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**PARTIES/ATTORNEYS**

Plaintiff	Wescom Central Credit Union	Prenovost, Normandin, Dawe & Rocha  Karel Rocha Jason Meyer
Defendants	Clifford Robert Leyva and Natalie Susan Leyva	Self-Represented Litigants

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**TENTATIVE RULING**

For all the reasons discussed below, the court denies the motion to set aside judgment. The court grants the motion for attorney fees and finds fees in the amount of \$7,875.35 to be reasonable.

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Defendants Clifford Robert Leyva and Natalie Susan Leyva entered into a written Revolving Line of Credit - Credit Agreement and Security Agreement with plaintiff Wescom Central Credit Union. Defendants defaulted under the terms of the Agreement on April 25, 2019, with a balance of \$15,950.78 due.

On June 5, 2025, plaintiff filed a motion for summary judgment. It was timely served on defendants on the same date. No opposition was filed. On September 24, 2025, the court granted the motion. The court entered summary judgment in favor of plaintiff on in the sum of \$15,950.78, plus interest of \$12,881.60, calculated at the Agreement rate of 24.90% (per diem rate of \$9.70 for 1328 days) from February 5, 2022, to September 24, 2025, and costs of \$1,589.39 for a total of \$30,421.77. (Judgment dated October 16, 2025.) Notice of this ruling was mailed to the defendants on September 26, 2025. Judgment was filed on October 16, 2025.

Motion to Set Aside Judgment

On December 18, 2025, defendant Clifford Leyva moved to set aside the judgment pursuant to Code of Civil Procedure section 473, subdivision (b). That section provides that the court may, upon “any terms as may be just, relieve a party or his or legal representative from a judgment . . . taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. . . .” Relief is discretionary. (Code Civ. Proc., § 473, subd. (b); see *Lorenz v. Commercial Accept. Ins. Co.* (1995) 40 Cal.App.4th 981, 989.) The party moving for relief on the basis of

“mistake, inadvertence, surprise, or excusable neglect” must show specific facts demonstrating that one of these conditions was met. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410—defendant's burden to demonstrate “that due to some mistake, either of fact or of law, of himself or of his counsel, or through some inadvertence, surprise or neglect which may properly be considered excusable, the judgment or order from which he seeks relief should be reversed.”) The application must be made within a reasonable time, not exceeding six months after the judgment. (Code Civ. Proc., § 473, subd. (b).)

Here, defendant Clifford Leyva states that he “intended to defend myself at the Motion for Summary Judgment heard on September 24, 2025. I even went a week earlier to familiarize myself with the Court location, parking, and entry into the courthouse.” (Leyva Decl., ¶ 2.) But he “missed the date because I thought the hearing was a day later, and I showed up and then learned that I had missed my hearing.” (Leyva Decl., ¶ 3.)

The real mistake here, however, is the failure to submit opposition to the motion. Code of Civil Procedure § 437c, subdivision (b)(3) specifies:

**"The opposition papers [to a motion for summary judgment] shall include a separate statement** that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. **Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion."**

(Emphasis added.)

Review of Clifford Levya’s answer (filed with co-defendant, Natalie Levya, who is not a party to the motion)<sup>1</sup>, suggests he asserted defenses in this action, such as the running of the statute of limitations, breach of contract by plaintiff, and failure to mitigate (e.g., unreasonable delay in filing this lawsuit). (Answer filed April 17, 2025.) He was required to support these defenses by submission of facts in opposition to the motion which he failed to do. (Code Civ. Proc., § 437c, subd. (p)(1) [“The defendant . . . shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of

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<sup>1</sup> The motion is filed on behalf of Clifford Levya only. Unless he is an attorney, Clifford Levya is prohibited from representing another. (Bus. & Prof. Code, § 6125 [“No person shall practice law in California unless the person is an active licensee of the State Bar”].)

action or a defense thereto.”].) Thus, the failure to appear at the hearing for oral argument is not the mistake that caused entry of judgment against him.

The court recognizes the policy in favor of deciding cases on their merits and understands that policy informs decisions whether to grant relief from judgment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982.) But in this case, there are simply no facts offered that suggest why defendant Clifford Levya failed to submit opposition, which is critical in defending a motion for summary judgment, and he failed to submit any facts upon which the court might find this failure to be excusable neglect or mistake. This is true even though he is self-represented. “Mere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation.” (*Rappleye, supra*, 8 Cal.4th at 984; *McClain v. Kissler* (2019) 39 Cal.App.5th 399, 416--treating self-represented litigants with lenience for ignoring procedural rules "would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.")

The motion to set aside judgment is denied.

#### Motion: Attorney Fees

Plaintiff now moves for an award of attorney’s fees in the amount of \$9,048.85. The motion was timely filed. (Calif. Rules Court, rule 3.1702(b)(1); see *P R Burke Corp. v. Victor Valley Wastewater Reclamation Auth.* (2002) 98 Cal.App.4th 1047, 1052.)

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.) Except where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. (Civ. Code, § 1717, subd. (b)(1).) When a party obtains a simple, unqualified victory by completely prevailing on, or defeating, all contract claims and the contract provides for attorney fees, Civil Code section 1717 entitles that party to recover reasonable attorney fees. (*Scott Co. of Calif. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1109; *Hsu v. Abbara* (1995) 9 Cal.4th 863, 865-866.)

Here, the contract provides: “You shall pay all costs incurred by us in enforcing any amount you owe or in enforcing or protecting our rights. Costs of collection include . . . reasonable attorney’s fees for any action taken by an attorney who is not our salaried employee in order to collect this loan or preserve or protect

our rights and remedies . . .” (Lopez Decl., Exh. 1, p. 2, Costs of Collection.) The contract authorizes an award of fees. Moreover, plaintiff is the prevailing party, as it has completely prevailed on its contract claims.

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 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; but see *Crespin v. Shewry* (2004) 125 Cal.App.4th 259, 271—“fee motions must be based on detailed time records;” *Taylor v. County of Los Angeles* (2020) 50 Cal.App.5th 205, 207—“[C]ontemporaneous time records are the best evidence of lawyers’ hourly work. They are not indispensable, but they eclipse other proofs. Lawyers know this better than anyone. They might heed what they know.”) An attorney fees award should include compensation for the work of legal assistants when the “prevailing practice . . . is to bill separately for paralegal service time at a reasonable market value rate”—in other words, when the cost of paralegal work is not included as overhead in the rates charged for attorney work. (*Guinn v. Dotson* (1994) 23 Cal.App.4th 262, 269.) The trial court has broad authority to determine the amount of a reasonable fee. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

In support of the fee request, plaintiff has submitted the declaration of attorney Karel Rocha who authenticates the detailed billing statement for this case, attached to the declaration as Exhibit A. The court notes the billing statement shows initial drafts of a discovery package was prepared on May 28, 2025, resulting in six entries of \$58.50 each (2 entries for requests for admission for Clifford and Natalie; 2 entries for special interrogatories for Clifford and Natalie; and 2 entries for demand for production for Clifford and Natalie). On May 29, 2025, six entries were made at a higher rate for a “draft” of the same discovery (presumably reviewed by the attorney). On May 30, 2025, an entry appears for “finalized discovery requests to defendants.” There are no entries showing that the discovery was ever served. These entries, all together, total \$1,489.50.

On these same dates—May 28, 29, and 30—entries were made for the initial draft, draft, and finalized motion for summary judgment against defendants. This motion was filed on June 5, 2025. The motion offered no discovery responses in support of the separate statement.

The court concludes that the work performed to prepare, review, and finalize a discovery package for the two defendants that was not even served, much less relied upon, was not time reasonably expended. The court thus reduces the fee request by \$1,489.50.

Plaintiff seeks an additional \$945.00 for attending the hearing and reviewing and replying to any opposition. No opposition was filed. The court will allow one hour of time billed at \$315/hour for the appearance.

Thus, the court finds that fees in the amount of \$7,875.35 (\$9,048.85-\$1,489.50 + \$315) are reasonable. The motion is granted in the amount of \$7,875.35.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))