

PROPOSED TENTATIVE

On June 23, 2021, plaintiff Constellation NewEnergy, Inc. (real name Constellation New Energy – Gas Division, LLC), filed a complaint against defendant California Asphalt Production, Inc. for breach of contract. Plaintiff contends the parties entered into a “Settlement Agreement,” dated March 9, 2021 (the Agreement) in which defendant agreed to pay for goods in the form of natural gas[,] with an amount remaining to be paid of \$439,620.35. Defendant breached the terms of the agreement by failing to pay the outstanding amount due.

Defendant answered on July 29, 2021. The court granted plaintiff’s request for a pretrial writ of attachment on December 28, 2021. Plaintiff filed a summary judgment motion, which, although unopposed, the court denied on February 13, 2024, because plaintiff’s separate statement was silent about plaintiff’s performance or excuse from nonperformance, a required element to establish a breach of contract. Plaintiff renewed its motion, which the court granted on May 7, 2024. Judgment in the total amount of \$578,212.26 was awarded on May 10, 2024. Plaintiff now moves for an order awarding attorney’s fees and costs, with a new amended judgment. There is no opposition. The matter was continued from July 2, 2024, to July 9, 2024, and then to October 22, 2024.

Civil Code section 1717 provides that in an action to enforce a contract authorizing an award of fees and costs to one party, the party “prevailing on the contract” is entitled to reasonable fees. (Civ. Code, § 1717.) Such fee awards are allowable as court costs under Code of Civil Procedure section 1032. (Code Civ. Proc. § 1033.5(a)(10)(A) & last para.) Here, the Agreement authorizes the recovery of fees: “If Customer fails to timely cure any noticed default, the balance of the Debt shall automatically be immediately due and payable by Customer to CNEO, without any further action on the part of CNEG, and CNEG shall be entitled to all its rights and remedies under this Settlement Agreement, the Gas Agreement, at law and/or inequity. (Dec. of Rosen, Exhibit “B,” emphasis added.) It also provides: “If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs.” (Decl. of Rosen, Exhibit “A”.) The prevailing party includes the party with the net monetary recovery. (Code Civ. Proc., § 1032, subd. (a)(4).) As plaintiff is the party with the net monetary recovery, it is the prevailing party.

Plaintiff requests recovery of attorney's fees in the amount of \$24,800.00. Contractual attorney fees in California are ordinarily calculated using the lodestar method. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) “Under the lodestar method, attorney fees are calculated by first multiplying the number of hours *reasonably* expended on the litigation by a *reasonable* hourly rate of compensation.” (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259, italics added.) California courts do not require detailed time records for purposes of calculating the lodestar method, and a trial court has discretion to award fees based on declarations of counsel describing the work attorneys have done and the court’s own view of

the number of hours reasonable spent. (See, e.g., *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698.)

As for the numbers of hours claimed, “ ‘A trial court may not rubberstamp a request for attorney fees, but must determine the number of hours reasonably expended.’ ” (*Morris v. Hyundai Motor America* (2019) 41 Cal.App.5th 24, 38.) Nevertheless, “[a] trial court is not required to state each charge it finds reasonable or unreasonable. A reduced award might be fully justified by a general observation that an attorney over-litigated a case.” (*Snoeck v. Exaktime Innovations, Inc.* (2023) 96 Cal.App.5th 908, 921.) The reasonable hourly rate is that prevailing for private attorneys in the community conducting non-contingent litigation of the same type. (*PLCM Group, Inc., supra*, 22 Cal.4th at p. 1095.) Prevailing hourly rates apply “ ‘regardless of whether the attorneys claiming fees charge[d] nothing for their services, charge[d] at below-market or discounted rates, represent[ed] the client on a straight contingent fee basis, or are in-house counsel. [Citations.]’ ” (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 701; *Glaviano v. Sacramento City Unified School Dist.* (2018) 22 Cal.App.5th 744, 751[.]) “The relevant ‘community’ is that where the court is located.” (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 71; *MBNA America Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 13 [“determination of market rate is generally based on the rates prevalent in the community where the services are rendered, i.e., where the court is located”].)

Here, attorney Aires has submitted a declaration indicating his hourly rate is \$500. He submits a spreadsheet indicating that his firm expended 46.9 hours prosecuting this complaint. The total hours spent to prep the renewed motion for summary judgment, separate statement, and reply, was 6.4 hours. The court finds these hours to be unreasonable since the flaw with the initial motion was firmly within the moving attorney’s control (and in any event, there was no need for a reply since the motion was unopposed both in its initial incarnation and as renewed). The court reduces the hours spent to 40.5 hours. The court awards attorney fees of \$20,250.

According to the memorandum of costs, plaintiff incurred costs totaling \$2,397.06, all of which appear to be appropriate, and thus are allowed. The “prevailing party” is entitled as a matter of right to recover costs of suit in any action or proceeding. (Code Civ. Proc. § 1032(b); *Santisas v. Goodin* (1998) 17 C4th 599, 606.)

In summary, plaintiff is the prevailing party; the court awards reasonable attorney’s fees of \$20,250 and reasonable costs of \$2,397.06.. Plaintiff is directed to provide a proposed order and amended judgment for signature. The parties are directed to appear either in person or by Zoom.