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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Franchise Holding II LLC,

10 Plaintiff,

11 v.

12 Huntington Restaurants Group  
13 Incorporated, et al.,

14 Defendants.

No. CV-12-01363-PHX-DGC

**ORDER**

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16 Plaintiff filed a complaint on June 25, 2012 asserting a claim for breach of  
17 contract. Doc. 1. The Court granted Plaintiff's motion for summary judgment on  
18 January 8, 2014 and awarded Plaintiff damages in the amount of \$12,800,000 plus  
19 prejudgment interest. Doc. 86. Plaintiff now asks the Court to award attorneys' fees in  
20 the amount of \$71,930.82 in connection with this action. Doc. 89. The motion is fully  
21 briefed and no party has requested oral argument. For the reasons that follow, the Court  
22 will grant the motion.

23 **I. Legal Standard.**

24 Under Arizona law, "[i]n any contested action arising out of a contract, express or  
25 implied, the court may award the successful party reasonable attorney fees."  
26 A.R.S. § 12-341.01(A). To determine whether an award of attorneys' fees is appropriate,  
27 courts consider a number of factors, including: (1) the merits of the unsuccessful party's  
28 claim; (2) whether the litigation could have been avoided or settled and whether the

1 successful party's efforts were completely superfluous in achieving the ultimate result;  
2 (3) whether assessing fees against the unsuccessful party would cause extreme hardship;  
3 (4) whether the successful party prevailed with respect to all relief sought; (5) whether  
4 the legal question presented was novel or had been previously adjudicated; and  
5 (6) whether a fee award would discourage other parties with tenable claims from  
6 litigating. *Velarde v. PACE Membership Warehouse, Inc.*, 105 F.3d 1313, 1319-20 (9th  
7 Cir. 1997); *Associated Indemn. Corp. v. Warner*, 694 P.2d 1181, 1184 (Ariz. 1985) (en  
8 banc); *Uyleman v. D.S. Rentco*, 981 P.2d 1081, 1086 (Ariz. Ct. App. 1999).

## 9 **II. Analysis.**

### 10 **A. Appropriateness of Awarding Fees.**

11 Defendants do not dispute that this action arose out of contract. Doc. 90. The  
12 Court will individually consider each of the six factors outlined above.

#### 13 **1. Whether Defendants' Claim was Meritorious.**

14 As noted above, the Court granted summary judgment for Plaintiff. Doc. 86.  
15 Defendants do not advance any new arguments concerning the merit of their position.  
16 This factor favors Plaintiff.

#### 17 **2. Whether the Litigation Could Have Been Avoided.**

18 Defendants argue that "this litigation might well have been avoided had Plaintiff  
19 simply renewed its original judgment." Doc. 90 at 2. Plaintiff responds that when  
20 Defendants stopped making payments under their Stay Agreement with Plaintiff, the  
21 original judgment had expired and Plaintiff had "no other recourse other than to initiate  
22 this action against Defendants." Doc. 91 at 2. The Court agrees. This factor favors  
23 Plaintiff.

#### 24 **3. Whether Assessing Fees Would Cause Extreme Hardship.**

25 Defendants argue that "the Beatties are effectively precluded from receiving  
26 compensation from any of the defendant businesses and are limited in their ability to  
27 form new businesses." Doc. 90 at 2-3. They further argue that "[a] large fee award just  
28 adds to the heavy financial burden the Beatties already suffer under." *Id.* at 3.

1 Defendants, however, have not provided any evidence of financial hardship. “[T]he party  
2 asserting financial hardship has the burden of coming forward with *prima facie* evidence  
3 of financial hardship.” *Woerth v. City of Flagstaff*, 808 P.2d 297, 305 (Ariz. Ct. App.  
4 1990). Defendants have failed to meet this burden. This factor favors Plaintiff.

5 **4. Whether Plaintiff Prevailed With Respect to All Relief Sought.**

6 The Court granted summary judgment and Plaintiff clearly prevailed with respect  
7 to all relief sought. This factor favors Plaintiff.

8 **5. Whether the Legal Question Presented was Novel.**

9 This action concerned a breach of contract. Defendant does not contend that any  
10 novel legal questions were presented. This factor favors Plaintiff.

11 **6. Would a Fee Award Discourage Other Parties?**

12 Neither party argues this point. The Court cannot conclude that a fee award would  
13 discourage other parties from litigating. This factor favors Plaintiff.

14 In sum, all six factors favor Plaintiff. An award of fees is appropriate in this case.

15 **B. Reasonableness of the Requested Fees.**

16 Defendants make no arguments that the fees requested by Plaintiff are not  
17 reasonable. Plaintiff cites *Schweiger v. China Doll Restaurant, Inc.*, 673 P.2d 927, 931-  
18 32 (Ariz. Ct. App. 1983), for the proposition that the Court should consider “(1) the  
19 attorneys’ hourly rates, and (2) the amount of time spent on each task.” Doc. 89 at 3.  
20 Plaintiff argues that “[i]f the attorneys’ rates are reasonable and the attorneys’ time was  
21 reasonable, then the fee award is reasonable as well.” *Id.* at 4 (citing *Schweiger*, 673 P.2d  
22 at 931-32).

23 The Court finds the hourly rates charged by Plaintiff’s legal team to be reasonable  
24 for the Phoenix market and for attorneys of the skill and experience needed for a case  
25 such as this. The Court also finds the time records provided by Plaintiff’s counsel to be  
26 sufficiently detailed, and the hours incurred in pursuing this case to be reasonable.  
27 Having considered the record as a whole and the relevant fee award factors, *see Warner*,  
28 694 P.2d at 1184, the Court finds the requested fee award to be reasonable and

1 appropriate. *See also* LRCiv 54.2(c)(3)(A)-(M) (listing factors bearing on the  
2 reasonableness of a fee award).

3 **IT IS ORDERED:**

- 4 1. Plaintiff's motion for attorneys' fees (Doc. 89) is **granted**.  
5 2. Plaintiff is awarded attorneys' fees in the amount of **\$71,930.82** pursuant  
6 to A.R.S. § 12-341.01(A).

7 Dated this 24th day of March, 2014.

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12 David G. Campbell  
13 United States District Judge  
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