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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6
7 WYNN LAS VEGAS, LLC,

8 Plaintiff,

9 vs.

10 CIGAR ROW, LLC,

11 Defendant.

2:15-cv-01079-RJC-CWH

ORDER

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13 This case arises from an alleged breach of contract between a wholesale vendor of
14 tobacco products and its vendee. Now pending before the Court are Wynn's Motion to Reopen
15 the Case under Rule 60, (ECF No. 58), and Motion for Attorneys' Fees and Costs, (ECF No. 60).

16 **I. FACTS AND PROCEDURAL HISTORY**

17 Wynn filed this action alleging Cigar Row breached its contract with Wynn by failing to
18 obtain a license to operate in Nevada and failing to collect and remit \$136,008.99 in "other
19 tobacco products" ("OTP") taxes. As a result of Cigar Row's breach, Wynn was ultimately
20 forced to pay the OTP taxes to the State. (*See* July 10, 2014 Email from Michael P. Kelly, ECF
21 No. 22 at 175–76; Lawrence Decl. ¶ 4, ECF No. 22 at 184; Check, ECF No. 22 at 186.) On
22 November 28, 2016, the Court granted summary judgment in Wynn's favor on the breach of
23 contract claim, the effect of which was to award Wynn damages in the amount of the OTP tax
24 assessment. (Order, ECF No. 37.) On January 4, 2017, the Court permitted Cigar Row to file an

1 amended counterclaim, on the basis that under N.R.S. 370.450(3), OTP taxes “must be collected
2 and paid by the wholesale dealer” Therefore, Cigar Row had an obligation to collect OTP
3 taxes *from Wynn*, and under the standard contractual relationship Wynn would have had to pay
4 the disputed taxes anyway. Accordingly, the Court observed that “the ultimate just result may be
5 that Cigar Row owes Wynn nothing, or at least less than the full amount claimed by Wynn.”
6 (Order 4–5, ECF No. 41.)

7 Cigar Row’s amended counterclaim was thus filed, alleging one cause of action for
8 collection of OTP tax pursuant to N.R.S. 370.450. (Am. Countercl., ECF No. 42.) Wynn then
9 moved to dismiss the counterclaim under Rule 12(b)(6). (Mot. Dismiss, ECF No. 43.) On April
10 13, 2017, the Court granted the motion to dismiss, entered judgment in favor of Wynn, and
11 closed the case. (Order, ECF No. 56.) Wynn now moves to reopen the case in order to proceed
12 with its claims of negligent and intentional misrepresentation, which it argues were not disposed
13 of by any of the Court’s orders. (Mot. Relief J., ECF No. 58.) Wynn also moves for attorneys’
14 fees and costs based on its contract with Cigar Row. (Mot. Att’y Fees, No. 60.) Cigar Row has
15 not opposed either motion.

16 **II. MOTION FOR RELIEF FROM JUDGMENT (ECF NO. 58)**

17 **a. Legal Standards**

18 Federal Rule of Civil Procedure 60(a) provides that a court may correct any “mistake
19 arising from oversight or omission whenever one is found in a judgment.” In addition, Rule
20 60(b) provides, in pertinent part, that a court may relieve a party from a final judgment or order
21 for various reasons, including: “(1) mistake, inadvertence, surprise, or excusable neglect; . . . or
22 (6) any other reason that justifies relief.”

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1 **b. Analysis**

2 Wynn argues that the Court should not have closed the case because its claims for
3 negligent and intentional misrepresentation were never adjudicated. Wynn asserts that after the
4 Court granted summary judgment as to breach of contract and denied it as to all other claims, the
5 claims of negligent and intentional misrepresentation remained viable. However, at the
6 beginning of oral argument on Wynn’s summary judgment motion on October 6, 2016, the Court
7 voiced its initial inclination to grant summary judgment for Wynn on the breach of contract
8 claim only, and dismiss the remaining claims as moot. After hearing argument from both parties,
9 the Court determined to enter the judgment it had anticipated, i.e., grant the motion with respect
10 to breach of contract and dismiss the other claims.

11 The dismissal of Wynn’s remaining claims was not explicit in the written order that
12 subsequently issued. Therefore, the Court now clarifies its intent to grant summary judgment for
13 Wynn on breach of contract and dismiss Wynn’s remaining claims as moot. Accordingly, the
14 motion for relief from the judgment is denied.

15 **III. MOTION FOR ATTORNEYS’ FEES AND COSTS (ECF NO. 60)**

16 **a. Legal Standards**

17 A federal court “applies state law in a diversity action to determine whether an award of
18 attorneys’ fees is allowed.” *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 847 (9th Cir.
19 2009). Nevada follows the American Rule, under which litigants ordinarily are required to bear
20 the expenses of their litigation unless a statute, rule, or private agreement provides otherwise.
21 *Thomas v. City of N. Las Vegas*, 127 P.3d 1057, 1063 (Nev. 2006); *see also Grove v. Wells*
22 *Fargo Fin. Cal., Inc.*, 606 F.3d 577, 579 (9th Cir. 2010). Once a party establishes its entitlement
23 to an award of attorneys’ fees, the Court must determine the reasonableness of such an award.

1 *See GCM Air Group, LLC v. Chevron U.S.A, Inc.*, No. 3:07-cv-00168, 2009 WL 1810743, at *4
2 (D.Nev. June 24, 2009) (Sandoval, J.).

3 **b. Analysis**

4 Wynn's Retail Vendor Compliance Guide provides:

5 **ATTORNEY'S FEES.** Should Wynn Las Vegas utilize the services of an
6 attorney to enforce or defend any term or condition herein, Wynn Las Vegas shall
7 be entitled to an award of reasonable attorney's fees and costs expended
throughout the pendency of the demand, claim and/or litigation.

8 (Compliance Guide 21, ECF No. 60 at 40.) In its summary judgment order, the Court found that
9 Cigar Row breached material terms of the Compliance Guide by failing to obtain a license to
10 operate in Nevada and failing to pay \$136,008.99 in OTP taxes, which Wynn was required to
11 pay to the State. (Order, ECF No. 37.) Under these circumstances, it is clear that Wynn is
12 contractually entitled to recover its reasonable attorneys' fees and costs.

13 After a thorough review of the motion and supporting documents, including the
14 declaration of Wynn's attorney and the relevant billing invoices, the Court finds Wynn's request
15 for attorneys' fees and costs to be reasonable. The Court agrees that the case "presented fairly
16 straightforward claims," but that "pursuing claims with Nevada's OTP scheme underlying them
17 is novel and required additional detail, research and preparation." (Mot. Att'y Fees 7, ECF No.
18 60.) It is therefore reasonable that additional time was spent researching and discussing certain
19 issues, and that Wynn saw fit to enlist the assistance of an expert in the area of Nevada taxation.
20 The rates of Wynn's attorneys and their staff, which reflect discounts based on a longstanding
21 professional relationship with Wynn, are also reasonable. (Kircher Decl. ¶ 8, ECF No. 60 at 15.)
22 Moreover, Cigar Row has not opposed Wynn's motion, and thus has not objected to the amounts
23 claimed by Wynn. *See* D. Nev. Local. R. 54-14(e) ("If no opposition is filed [to a motion for
24 attorneys' fees], the court may grant the motion after independent review of the record.").

