying
19 the number of hours reasonably expended by a reasonable hourly
20 rate. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). A
21 court should exclude from this initial calculation any
22 “excessive, redundant, or otherwise unnecessary” hours expended.
23 See id. at 434. The following factors may counsel a court to
24 adjust the lodestar amount:

- 25 (1) the time and labor required; (2) the novelty and
26 the difficulty of the questions involved; (3) the skill
27 requisite to perform the legal service properly;
28 (4) the preclusion of other employment by the attorney
due to acceptance of the case; (5) the customary fee;
(6) whether the fee is fixed or contingent; (7) time
limitations imposed by the client or the circumstances;

1 (8) the amount involved and the results obtained;
2 (9) the experience, reputation, and ability of the
3 attorneys; (10) the "undesirability" of the case;
4 (11) the nature and length of the professional
5 relationship with the client; and (12) awards in
6 similar cases.

7 Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir.
8 1975), abrogated on other grounds by City of Burlington v. Dague,
9 505 U.S. 557 (1992).

10 Turning first to the requested rates, the Court finds the
11 attorneys' rates reasonable. Although counsel did not produce
12 evidence of commensurate rates in the Sacramento area—the
13 community upon which the request must be based—the Court finds
14 the requested rates of \$365 to \$385 per hour for partners match
15 the prevailing rates in the region. See Monterrubio v. Best Buy
16 Stores, L.P., 291 F.R.D. 443, 460 (E.D. Cal. 2013) ("As many
17 cases in the Eastern District [] observe, 'prevailing hourly
18 rates in the Eastern District of California are in the \$400/hour
19 range.'"). However, the Court finds the requested rates for
20 paralegals to be too high. The prevailing rates in the
21 Sacramento community are less than \$100 per hour, often closer to
22 \$75 per hour. See Passport Health, Inc. v. Travel Med, Inc., No.
23 2:09-CV-01753-GEB, 2011 WL 6211874, at *2 (E.D. Cal. Dec. 14,
24 2011) (awarding \$75 per hour for paralegals); Monterrubio v. Best
25 Buy Stores, L.P., 291 F.R.D. 443, 461 (E.D. Cal. 2013) (awarding
26 \$75 per hour for a legal assistant and \$95 per hour for a
27 paralegal). Because counsel's declaration lacked any information
28 concerning the paralegals' years of experience or expertise, the
Court finds \$75 per hour the appropriate rate. The award will be
adjusted accordingly.

1 The Court further finds that the number of hours expended on
 2 this case was unreasonable. Four different partners devoted a
 3 total of 406.2 hours on this case. Bay Decl. ¶¶ 4-7. Although
 4 counsel indicates that each partner has different areas of
 5 expertise, it is not clear why it was necessary to utilize four
 6 partner level attorneys instead of delegating tasks to associate
 7 attorneys. The inefficiency in this structuring is reflected in
 8 the redundant invoice entries. The Court has carefully reviewed
 9 and examined every billing entry in the invoices provided in
 10 support of Plaintiff's request. See Bay Decl., Exh. A. Time
 11 billed for attorney services that were determined to be redundant
 12 (i.e. attorneys reviewing the same filings or revising the same
 13 documents multiple times) has been reduced accordingly. To
 14 ensure compensation is limited to only those hours reasonably
 15 expended, the hours and corresponding fee award are reduced as
 16 follows (changes underlined):

Timekeeper	Hours Awarded (Hours Requested)	Billed/Hour	Bill Amount
August 2017			
Bay	<u>20.7</u> (21.8)	\$365.00	<u>\$7,555.50</u>
Brown	<u>8.5</u> (12.5)	\$365.00	<u>\$3,102.50</u>
Fink	4.5	\$365.00	\$1,642.50
Hockett	<u>22.2</u> (29.6)	\$365.00	<u>\$8,103.00</u>
Sachtleben	<u>6.6</u> (8.3)	<u>\$75.00</u>	<u>\$495.00</u>
Total	<u>62.5</u> (76.7)	--	<u>\$20,898.50</u>
September 2017			
Bay	<u>19.7</u> (21.7)	\$365.00	<u>\$7190.50</u>
Brown	<u>5.5</u> (8)	\$365.00	<u>\$2007.50</u>

1	Fink	.7	\$365.00	\$255.50
2	Hockett	<u>12.1</u> (14.8)	\$365.00	<u>\$4416.50</u>
3	Sachtleben	<u>7.8</u> (8.5)	<u>\$75.00</u>	<u>\$585.00</u>
4	Total	<u>45.8</u> (53.7)	--	<u>\$14455.00</u>
5	October 2017			
6	Bay	1.0	\$365.00	\$365.00
7	Brown	<u>1.2</u> (3.8)	\$365.00	<u>\$438.00</u>
8	Fink	1.3	\$365.00	\$474.50
9	Hockett	<u>2.5</u> (3.8)	\$365.00	<u>\$912.50</u>
10	Sachtleben	.5	<u>\$75.00</u>	<u>\$37.50</u>
11	Total	<u>6.5</u> (10.4)	--	<u>\$2227.50</u>
12	November 2017			
13	Bay	15.3	\$365.00	\$5584.50
14	Brown	<u>12</u> (17)	\$365.00	<u>\$4380.00</u>
15	Hockett	.7	\$365.00	\$255.50
16	Sachtleben	<u>0</u> (.2)	<u>\$75.00</u>	<u>0</u>
17	Total	<u>32.1</u> (33.2)	--	<u>\$11716.50</u>
18	December 2017			
19	Bay	<u>4.9</u> (5.1)	\$365.00	<u>\$1788.50</u>
20	Brown	<u>5.6</u> (7.1)	\$365.00	<u>\$2044.00</u>
21	Fink	<u>0</u> (.2)	\$365.00	<u>0</u>
22	Hockett	<u>2.2</u> (3.6)	\$365.00	<u>\$803.00</u>
23	Huning	.6	<u>\$75.00</u>	<u>\$45.00</u>
24	Sachtleben	<u>0</u> (.1)	<u>\$75.00</u>	<u>0</u>
25	Total	<u>13.3</u> (16.7)	--	<u>\$4680.50</u>
26	January 2018			
27	Bay	<u>37.3</u> (39.2)	\$365.00	<u>\$13614.50</u>
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Brown	<u>3.4</u> (3.8)	\$365.00	<u>\$1241.00</u>
Fink	<u>29.8</u> (30.8)	\$365.00	<u>\$10877.00</u>
Hockett	<u>2.2</u> (2.6)	\$365.00	<u>\$803.00</u>
Sachtleben	<u>.4</u> (.5)	<u>\$75.00</u>	<u>\$30.00</u>
Total	<u>73.1</u> (76.9)	--	<u>\$26565.50</u>
February 2018			
Bay	10.2	\$365.00	\$3723.00
Fink	<u>1.5</u> (2.2)	\$365.00	<u>\$547.50</u>
Hockett	<u>0</u> (.4)	\$365.00	<u>0</u>
Sachtleben	<u>0</u> (.1)	<u>\$75.00</u>	<u>0</u>
Total	<u>11.7</u> (12.9)	--	<u>\$4270.50</u>
March 2018 (less fees awarded/considered in Contempt Order)			
Bay	<u>4</u> (24.2)	\$385.00	<u>\$1540.00</u>
Brown	<u>0</u> (1.2)	\$385.00	<u>0</u>
Fink	<u>3.1</u> (26.6)	\$385.00	<u>\$1193.50</u>
Hockett	<u>0</u> (.1)	\$385.00	<u>0</u>
Sachtleben	<u>0</u> (.3)	\$75.00	<u>0</u>
Total	<u>7.1</u> (52.4)	--	<u>\$2733.50</u>
April 2018 (less fees awarded/considered in Contempt Order)			
Bay	<u>9.6</u> (41.9)	\$385.00	<u>\$3696.00</u>
Brown	<u>1.3</u> (13.2)	\$385.00	<u>\$500.50</u>
Fink	<u>27.2</u> (33.1)	\$385.00	<u>\$10472.00</u>
Hockett	<u>.2</u> (.7)	\$385.00	<u>\$77.00</u>
Sachtleben	<u>0</u> (.5)	\$75.00	<u>0</u>
Total	<u>38.3</u> (89.4)	--	<u>\$14745.50</u>
Grand Total			\$102,293.00

1 The Court finds Plaintiff is entitled to \$102,293.00 in
2 attorneys' fees. These fees are awarded in addition to the
3 \$15,000 in fees the Court previously awarded in connection with
4 Plaintiff's motion for contempt. The Court further finds that
5 none of the Kerr factors warrant an increase or decrease in this
6 award.

7 II. NONTAXABLE EXPENSES

8 Plaintiff also seeks \$30,881.88 for related nontaxable
9 expenses. These expenses include \$299.70 for delivery service
10 and mailing costs, \$2113.46 for counsels' travel expenses,
11 \$10,000 for the premium for the surety bond that Plaintiff was
12 required to post to obtain the prejudgment injunctive relief that
13 the Court entered in September 2017, and \$17,968.72 for 24-hour
14 surveillance on Marker Oil until the temporary restraining order
15 was entered. Mot. at ¶ 7; Bay Decl. at ¶ 20. As grounds for
16 recovery of such costs, Plaintiff cites Section 20(c) of the
17 Inventory Security Agreement, ECF No. 1-1, and the last sentence
18 of the first paragraph of the Guaranty, ECF No. 1-4.

19 "Under the 'American rule,' litigants ordinarily are
20 required to bear the expenses of their litigation unless a
21 statute or private agreement provides otherwise." Grove v. Wells
22 Fargo Fin. Cal., Inc., 606 F.3d 577, 579 (9th Cir. 2010)
23 (citation omitted). "When determining the applicability of an
24 attorneys' fees provision in a contract, federal courts must
25 apply state law." Monster Energy Co. v. Sainte Claire, No. ED CV
26 17-1111 PA (SKx), 2017 WL 8220421, at *1 (C.D. Cal. Oct. 13,
27 2017) (citing Resolution Trust Corp. v. Midwest Fed. Sav. Bank of
28 Minot, 36 F.3d 785, 800 (9th Cir. 1993)). "California law

1 authorizes the recovery of attorneys' fees pursuant to
2 contractual provisions." Monster Energy Co., 2017 WL 8220421, at
3 *1 (C.D. Cal. Oct. 13, 2017).

4 The contract at issue in this action has an Illinois choice
5 of law provision. See Inventory Security Agreement ¶ 16. It
6 appears that Illinois courts, similarly, follow the American Rule
7 and only award fees where explicitly provided by statute or
8 agreement. See Helland v. Helland, 214 Ill. App. 3d 275, 277
9 (1991). "Contractual provisions for attorney fees must be
10 strictly construed, and the court must determine the intention of
11 the parties with respect to the payment of attorney fees." Id.
12 at 277-78.

13 Plaintiff did not address how the choice of law provision
14 affects the Court's analysis. Indeed, Plaintiff did not cite or
15 discuss any legal authority to assist the Court in determining
16 the scope of awardable attorneys' fees and nontaxable expenses.
17 The Agreement's attorneys' fees and expenses provision is written
18 to cover a broad range of expenses and is written to entitle
19 Plaintiff (Lender) to all of its fees and expenses, but not
20 Defendants (Dealer). See Inventory Security Agreement ¶ 20(c).
21 Plaintiff has cited no authority supporting the validity of such
22 a broad, one-sided provision.

23 Due to this deficiency the Court will award only those
24 expenses regularly regarded as awardable attorneys' fees. For
25 instance, attorneys' fees awards can include reimbursement for
26 out-of-pocket expenses including travel, courier, and copying
27 costs. See Grove, 606 F.3d at 580 (citing Davis v. City of San
28 Francisco, 976 F.2d 1536, 1556 (9th Cir.1992), vacated in part on

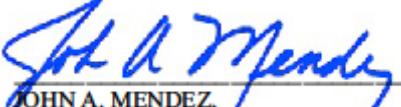
1 other grounds, 984 F.2d 345). “[C]ourts have long held that
2 certain non-taxable costs can be awarded as part of a reasonable
3 attorneys’ fee since they are typically charged to paying clients
4 by private attorneys.” Grove, 606 F.3d at 580 (quoting Davis,
5 976 F.2d at 1556). Accordingly, the Court grants Plaintiff’s
6 request for delivery service and mailing costs, travel expenses
7 of counsel, and the premium for the surety bond, totaling
8 \$12,413.16. The Court denies Plaintiff’s request for
9 reimbursement of \$17,968.72 for 24-hour surveillance because
10 Plaintiff failed to provide sufficient legal support for the
11 request and failed to show that this expense was reasonably
12 undertaken.

13
14 III. ORDER

15 For the reasons set forth above, the Court grants in part
16 and denies in part Plaintiff’s Motion for Attorneys’ Fees and
17 Taxable Costs and ORDERS Defendants to pay Plaintiff:

- 18 1. \$102,293.00 in attorneys’ fees, in addition to the
19 \$15,000 previously awarded, ECF No. 51; and
20 2. \$12,413.16 in nontaxable expenses.

21 Dated: July 25, 2018

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24 JOHN A. MENDEZ,
25 UNITED STATES DISTRICT JUDGE
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