



1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 On November 16, 2010, Plaintiff filed a Verified Complaint for breach of a guaranty contract  
3 against defendants Bernard Gliberman and the Bernard Gliberman Revocable Living Trust  
4 (collectively, "Gliberman"). (Doc. 1.) Gliberman failed to answer or otherwise make an  
5 appearance in this action.

6 On October 27, 2011, Plaintiff moved for default judgment against Gliberman, requesting  
7 judgment in the amount of \$81,170,331.74, plus attorney's fees and costs. (Doc. 41.) On February  
8 27, 2012, the Magistrate Judge issued Findings and Recommendations recommending that the  
9 Motion for Default Judgment be granted. (Doc. 55.) The Findings and Recommendations also  
10 found that "[b]y successfully obtaining a default judgment against Gliberman in this breach of  
11 contract action, Plaintiff is the "prevailing party" under Cal. Civ. Code § 1717 and is entitled to  
12 reasonable attorney's fees and costs. An award of reasonable attorney's fees and costs is also  
13 authorized under Cal. Code. Civ. P. § 1021." (Doc. 55, 14: 6-9.) The Findings and  
14 Recommendations ordered Plaintiff to submit a "detailed, itemized petition for attorney's fees and  
15 costs" by March 23, 2012. (Doc. 55, 14: 18-20.) On March 26, 2012, the District Judge adopted the  
16 Magistrate's Findings and Recommendations in full, and entered judgment in favor of Plaintiff and  
17 against Gliberman in the amount of \$81,170,331.74. The Court now turns to Plaintiff's Motion for  
18 Attorney's Fees. (Doc. 56.)

19 **III. DISCUSSION<sup>1</sup>**

20 **A. Legal Standard**

21 The Amended Loan Guaranty entered into between Plaintiff and Gliberman provides that  
22 the prevailing party in any lawsuit arising from the agreement is entitled to reasonable attorney fees.  
23 Declaration of Steven T. Darak ("Darak Decl."), ¶ 17, Attach. 9, ¶ 15(j), Doc. 43. Generally, an  
24 award of reasonable attorney's fees is determined through the lodestar approach. *Van Gerwen v.*  
25 *Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) ("This court has adopted the hybrid  
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27 <sup>1</sup> As the Court has already found Plaintiff is entitled to an award of attorney's fees and costs pursuant to Cal. Civ.  
28 Code § 1717 and Cal. Code Civ. P. § 1021, *see* Doc. 55, 14: 4-9, the Court limits its discussion to proper amount of attorney  
fees and costs to be awarded.

1 lodestar/multiplier approach used by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 103  
2 S.Ct. 1933, 76 L.Ed.2d 40 (1983), as the proper method for determining the amount of attorney's  
3 fees"). A court determines the "lodestar" amount by multiplying the number of hours reasonably  
4 expended on the litigation by a reasonable hourly rate. See *D'Emanuelle v. Montgomery Ward & Co.,*  
5 *Inc.*, 904 F.2d 1379, 1383 (9th Cir. 1990). The lodestar amount is presumptively the reasonable fee  
6 amount. *Van Gerwen*, 214 F.3d at 1045. The Court adopts the lodestar method for determining the  
7 reasonableness of this fee request.

8 **B. Reasonableness of Plaintiff's Counsel's Hourly Rate**

9 In determining a reasonable hourly rate, the fee applicant "has the burden of producing  
10 satisfactory evidence, in addition to the affidavits of its counsel, that the requested rates are in line  
11 with those prevailing in the community for similar services of lawyers of reasonably comparable  
12 skill and reputation." *Blum*, 465 U.S. at 896 n. 11; *Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005).  
13 The Ninth Circuit has elaborated that:

14 This determination "is not made by reference to rates actually charged by the  
15 prevailing party." [] The court should use the prevailing market rate in the community  
16 for similar services of lawyers "of reasonably comparable skill, experience, and  
17 reputation." []

17 *D'Emanuelle v. Montgomery Ward & Co., Inc.*, 904 F.2d 1379, 1384 (9th Cir. 1990). The "relevant  
18 legal community" in the lodestar calculation is generally the forum in which the district court sits.<sup>2</sup>  
19 *Mendenhall v. NTSB*, 213 F.3d 464, 471 (9th Cir. 2000); *Jadwin v. County of Kern*, 767 F. Supp. 2d  
20 1069 (E.D. Cal. 2011) (where a case is tried in the Eastern District of California, Fresno Division,  
21 "[t]he Eastern District of California, Fresno Division, is the appropriate forum to establish the  
22 lodestar hourly rate . . ."); *Barjon v. Dalton*, 132 F.3d 496 (9th Cir.1997) (applying the prevailing  
23 rate for the Sacramento community to an attorney whose practice was based in San Francisco when  
24 the case was litigated in the Eastern District, Sacramento Division). As this case is pending in the  
25 Fresno Division of the Eastern District of California, generally accepted attorney's fees in the Fresno

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27 <sup>2</sup> There are narrow exceptions to the general rule that the relevant legal community is the forum in which the court  
28 sits. See *Schwarz v Sec. Of Human Health and Human Servs.*, 73 F.3d 895, 907 (9<sup>th</sup> Cir. 1995). Plaintiff, however, does not  
argue that a recognized exception to the general rule applies.

1 community will determine whether Plaintiff’s hourly fee request is reasonable.

2 Plaintiff’s Counsel, Jeffrey E. Mitchell (“Mitchell”), requests hourly rates between \$560.00  
3 and \$650.00.<sup>3</sup> (Pl.’s Mot. For Attorney’s Fees, 6: 18-20, Doc. 56; Declaration of Jeffrey E. Mitchell  
4 “Mitchell Decl., ¶ 4, Doc. 57.) Mitchell argues his hourly rate in this case is reasonable because  
5 “[t]his rate is reasonable for a lawyer of comparable skill and expertise in the Northern California  
6 market [,] . . . the amount at issue in this lawsuit (this Court awarded \$81,170,331.74),” and the  
7 complexity of the legal and damage issues involved. (Pl.’s Mot. For Attorney’s Fees, 6: 18-27, Doc.  
8 56.)

9 As noted above, “Northern California” is not the relevant community. The relevant legal  
10 community is Fresno, California. *Barjon v. Dalton*, 132 F.3d 496 (9th Cir. 1997). Mitchell has not  
11 presented relevant evidence to demonstrate these rates are in line with those generally accepted in the  
12 Fresno community. *See, Dang v. Cross*, 422 F.3d 800, 814 (9th Cir. 2005) (“To inform and assist  
13 the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory  
14 evidence-in addition to the attorney’s own affidavits-that the requested rates are in line with those  
15 prevailing in the community for similar services by lawyers of reasonably comparable skill,  
16 experience and reputation.”) The only evidence Mitchell has offered to justify his hourly rate is his  
17 own declaration stating that these are the rates he charges his clients, and his personal belief they are  
18 in line with the relevant community. Mitchell Decl., ¶ 4. Mitchell’s declaration, by itself, is not  
19 sufficient evidence to justify his hourly fee request.

20 The Court’s review of the hourly rates generally accepted in the Fresno community for  
21 competent, experienced attorneys, reveals a range between \$250 - \$380. The rates at the highest end  
22 of this scale (in excess of \$300) are generally reserved for those practitioners regarded as competent,  
23 reputable, and possessing in excess of 20 years of experience. *See, e.g., Jadwin v. County of Kern*,  
24 767 F. Supp. 2d 1069, 1129-1134 (E.D. Cal. 2011) (The *Jadwin* Court evaluated the fee requests of  
25 four different prevailing attorneys: An attorney with 13 years of experience, but insubstantial trial  
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27 <sup>3</sup> Mr. Mitchell states his hourly rate increased annually from \$565 (2010) to \$605 (2011) to \$650 (2012). Mitchell  
28 Decl., ¶ 4.

1 experience, requested \$400 hour and received \$275 an hour; An attorney with 16 years of experience  
2 requesting \$450 an hour, received \$350 an hour; A research attorney with 20 years of experience  
3 requested \$385 an hour, received \$295 an hour; An attorney with almost 40 years of experience  
4 requesting \$660 per hour received \$380 per hour.); *Luna v. Hoa Trung Vo*, 2011 WL 2078004 (E.D.  
5 Cal. 2011) (Experienced and competent attorney with more than 40 years experience received \$375  
6 per hour, which represented the “top of the compensation range for attorneys practicing in the Fresno  
7 area”); *Ruff v. County of Kings*, 700 F.Supp.2d 1225 (E.D. Cal. 2010) (experienced and competent  
8 trial lawyer attorney with almost 20 years of experience had a reasonable hourly rate of \$300.00);  
9 *Schultz v. Ichimoto*, 2010 WL 3504781 (E.D. Cal. 2010)( it was determined that two very  
10 experienced employment litigation counsel—with more than twenty years of litigation experience  
11 each—were entitled to hourly rates of \$305.00 and \$255.00, respectively).

12 Further down the scale, the range of reasonable hourly rates for competent attorneys with less  
13 than ten years of experience is \$250-\$300 per hour. *See, e.g., S.A. Minor ex. Rel. His parents v.*  
14 *Tulare County Office of Educ.*, 2009 WL 4048656 (E.D. Cal. 2009) (\$250 for an attorney with eight  
15 years of experience); *C.B. v. Sonora School Dist.*, 2011 WL 4590775 (E.D. Cal. 2011) (\$300 for lead  
16 trial counsel with five years experience); *Frank v. Wilbur-Ellis Co. Salaried Employees Ltd. Plan*,  
17 2009 WL 2579100 (E.D. Cal. 2009 (awarding an hourly rate of \$300 per hour to a fourth year  
18 associate who has been involved in six trials).

19 Mitchell, licensed to practice law in 2004, has nine years of experience. Thus, even though  
20 Mitchell has proven to be both competent and effective, the Court can find no basis to award  
21 Mitchell a rate of compensation beyond the rates this Court has identified to be the top of the  
22 compensation range for attorneys of similar experience. The Court is mindful, however, that  
23 Mitchell was solely responsible for litigating this case, and that the amount at stake, as well as the  
24 results achieved, were substantial. Accordingly, the Court sets Mitchell’s hourly rate at the top of  
25 the range for attorneys of similar competence and experience in the Fresno community, and awards  
26 Mitchell \$300 per hour.

27 **C. The Number of Hours Expended**

28 The party seeking an award of fees must submit evidence supporting the hours worked and

1 the rates claimed. *Van Gerwen*, 214 F.3d at 1045. A district court should exclude from the lodestar  
2 amount hours that are not reasonably expended because they are “excessive, redundant, or otherwise  
3 unnecessary.” *Id.*

4 Plaintiff presented a detailed itemization of time spent obtaining judgment in this matter.  
5 Mitchell Decl., ¶ 7, subpar. a-g. Mitchell represents he expended 8.4 hours in pre-default activity.  
6 This activity included case analysis, document review, legal research and complaint drafting.  
7 Mitchell Decl., ¶ 7, subpar. a-c. The Court finds these hours were reasonably and necessarily  
8 expended.

9 Mitchell represents he expended 20.2 hours obtaining a default judgment. These endeavors  
10 included damage calculations, document and contract review, correspondence with Plaintiff and  
11 opposing counsel, drafting the default documents and supplemental briefing at the Court’s request.  
12 Mitchell Decl., ¶ 7, subpar. d-g. The Court finds these hours were reasonably and necessarily  
13 expended.

14 Accordingly, the Court awards Plaintiff attorneys’s fees calculated as follows: 28.6 hours x  
15 \$300 per hour, for a total attorney fee award of **\$8,580.00**.

16 **D. Costs**

17 Allowable costs are those available under California Civil Code Section 1033.5, unless  
18 parties provide evidence that some contractual provision has expanded the statutory definition. *Hsu*  
19 *v. Semiconductor Sys., Inc.*, 126 Cal.App.4th 1330, 1341, 25 Cal.Rptr.3d 82 (2005). “Allowable  
20 costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or  
21 beneficial to its preparation.” Cal. Civ.Code § 1033.5(c)(2).

22 Plaintiff requests reimbursement for the following costs: \$350 for the filing fee; \$475 for  
23 personal service on an out-of-state resident; and \$202.50 for “duplication fees.” The Court will grant  
24 Plaintiff’s request for the first two items, however, duplication fees, or photocopies, are specifically  
25 disallowed as recoverable costs under Cal. Code Civ. P. § 1033.5(b)(3). Accordingly, the Court  
26 grants Plaintiff’s request to recover costs in the amount of \$825.00.

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**IV. CONCLUSION**

Based on the foregoing, the Court GRANTS Plaintiff's Motion for Attorney's Fees in part, and DENIES Plaintiff's Motion for Attorney's Fees in part. The Court awards Plaintiff attorney's fees and costs in the amount of **\$9,405.00**.

IT IS SO ORDERED.

**Dated: July 17, 2012**

/s/ **Barbara A. McAuliffe**  
UNITED STATES MAGISTRATE JUDGE