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12 OAKLAND GLOBAL RAIL ENTERPRISE, LLC, and *Counter-*
Defendant CALIFORNIA CAPITAL & INVESTMENT GROUP

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

14 ADMINISTRATION BUILDING COURTHOUSE

15
16 OAKLAND BULK AND OVERSIZED
TERMINAL, LLC, a California limited liability
17 company and OAKLAND GLOBAL RAIL
ENTERPRISE, LLC, a California limited
18 liability company,

19 Plaintiffs,

20 v.

21 CITY OF OAKLAND, a California municipal
corporation,

22 Defendant.

23 CITY OF OAKLAND,

24 Counter-Plaintiff,

25 v.

26 OAKLAND BULK AND OVERSIZED
TERMINAL, LLC, and CALIFORNIA
CAPITAL INVESTMENT GROUP,

27 Counter-Defendants.
28

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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By: Anita Dhir,
Deputy Clerk

Consolidated Case Nos. RG18930929 /
RG20062473

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS'
FEES AND COSTS; SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

Reservation No.: 091774930178

Date: April 3, 2024

Time: 10 a.m.

Dept.: 21

Judge: Honorable Noël Wise

Filed Concurrently With:

- (1) Declaration of Barry W. Lee;
- (2) Declaration of Skyler Sanders;
- (3) Declaration of Phillip H. Tagami;
- (4) Declaration of Gary Greenfield;
- (5) Appendix of Evidence;
- (6) [Proposed] Order.

Trial Date: July 10, 2023 (Phase 1)
November 28, 2023 (Phase 2)

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on April 3, 2024 at 10:00 a.m., in the Superior Court of
3 the State of California, County of Alameda, Administration Building Courthouse, located at 1221
4 Oak Street, Oakland, California 94612, Department 21, Plaintiff/Counter-Defendant Oakland Bulk
5 and Oversize Terminal, LLC (“OBOT”), Plaintiff Oakland Global Rail Enterprise, LLC (“OGRE”) and
6 Counter-Defendant California Capital Investment Group (“CCIG”) (together “Plaintiffs”) will
7 and do move, under Civil Code section 1717; Code of Civil Procedure sections 425.16(c)(1), 128.5,
8 1032, and 1033.5; California Rules of Court, rule 3.1702; and Section 38.13 and Article 40 of the
9 Ground Lease between OBOT and Defendant/Counter-Plaintiff City of Oakland (“Defendant” or
10 “City”) for an order awarding Plaintiffs reasonable prevailing-party attorneys’ fees and costs in the
11 amount of \$12,533,028.92 plus the fees expended preparing and litigating this motion.

12 The grounds for Plaintiffs’ motion are: (1) Plaintiffs are the prevailing party in this action
13 because they successfully litigated claims for breach of contract, breach of the implied covenant of
14 good faith and fair dealing, and declaratory relief to judgment against the City; (2) they defeated
15 every cause of action the City alleged in its complaint; and (3) Plaintiffs are statutorily and
16 contractually entitled to recover their reasonable attorneys’ fees and costs from Defendant under
17 Civil Code section 1717 and the Ground Lease. This motion is based on this notice of motion, the
18 accompanying memorandum of points and authorities, the concurrently filed declarations of Barry
19 W. Lee, Skyler Sanders, Phil Tagami, and Gary Greenfield, all other pleadings, papers, and orders
20 on file in this action, and such other argument or evidence properly presented to Court at or in
21 connection with the hearing on this motion.

22 Date: February 15, 2024

MANATT, PHELPS & PHILLIPS, LLP


23
24 By: 
25 Barry W. Lee
26 *Attorneys for Plaintiff and Counter-*
27 *Defendant OAKLAND BULK AND*
28 *OVERSIZED TERMINAL, Plaintiff*
OAKLAND GLOBAL RAIL ENTERPRISE,
LLC, and Counter-Defendant CALIFORNIA
CAPITAL & INVESTMENT GROUP

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1 **I. INTRODUCTION**

2 As prevailing parties, Plaintiffs bring this motion for an award of attorneys’ fees and costs
3 following the Court’s final resolution of all claims in this action. Plaintiffs prevailed on their
4 contract claims asserted against the City, and defeated every claim the City asserted in its complaint.
5 Without question, Plaintiffs are the prevailing parties in this litigation, and they respectfully request
6 that the Court issue an order confirming their prevailing party status and awarding them reasonable
7 attorneys’ fees and miscellaneous costs.¹

8 Starting in 2014, in the face of unambiguous contract language and a clear administrative
9 record entitling Plaintiffs to construct a bulk commodity terminal at the former Oakland Army
10 Base, the City implemented a scheme to prevent that from happening. Plaintiffs were compelled to
11 file this action after the City refused to honor its contractual commitments, and then used that
12 refusal to justify its pretextual termination of the parties’ contracts. The City’s response to the filing
13 included multiple unsuccessful motions and appeals, intentional years-long delays, a feigned
14 settlement, and a host of scorched-earth litigation tactics to drive up Plaintiffs’ costs. The City
15 enlisted an army of outside counsel, including at least four separate law firms, plus three lawyers
16 from the City Attorneys’ Office, the goal of which was to delay Plaintiffs’ project and force them
17 to incur such crippling and unsustainable litigation expenses that they would abandon the project.

18 The City’s scheme failed. In an exhaustive and compelling liability decision, this Court
19 ruled that the City breached the Feb. 16, 2016 West Gateway Ground Lease (“Ground Lease” or
20 “Lease”) and Development Agreement (“DA”), and acted in bad faith. The Court awarded Plaintiffs
21 their preferred remedy—specific performance. It is now time for the City to be held to account for
22 its actions. As set forth below and in the accompanying declarations, Plaintiffs’ attorneys’ fees and
23 costs² in the aggregate amount of \$12,533,028.92 are reasonable and should be awarded.

24
25 ¹ The attorneys’ fees and costs that are the subject of this motion were paid by OBOT. (Declaration
of Phillip H. Tagami in Support of Motion for Fees and Costs (“Tagami Decl.”) ¶ 4.)

26 ² On February 6, 2024, Plaintiffs filed a memorandum of costs, listing the costs that Plaintiffs have
27 a statutory right to recover. This motion does not identify the costs included in that memorandum.
Those costs, however, are also recoverable under the Lease. Thus, to the extent Defendant seeks to
28 tax those costs and this Court agrees, the costs remain recoverable under the Lease. For that
purpose, Plaintiffs expressly incorporate by reference the memorandum of costs into this motion.

1 **II. BACKGROUND**

2 The Court’s November 22, 2023 Statement of Decision (“SOD I”) exhaustively evidences
3 the City’s sustained efforts to deprive Plaintiffs of the benefits of their contracts and prevent
4 development of the terminal. Ignoring Plaintiffs’ multiple force majeure delay notices and refusing
5 to extend the deadline for completion of the Minimum Project Improvements, Defendant
6 unlawfully terminated the Lease. Faced with no alternative other than judicial relief, Plaintiffs
7 initiated this action in December 2018 and successfully litigated claims for breach of contract,
8 breach of the implied covenant of good faith and fair dealing, and declaratory relief to judgment
9 against the City. (SOD I at 94.) The Court further found that the “City failed to prove its claims
10 against OBOT” (*id.* at 95), and awarded Plaintiffs their preferred remedies—specific performance
11 and declaratory relief (*id.* at 94; Statement of Decision Re Damages (“SOD II”) at 3).

12 The Lease contains an expansive fees and cost clause. Section 38.13 is unequivocal:

13 [I]f either Party [] fails to perform any of its respective obligations
14 under [the] Lease or if any dispute arises between the Parties hereto
15 concerning the meaning or interpretation of any provision of this
16 Lease, then the defaulting Party or the Party not prevailing in such
17 [a] dispute [] ***shall pay any and all costs and expenses incurred by
the other Party on account of such default and/or in enforcing or
establishing its rights hereunder, including, without limitation,
reasonable Attorneys’ Fees and Costs.***

18 (Ex. 68 at 121-22 § 38.13) (emphasis added). Article 40 is similarly unambiguous, defining
19 “Attorneys’ Fees and Costs” to include ***all*** costs associated with the litigation:

20 Attorneys’ Fees and Costs means reasonable attorneys’ fees
21 (including fees from attorneys in the Office of the City Attorney of
22 Oakland), costs, expenses and disbursements, including, but not
23 limited to, expert witness fees and costs, travel time and associated
24 costs, transcript preparation fees and costs, document copying,
25 exhibit preparation, courier, postage, facsimile, long-distance and
communications expenses, court costs and other reasonable costs and
fees associated with any other legal, administrative or alternative
dispute resolution proceeding, including such fees and costs
associated with execution upon any judgment or order, and costs on
appeal.

26 (Ex. 68 at 127.)

27 The claims at trial were pleaded in OBOT/OGRE’s First Amended Complaint and the City’s
28 Complaint against OBOT and CCIG. (Declaration of Barry W. Lee In Support of Motion for

1 Attorneys Fees and Costs (“Lee Decl.” ¶¶ 7-14.) The Court held a 35-day trial that included
2 testimony and argument during a liability phase from July 10, 2023 to October 11, 2023 and a
3 remedies phase from November 28, 2023 to December 1, 2023. (Lee Decl. ¶¶ 30, 36.) The docket
4 attests to the amount of work the City foisted on Plaintiffs, including by contesting virtually every
5 issue and needlessly multiplying the proceedings.³ A more detailed procedural history, including
6 descriptions of the work Plaintiffs’ counsel performed at each litigation stage, is contained in the
7 Lee Declaration; a short summary follows.

8 OBOT and OGRE filed this action in December 2018. (*Id.* ¶ 9.) In response, the City filed
9 and then dismissed days later an unlawful detainer complaint. (*Id.*) The City next filed an anti-
10 SLAPP motion, lost the motion, and appealed, resulting in an 18-month stay of the case. (*Id.* ¶ 10.)
11 In a decision critical of the City’s procedural gamesmanship, the Court of Appeal affirmed the trial
12 court’s denial of the anti-SLAPP motion, holding that the motion and appeal were meritless.
13 *Oakland Bulk and Oversized Terminal, LLC v. City of Oakland*, 54 Cal. App. 4th 738, 754-59
14 (2020). The Court of Appeal questioned whether any “possible motive could exist for this appeal”
15 other than delay, quoting William Gladstone: “Justice delayed is justice denied” *Id.* at 760-65.

16 While the anti-SLAPP order was on appeal, the City filed a new action in 2020 (Alameda
17 County Superior Court Case. No. 20062473) against Plaintiffs, asserting breach of the
18 Development Agreement and Lease and declaratory relief claims.⁴ (Lee Decl. ¶ 11.) The City’s
19 later-filed action was subsequently consolidated with Plaintiffs’ action. (*Id.* ¶ 14.)

20 The parties took a total of 26 depositions over a nine-month period, and produced more than
21 750,000 pages of documents, including third party productions.⁵ (*Id.* ¶ 21.)

22 The Court (Hon. Delbert Gee) denied Defendant’s motion for summary judgment in its
23 entirety on January 6, 2022, two months prior to the original March 4, 2022 trial date. (*Id.* ¶ 26.)
24 On January 31, 2022, the City signed a settlement term sheet, setting forth the material terms on

25 _____
26 ³ The online docket includes at least 1,070 separate entries. (Lee Decl. ¶ 6.)

27 ⁴ The City’s claims in Case No. 20062473 were compulsory counterclaims and should have been
28 filed, if at all, in Plaintiffs’ pending action (Case No. RG18930929), rather than in a new action.
See Code Civ. Proc. § 426.30(a).

⁵ Table 1 of Mr. Lee’s declaration lists all deponents and the counsel who attended each deposition.
(Lee Decl. ¶ 21.)

1 which it was purportedly willing to resolve the matter. (*Id.* ¶ 27.) Although the City issued a press
2 release publicly touting settlement,⁶ it privately reneged and refused to complete the settlement.
3 (*Id.*) As a result, the City obtained another significant delay—until July 10, 2023—of the trial of
4 Plaintiffs’ claims.

5 This Court is familiar with the subsequent proceedings, which required nearly round-the-
6 clock attention from a team of Plaintiffs’ lawyers for several months as the City filed nearly every
7 conceivable pre-trial motion, including motions to bifurcate, motions *in limine*, and multiple trial
8 and post-trial motions and briefs. The City did everything it could to make enforcement of its
9 contracts as expensive as possible for Plaintiffs.

10 **III. PLAINTIFFS ARE ENTITLED TO THE REQUESTED FEES AND COSTS**

11 Under California law, a fee motion based on a prevailing-party contractual fee provision is
12 subject to Civil Code section 1717, which states:

13 In any action on a contract, where the contract specifically provides
14 that attorney’s fees and costs, which are incurred to enforce that
15 contract, shall be awarded either to one of the parties or to the
16 prevailing party, then the party who is determined to be the party
prevailing on the contract, whether he or she is the party specified in
the contract or not, ***shall be entitled*** to reasonable attorney’s fees in
addition to other costs.

17 Civ. Code § 1717(a) (emphasis added). California’s Supreme Court has held that a fee award is
18 mandatory when section 1717 applies. *Hsu v. Abarra*, 9 Cal. 4th 863, 872 (1995) (en banc).

19 The Lease expressly provides that the party not prevailing “shall pay any and all costs and
20 expenses incurred by the other Party on account of such default and/or in enforcing or establishing
21 its rights hereunder, including, without limitation, reasonable Attorneys’ Fees and Costs.” (Ex. 68
22 at 121-22.) “Attorneys’ Fees and Costs” expressly include a host of items such as, without
23 limitation: “expert witness fees and costs, travel time and associated costs, transcript preparation
24 fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance
25 and communications expenses, court costs and other reasonable costs and fees associated with any
26 other legal, administrative or alternative dispute resolution proceeding.” (*Id.* at 127.)

27 _____
28 ⁶ See press release, available at
https://www.oaklandcityattorney.org/News/Press%20releases/Ground_Lease_Settlement.html.

1 **A. Plaintiffs Are the Prevailing Parties.**

2 Under Section 1717, “the party prevailing on the contract shall be the party who recovered
3 a greater relief in the action on the contract.” Civ. Code § 1717(b)(1). A court has no discretion to
4 forgo finding that a party prevailed and awarding attorneys’ fees to that party where, as here, “the
5 decision on the litigated contract claims is purely good news for one party and bad news for the
6 other.” *Hsu*, 9 Cal. 4th at 875-76. In addition, with respect to the City’s causes of action, “when a
7 defendant defeats recovery by the plaintiff on the only contract claim in the action, the defendant
8 is the party prevailing on the contract under section 1717 as a matter of law.” *Id.* at 876.

9 Here, the Court entered final judgment in Plaintiffs’ favor on their primary causes of action
10 against the City.⁷ Plaintiffs’ causes of action for breach of contract, breach of the covenant of good
11 faith and fair dealing, and declaratory relief arose out of, and sought relief with respect to Plaintiffs’
12 rights under the Lease, in addition to the Development Agreement. And Plaintiffs defeated every
13 cause of action the City asserted.

14 The Judgment awarded Plaintiffs their preferred remedy—specific performance—and, as
15 an alternative, legal damages in the amount of \$317,683. While the amount awarded is significantly
16 less than Plaintiffs’ damage request, Plaintiffs remain the prevailing parties. The Phase 2 trial was
17 necessary because, although the City stipulated to the availability of specific performance generally
18 after Phase 1, it conditioned the stipulation on the right to appeal this Court’s liability decision and
19 it challenged the scope of specific performance available. (SOD II at 4:18-5:2.) Plaintiffs were thus
20 required to and did present evidence demonstrating that a 2 year, 6 month extension was necessary
21 to meet the initial milestone for the minimum project improvements. And, the Judgment included
22 the requested time extension. Plaintiffs are the prevailing parties. *See Hsu*, 9 Cal. 4th at 876.

23 **B. Plaintiffs Are Entitled to Recover All Fees Incurred.**

24 **1. Plaintiffs’ Claims All Arose Out Of, Were Based On, or Related To the**
25 **Ground Lease.**

26 Attorneys’ fees are recoverable under section 1717 when (1) a claim “arises out of, is based

27 ⁷ The Court did not need to address Plaintiffs’ cause of action for anticipatory breach of the Ground
28 Lease because the Court “determined that the City’s termination of the Ground Lease on November
22, 2018, constituted a breach of contract.” (SOD I at 95.)

1 upon, or relates to an agreement by seeking to define or interpret its terms or to determine or enforce
2 a party's rights or duties under the agreement, and (2) the agreement contains an attorney fees
3 clause." *Hjelm v. Prometheus Real Estate Grp., Inc.*, 3 Cal. App. 5th 1155, 1170 (2016).

4 From inception, this lawsuit focused on Plaintiffs' claims to enforce their rights under the
5 Lease, which contains a mandatory fees and costs provision. This action was filed in response to
6 the City's November 22, 2018 wrongful termination of the Lease, setting in motion five years of
7 extensive and expensive litigation. Plaintiffs' principal claims—breach of contract, breach of the
8 covenant of good faith and fair dealing, and declaratory relief—each relate to the Lease. Significant
9 legal analysis focused on the interpretation of Section 16.1, the Lease's force majeure provision,
10 and whether various acts by the City constituted acts of force majeure that in turn extended
11 Plaintiffs' time to perform. The City stipulated that if their November 2018 termination was
12 unlawful, Plaintiffs would prevail. (RT 180:10-23.) The City concedes that this entire case arises
13 under the Lease.

14 **2. No Apportionment Is Required.**

15 Even if the Court finds that some of Plaintiffs' claims or defenses are not directly related to
16 the Lease—which is not the case—fees are not required to be apportioned among claims or defenses
17 when, as here, a common legal and factual nexus exists. *See Reynolds Metals Co. v. Alperson*, 25
18 Cal. 3d 124, 129-30, (1979) ("Attorney's fees need not be apportioned when incurred for
19 representation on an issue common to both a cause of action in which fees are proper and one in
20 which they are not allowed."); *Cruz v. Fusion Buffet, Inc.*, 57 Cal. App. 5th 221, 235 (2020), *review*
21 *denied* (Feb. 10, 2021) (a party is entitled to recover fees for claims and affirmative defenses that
22 contain "common factual issues or legal issues"); *Thompson Pac. Constr., Inc. v. City of Sunnyvale*,
23 155 Cal. App. 4th 525, 555 (2007) ("[A]llocation is not required when the issues are so interrelated
24 that it would have been impossible to separate them into claims for which attorney fees are properly
25 awarded and claims for which they are not." (cleaned up)); *Drouin v. Fleetwood Enters.*, 163 Cal.
26 App. 3d 486, 493 (1985) ("Attorneys['] fees need not be apportioned between distinct causes of
27 action where plaintiff's various claims involve a common core of facts or are based on related legal
28 theories."). Thus, there may be cases where multiple causes of action are so intertwined that it

1 would be “impracticable, if not impossible, to separate the multitude of conjoined activities into
2 compensable or noncompensable time units.” *Fed–Mart Corp. v. Pell Enters., Inc.*, 111 Cal. App.
3 3d 215, 227 (1980); *accord Abdallah v. United Savs. Bank*, 43 Cal. App. 4th 1101, 1111 (1996).

4 Here, Plaintiffs’ claims for breach of contract and the covenant of good faith and fair dealing
5 of the DA and all of their affirmative defenses to the City’s Complaint were inextricably intertwined
6 with the Lease claims because all were premised on common issues and factual allegations. The
7 gravamen of Plaintiffs’ claims was that the City wrongfully acted to pretextually terminate the
8 Lease and prevent development of a terminal that could handle coal. Plaintiffs presented the same
9 evidence to prove their breach of Lease claim as they did to support the DA breach claim (and
10 likewise for their breach of the covenant of good faith and fair dealing claims). The factual
11 allegations supporting certain events of force majeure under the Lease also supported a breach of
12 the DA. For example, the Court found that the City breached the DA by failing to inform OBOT
13 clearly and unequivocally what commodities the City viewed as impermissible. (SOD I at 61.) This
14 act was also an event of force majeure under Section 16.1 of the Lease; it hindered, affected and
15 delayed OBOT’s ability to perform. (Ex. 68 at 84-85.) The City’s acts, errors and omissions on
16 which Plaintiffs’ breach of Lease claim was based also established the DA breach claim.

17 Accordingly, Plaintiff’s claims for breach of the DA, along with their defenses to the City’s
18 complaint are inextricably intertwined with one another, and apportionment of the fees expended
19 with respect to all causes of action and defenses is neither required nor possible. *Bell v. Vista*
20 *Unified Sch. Dist.*, 82 Cal. App. 4th 672, 687 (2000); *Abdallah*, 43 Cal. App. 4th at 1111; *see, e.g.,*
21 *Erickson v. R.E.M. Concepts, Inc.*, 126 Cal. App. 4th 1073, 1085-86 (2005) (affirming the trial
22 court’s refusal to apportion fees incurred in litigating tort claims that “rais[ed] common issues
23 requiring virtually identical evidence” as a contractual indemnity claim).

24 **3. Plaintiffs Were Forced to Litigate for Years to Establish Their Rights.**

25 Since 2018, every dispute between the parties was part of a larger fight that resulted in a
26 full vindication of OBOT’s rights by finding the Lease to be in full force and effect and awarding a
27 two-year, six-month extension of time to complete the initial minimum project milestones.
28 Plaintiffs incurred significant fees responding to the City’s motions and reviewing and analyzing

1 the voluminous discovery produced. (Lee Decl. ¶¶ 17-20; Table 6.) Plaintiffs did not file any
2 frivolous motions; the City forced Plaintiffs to respond to multiple substantive motions, including
3 a demurrer, anti-SLAPP motion, and motion to strike at the pleading stage and a later motion for
4 summary judgment.

5 The City also obtained broad discovery, served 13 third-party subpoenas, requested that
6 Plaintiffs collect documents from multiple repositories and sought an expansive document
7 production that included marginally relevant documents at best. (*Id.* ¶¶ 15, 17-18.) These requests
8 directly led to Plaintiffs incurring hundreds of thousands of dollars in costs for document hosting
9 and review. (*Id.* ¶ 19; *see also* February 6, 2024 Plaintiffs' Memorandum of Costs.) The parties'
10 claims and defenses directly hinged on written communications, including emails, correspondence,
11 and contracts, all of which required detailed and careful review. Plaintiffs proved their case in large
12 part through the written communications and testimony of adverse witnesses, which rendered the
13 documents even more critical.

14 **4. Plaintiffs Are Entitled to In-House Counsel Fees.**

15 In California, a party represented by in-house counsel may recover attorney fees under
16 Section 1717. In the words of California's Supreme Court:

17 We discern no basis for discriminating between counsel working for
18 a corporation in-house and private counsel engaged with respect to a
19 specific matter or on retainer. Both are bound by the same fiduciary
20 and ethical duties to their clients. Both are qualified to provide, and
do provide, equivalent legal services. And both incur attorney fees
and costs within the meaning of Civil Code section 1717 in enforcing
the contract on behalf of their client.

21 *PLCM Grp. v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000), *as modified* (June 2, 2000).

22 Further, Section 38.13 of the Lease expressly permits recovery of in-house attorneys' fees:

23 If Tenant [OBOT] utilizes services of in-house counsel, then, for
24 purposes of this Lease, the reasonable fees of such in-house counsel
25 shall be based on the fees regularly charged by private attorneys with
26 the equivalent number of years of experience in the subject matter
area of the law for which the in-house counsel services were rendered
and practiced in the City of San Francisco and full service law firms.

27 (Ex. 68 at 113.)
28

1 **C. The Attorneys’ Fees Incurred by Plaintiffs Are Reasonable.**

2 California courts often apply a “lodestar” when computing fees. *Ketchum v. Moses*, 24 Cal.
3 4th 1122, 1134-36 (2001). The factors that a court may consider in determining whether to adjust
4 the lodestar include: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed
5 in presenting them, (3) success or failure, (4) the extent to which the nature of the litigation
6 precluded other employment by the attorneys, [and] (5) the contingent nature of the fee award.”
7 *Glaviano v. Sacramento City Unified Sch. Dist.*, 22 Cal. App. 5th 744, 751 (2018); *accord Drexler*,
8 22 Cal. 4th at 1096. The lodestar method allows courts to award hourly rates exceeding those
9 actually incurred or paid. *Pasternack v. McCullough*, 65 Cal. App. 5th 1050, 1058 (2021).

10 Although Plaintiffs are entitled to seek the full lodestar figure for Manatt’s work, they seek
11 only fees actually incurred and billed⁸ through December 2023, along with later incurred fees.⁹ In
12 addition to Manatt’s fees and costs, Plaintiffs seek fees incurred by Mr. Skyler Sanders. During this
13 litigation Mr. Sanders was in-house counsel from October 2018 until August 2022, at which time
14 he formed Baldr Advisors, LLC. (Declaration of Skyler Sanders (“Sanders Decl.”) ¶ 1.) Plaintiffs
15 seek \$3,256,800.00 for in-house fees and costs. (*Id.* ¶¶ 3-8; Tagami Decl. ¶¶ 5-8.) As explained in
16 Messrs. Tagami and Sanders’ declarations, this amount represents 60% of the time spent by Mr.
17 Sanders and paralegals as in-house counsel. (Sanders Decl. ¶ 6; Tagami Decl. ¶¶ 7-8.) In addition,
18 Plaintiffs seek \$177,813.17 for fees incurred by Mr. Sanders after he joined Baldr Advisors.
19 (Sanders Decl. ¶ 9.)

20 The total fee amount of \$11,814,040.03 is reasonable in light of the magnitude of work
21 performed.¹⁰ The stakes of this litigation were incredibly high for both parties, and the amount of
22 work performed as summarized in this motion and the accompanying declarations prove the point.

23
24 _____
25 ⁸ Manatt is allowed to seek all fees “incurred,” including those that it wrote off, waived, or never
26 billed. Nevertheless, counsel seeks only fees billed to Plaintiffs. *See City of Los Angeles v. Knapp*,
27 7 Cal. 2d 168, 174 (1936) (“The allowance of attorneys’ fees is made to reimburse the defendant
28 for fees which he has paid, or to indemnify him for fees which he has not paid, but has incurred.”
(citing *City of Long Beach v. O’Donnell*, 91 Cal. App. 760 (1928))); *see also Rosenaur v. Scherer*,
88 Cal. App. 4th 260, 283 (2001) (fees that an attorney waives and does not seek from the
represented party are still “incurred”).

⁹ Plaintiffs will update the fee and costs amounts in its reply to the City’s opposition to the motion.

¹⁰ This amount includes fees/costs from Manatt, in-house counsel, Baldr, Lowenstein & Venable.

1 **1. The Billing Rates Charged Are Reasonable.**

2 In assessing the reasonableness of hourly rates, the court may rely on: (1) its own knowledge
3 of and familiarity with the legal market;¹¹ (2) the experience, skill and reputation of the attorneys
4 requesting the fees; (3) the difficulty or complexity of the litigation to which the attorneys’ skill
5 was applied; (4) the result achieved; and (5) attorney affidavits regarding prevailing fees in the
6 community and rate determinations in other cases. *Drexler*, 22 Cal. 4th at 1096; *Morris v. Hyundai*
7 *Motor Am.*, 41 Cal. App. 5th 24, 41 (2019). Expert testimony is not required. *Drexler*, 22 Cal. 4th
8 at 1096. Nonetheless, Plaintiffs’ retained expert, Gary Greenfield, concurs that the Manatt fees are
9 reasonable. (Declaration of Gary Greenfield (“Greenfield Decl.”) ¶¶ 33-72, 74.) And the lodestar
10 factors conclusively demonstrate that the fees and costs Plaintiffs seek are reasonable.

11 **a. The Experience, Skill and Reputation of the Attorneys**
12 **Requesting Fees**

13 Plaintiffs’ lead outside counsel, Barry W. Lee, is a litigation partner and trial lawyer at
14 Manatt, who has extensive experience representing plaintiffs and defendants in complex business
15 litigation in state and federal courts and arbitration and has tried over 50 cases. (Lee Decl. ¶¶ 2-3.)
16 Mr. Lee was joined by Manatt partner, Christopher Wanger, who together with Mr. Lee managed,
17 supervised and executed all aspects of the litigation including all major depositions, motions and
18 hearings. (*Id.* ¶ 5(a).) For the overwhelming majority of the case, only one associate was staffed on
19 the matter at any given time (although the identity of the associate changed over time due to staffing
20 changes). (*Id.* ¶ 5(f).) To the extent possible and when appropriate, tasks were delegated or assigned
21 to paralegals, administrators or staff attorneys, all of whom charge lower hourly rates.¹² (*Id.*)

22 Mr. Sanders, a graduate of Pepperdine Law School and adjunct professor at Brigham Young
23 University served as in-house counsel for Plaintiffs from 2018-2022. (Sanders Decl. ¶¶ 1-2.) Mr.
24 Sanders was involved in every aspect of the litigation, reviewing/revising pleadings, preparing
25 correspondence, developing strategy, supervising the collection of documents, reviewing
26 discovery, preparing witnesses, reviewing invoices; in other words, all of the legal tasks that led to

27 ¹¹ Plaintiffs do not address this first factor.

28 ¹² The Manatt attorneys and paralegals who worked on this matter and the applicable billing rates for each are detailed in Mr. Lee’s Declaration. (Lee Decl. ¶ 50.)

1 the successful resolution of the case. (*Id.* ¶ 6.) While in-house counsel in the Bay Area, Plaintiffs
2 used a \$550.00 per hour rate for Mr. Sanders; while at Baldr (located in Rexburg, Idaho),
3 Mr. Sanders’ time was discounted to \$250.00 per hour. (*Id.* ¶¶ 4-5.) Both are reasonable.

4 Plaintiffs also seek \$145,309.13 in fees paid to Lowenstein Sandler, which represented
5 Insight Terminal Solutions, LLC and its consultants (collectively, “ITS”). (Tagami Decl. ¶ 10.)
6 OBOT is obligated to and did reimburse ITS for 50% of the fees paid to Lowenstein, which
7 collected, reviewed and produced ITS documents in response to Defendant’s subpoenas; defended
8 depositions of ITS witnesses; met and conferred with defense counsel in discovery disputes
9 involving ITS; and otherwise advised ITS throughout the proceedings. (*Id.*)

10 Plaintiffs seek \$121,620.15 in fees paid to Venable, LLP, Plaintiffs’ counsel before the
11 Surface Transportation Board (“STB”). (*Id.* ¶ 11.) Venable handled all briefing and appearances
12 before the STB, which were necessary because of the City’s persistent refusal to perform its Lease
13 obligations and its continuous interference with Plaintiffs’ development efforts. (*Id.*)

14 **b. The Difficulty of the Litigation and the Result Achieved**

15 This was a factually complex case. Manatt faced skilled counsel representing the City, who
16 fought zealously for their client at every turn, requiring Plaintiffs to prove every contested detail.
17 The positions that the City took throughout this litigation and in trial required Plaintiffs to spend
18 significant time disproving a myriad of theories and defenses. Given the complexity of the claims
19 and the caliber of opposing counsel, Plaintiffs achieved an exceptional result. In the end, the Court
20 entered judgment for Plaintiffs, finding that the City breached the Lease, the DA, and the covenant
21 of good faith and fair dealing, awarding Plaintiffs their preferred remedies—specific performance
22 and declaratory relief. The fees represent compensation for the time reasonably spent by the firms’
23 attorneys, paralegals and support staff pursuing Plaintiffs’ claims over a five-year period.

24 **c. Prevailing Fees in the Community and Rate Determinations in**
25 **Other Cases**

26 Manatt is a national law firm with more than 450 lawyers and consultants in multiple offices
27 in the United States. (Lee Decl. ¶ 56.) Data extracted from the Peer Monitor tool shows that
28 Manatt’s 2018-2024 standard hourly rates are well within the range of billing rates charged by

1 similar firms. (*Id.* ¶¶ 57-58.) Further, Courts in California have accepted Manatt’s billing rates as
2 reasonable in awarding attorney fees to Manatt clients.¹³ The firms’ rates were reasonable within
3 the relevant community for high-stakes, high value commercial and business litigation such as this
4 action. *See Sonoma Land Trust v. Thompson*, 63 Cal. App. 5th 978, 988 (2021) (“A skilled attorney
5 commands a higher fee, and a difficult case requires more hours[.]”).

6 **2. The Amount of Time Spent Was Reasonable and the Work Performed**
7 **was Appropriate, Nonduplicative, and Necessary.**

8 Counsel are entitled to compensation for every “hour[] reasonably spent, including those
9 relating solely to the fee.” *Ketchum*, 24 Cal. 4th at 1133. A court can rely on “time records” and
10 attorney declarations concerning the completed work and hours spent when determining whether
11 such hours are reasonable.¹⁴

12 Here, the accompanying declarations and this motion detail the attorneys who performed
13 the work, the actual worked performed, the billing rate, and the total fees for all work performed.
14 (Lee Decl. ¶¶ 50, 51; Tables 5, 6.) Further detail related to the attorney work can be found in the
15 invoices attached to the declarations. (*Id.* ¶ 59; Ex. G; Tagami Decl. ¶¶ 9-12.) Moreover, the
16 attorneys’ fees incurred in this action are within the range normally expended by clients on
17 attorneys’ fees in a litigation of this size and importance. (Greenfield Decl. ¶ 74.) The Manatt fees
18 billed are shown in Table 5 of Mr. Lee’s Declaration. (Lee Decl. ¶ 50.) Table 6 breaks down these
19 fees by month and summarizes the work performed. (*Id.* ¶ 51.)

20 As the Court witnessed at trial, this was an extremely time consuming and costly case. The

21 _____
22 ¹³ *See Tracy Anderson Mind and Body, LLC, et al. v. Megan Roup, et al.*, 2023 WL 6890744 (C.
23 D. Cal Sept. 11, 2023) (Manatt’s billing rates of \$1,065.00 for partners and \$760.00 for associates
24 reasonable); *Rincon EV Realty LLC v. CPIII Rincon Towers, Inc.*, No. CGC-10-496887 (S.F. Super.
25 Ct. May 24, 2018) (awarding Manatt over \$9,000,000 in attorneys’ fees and accepting Manatt’s
26 hourly billing rates ranging from to \$409.50 to \$837.00); *Weinerman v. Weinerman*, No. BC598921
27 (L.A. Super. Ct. May 16, 2016) (accepting Manatt’s hourly billing rates ranging from \$561.00 to
28 \$731.85).

¹⁴ *See Peak-Las Positas Partners v. Bollag*, 172 Cal. App. 4th 101, 114 (2009) (“A defendant
cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the
plaintiff in response.” (cleaned up)); *Stokus v. Marsh*, 217 Cal. App. 3d 647, 654 (1990) (“Parties
who litigate with no holds barred in cases such as this, in which the prevailing party is entitled to a
fee award, assume the risk they will have to reimburse the excessive expenses they force upon their
adversaries.”); *Citizens Against Rent Control v. City of Berkeley*, 181 Cal. App. 3d 213, 232-35
(1986) (some “duplication of services” is not necessarily “inappropriate”).

1 parties' relationship began years ago, and Plaintiffs' counsel worked tirelessly to illustrate that the
2 City's numerous actions throughout the years violated the Lease. Plaintiffs' counsel analyzed
3 thousands of documents and examined 17 witnesses to prove the City's breaches and rebut the
4 City's defenses. (*Id.* ¶ 29.) Moreover, the SODs and Judgment vindicate Plaintiffs' positions and
5 illustrate that all the work was necessary to establish and enforce their rights under the Lease.

6 Manatt billed Plaintiffs on a monthly basis from October 2018 to December 2023. (*Id.* ¶
7 48.) Prior to their submission to Plaintiffs, Mr. Lee reviewed the bills for inefficiencies and wrote
8 off fees and costs that, based on his experience, he thought could be viewed as excessive or
9 unnecessary. (*Id.* ¶ 49.) In addition, Plaintiffs received a 15% discount on all time billed by Manatt
10 professionals, a 20% discount on David Smith's fees on one bill, and additional courtesy discounts.
11 These written-off fees, totaling, \$1,547,581.13, are summarized in Table 9 of Mr. Lee's Declaration
12 and are not being sought in this motion. (*Id.* ¶ 55.)

13 **D. Plaintiffs Are Entitled to Costs.**

14 Parties are free to enter into contracts that shift attorneys' fees and costs to the prevailing
15 party. *See, e.g., Alyeska Pipeline Co. v. Wilderness Society*, 421 U.S. 240, 257 (1975). And "[w]hile
16 it is reasonable to interpret a general contractual cost provision by reference to an established
17 statutory definition of costs[,]” courts will not “prevent sophisticated parties from freely choosing
18 a broader standard authorizing recovery of reasonable litigation charges and expenses.” *Arntz Cont.*
19 *Co. v. St. Paul Fire & Marine Ins. Co.*, 47 Cal. App. 4th 464, 492 (1996).

20 Under the Lease, Plaintiffs are entitled not only to their reasonable fees, but also to:

21 costs, expenses and disbursements, including, but not limited to,
22 expert witness fees and costs, travel time and associated costs,
23 transcript preparation fees and costs, document copying, exhibit
24 preparation, courier, postage, facsimile, long-distance and
25 communications expenses, court costs and other reasonable costs and
fees associated with any other legal, administrative or alternative
dispute resolution proceeding, including such fees and costs
associated with execution upon any judgment or order, and costs on
appeal.

26 (Ex. 68 at 127.) All Plaintiffs' costs incurred during this litigation are recoverable.

27 The parties were undoubtedly aware of costs a prevailing party might incur litigating this
28 matter, including costs for: (1) consulting or testifying experts; (2) trial, including, but not limited

1 to, reporters, travel, lodging and meals; (3) document collection and hosting; (4) deposition and
 2 trial transcripts; and (5) other administration necessary to conduct the litigation. Plaintiffs are
 3 entitled not only to all costs specifically enumerated in the Lease, but also to all unenumerated but
 4 customary costs associated with litigation. Plaintiffs seek here an award of costs in the amount of
 5 \$718,988.89. The table below summarizes those costs. (Lee Decl. ¶¶ 52-54.)

Cost Description	Amount Incurred
Travel (Airfare/Car Rental/Etc.) (Mark McClure)	\$5,182.53
Travel (Airfare/Transportation/Etc.) (James Wolff)	\$2,299.78
Expert Witness Fees & Costs (*see below table)	\$554,221.68
Photocopying and Mail Services	\$2,947.66
Mock Trial Expenses	\$94,816.04
Thomson Reuters/Westlaw Plaintiffs Costs	\$59,521.20
TOTAL COSTS REQUESTED	\$718,988.89

Expert Witness Fees Breakdown

Expert Description	Amount Incurred
Peter Brown 1,304.9 total hours: Mr. Brown reviewed hundreds of pages of records; participated in phone and in-person consultations; drafted two reports; prepared for and attended two depositions; prepared for trial; testified over 2 days; visited the site; and consulted on overall strategy. Mr. Brown also received assistance from various staff members including Elizabeth Akers, Jae Byoun, Christina Fung, Joseph Leventhal, Kyle Prutz, and Rachel Kaplan. These individuals assisted with research and case document review. These hours are included in the above total.	\$603,181.50
Mr. Brown Travel Expenses	\$1,040.18
Mr. Brown Discount/Write Off	- \$50,000.00
TOTAL EXPERT WITNESS COSTS INCURRED BY PLAINTIFFS	\$554,221.68

20 The total cost figure above represents actual costs incurred in this litigation. Under the
 21 Lease, and as detailed above, Plaintiffs are entitled to recover all such costs so long as they are not
 22 also recovered under Plaintiffs' memorandum of costs. As noted above, those costs are incorporated
 23 into this motion but not yet included, and Plaintiffs have subtracted all written off costs summarized
 24 in Table 9 of Mr. Lee's declaration. Plaintiffs are thus entitled to the requested amount of
 25 \$718,988.89. (See Lee Decl. ¶ 52-54.)

IV. CONCLUSION


27 For the reasons stated above, Plaintiffs respectfully submit that they are entitled to an award
 28

1 of attorneys' fees in the amount of \$11,814,040.03, and costs in the amount of \$718,988.89. Given
2 the extraordinarily favorable result that Plaintiffs obtained in this case, the Court should find that
3 the expenses Plaintiffs incurred litigating this dispute were appropriate and reasonable.
4
5

6 Date: February 15, 2024

MANATT, PHELPS & PHILLIPS, LLP

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By:  _____

Barry W. Lee
Attorneys for Plaintiff and Counter-Defendant OAKLAND BULK AND
OVERSIZED TERMINAL, *Plaintiff*
OAKLAND GLOBAL RAIL ENTERPRISE,
LLC, and *Counter-Defendant* CALIFORNIA
CAPITAL & INVESTMENT GROUP



Court Reservation Receipt

Reservation	
Reservation ID: 091774930178	Status: RESERVED
Reservation Type: (Civil) Motion for Attorney Fees	Number of Motions: 1
Case Number: RG18930929	Case Title: Oakland Bulk And Oversized Terminal, LLC VS City of Oakland
Filing Party: Oakland Bulk And Oversized Terminal, LLC (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 21
Date/Time: April 3rd 2024, 1:30PM	Confirmation Code: CR-DOUCY7CRPPYRUIRVW

Fees			
Description	Fee	Qty	Amount
Reschedule Fee	1.00	1	1.00
TOTAL			\$1.00

Payment	
Amount: \$1.00	Type: Visa
Account Number: XXXX1452	Authorization: 000313
Payment Date: 2024-02-14	

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