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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PASSPORT HEALTH, INC., a	)	
Maryland corporation,	)	2:09-cv-01753-GEB-JFM
	)	
Plaintiff,	)	
	)	<u>ORDER AWARDING PLAINTIFF</u>
v.	)	<u>ATTORNEYS' FEES AND COSTS</u>
	)	
TRAVEL MED, INC., a California	)	
corporation and GINA FLAHARTY,	)	
an individual and citizen of the	)	
State of California	)	
	)	
Defendants.	)	
_____	)	

Plaintiff seeks \$362,123.48 in attorneys' fees and costs as the prevailing party in this action. (ECF No. 89.) Judgment was entered in Plaintiff's favor on September 6, 2011. (ECF No. 82.) Defendants oppose the motion. (ECF No. 98.)

Plaintiff argues it is entitled to the attorneys' fees it seeks under Section 1717 of the California Civil Code. (Mot. 12:8-14.) This statute "authorizes reasonable attorney's fees 'in any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce the contract, shall be awarded . . . to the prevailing party.'" Barrientos v. 1801-1825 Morton LLC, 583 F.3d 1197, 1216 (9th Cir. 2009) (quoting CAL. CIV. CODE § 1717(a)). Plaintiff argues that the Franchise Agreement provides for attorneys' fees and costs to the prevailing party. (Mot. 12:16-27.)

1 Defendants counter that Plaintiff's motion for attorneys' fees  
2 should be denied "because Plaintiff failed to first seek mediation  
3 and/or arbitration of this dispute prior to filing the instant lawsuit  
4 as required by the Franchise Agreement"; or, in the alternative, that  
5 the request "should be reduced to a reasonable amount because  
6 Plaintiff's counsel charged rates far in excess of a reasonable rate for  
7 the Sacramento area for legal services." (Opp'n 2:4-9.)

8 Defendants argue that the portion of the Franchise Agreement  
9 authorizing an award of attorneys fees is "subject to" the requirement  
10 that the parties submit their claims to mediation and/or arbitration  
11 prior to filing suit, which did not occur. Id. 5:6-9. Plaintiff  
12 counters that the Franchise Agreement "exempts some claims, including  
13 [Plaintiff's] claims in this matter, from the mediation requirement."  
14 (Reply 2:8-9.)

15 The Franchise Agreement prescribes, notwithstanding certain  
16 disputes that are to be arbitrated, "the parties may bring an action  
17 . . . for monies owed, [and] for injunctive or other extraordinary  
18 relief, . . . without submitting such action to mediation." (App. to  
19 Mot. Ex. 26, § 22(f)(i).) Therefore, the Franchise Agreement did not  
20 require Plaintiff to submit its claims to mediation or arbitration. The  
21 Franchise Agreement prescribes that the prevailing party "shall be  
22 awarded its costs and expenses including, but not limited to reasonable  
23 accounting, paralegal, expert witness and attorneys' fees[.]" Id. §  
24 22(h). Since Plaintiff is the prevailing party, Plaintiff is entitled to  
25 seek an award of reasonable attorneys' fees and costs in this lawsuit.

26 To determine whether a request for attorneys' fees is  
27 reasonable, courts in this circuit use the lodestar method and multiply  
28 "the number of hours the prevailing party reasonably expended on the

1 litigation by a reasonable hourly rate.” Camacho v. Bridgeport  
2 Financial, Inc., 523 F.3d 973, 978 (9th Cir. 2008) (quoting Ferland v.  
3 Conrad Credit Corp., 244 F.3d 1145, 1149 n.4 (9th Cir. 2001)).

4 Defendants argue Plaintiff’s requested hourly rates for its  
5 attorneys are unreasonable since they “are not in line with those in the  
6 Sacramento region.” (Opp’n 7:15.) Plaintiff responds arguing “a  
7 reasonable rate should reflect not only the market rates, but the skill  
8 and experience of the prevailing party’s counsel.” (Reply 3:5-6.)  
9 Plaintiff further argues “that the unique and complex trademark and  
10 franchise issues involved in this case required attorneys experienced in  
11 those areas and . . . attorneys with experience in franchise litigation  
12 are not present in the Sacramento market.” Id. 3:7-8, 4:14.

13 “[I]n determining a reasonable hourly rate, the district court  
14 should be guided by the rate prevailing in the community for similar  
15 work performed by attorneys of comparable skill, experience, and  
16 reputation.” Ingram v. Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011)  
17 (quoting Chalmers v. City of L.A., 796 F.2d 1205, 1210-11 (9th Cir.  
18 1986)). “[N]ormally the relevant legal community for determining the  
19 prevailing market rates for attorneys’ fees is the community in which  
20 the forum is situated.” Gates v. Rowland, 39 F.3d 1439, 1449 (9th Cir.  
21 1994). “[T]he burden is on the fee applicant to produce satisfactory  
22 evidence—in addition to the attorney’s own affidavits—that the requested  
23 rates are in line with those prevailing in the community for similar  
24 services by lawyers of reasonably comparable skill, experience and  
25 reputation.” Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). “If the  
26 prevailing party fails to meet this standard, the fee request is reduced  
27 or excluded altogether.” Schultz v. Ichimoto, No. 1:08-cv-526-OWW-SMS,  
28 2010 WL 3504781, at \*8 (E.D. Cal. Sept. 7, 2010).

1 Plaintiff's requested rates for its attorneys' fees are  
2 supported solely by the affidavit of Plaintiff's counsel, Aimee Furness;  
3 however, she does not address the prevailing market rates in this  
4 community. Further, Plaintiff's conclusory arguments that this case was  
5 unique and complex do not satisfy Plaintiff's obligation of producing  
6 evidence of the rates charged by comparably skilled attorneys in this  
7 community for similar litigation services. Since Plaintiff has failed to  
8 satisfy its burden of showing that its hourly rates are reasonable and  
9 "in line with those prevailing in the community" Plaintiff's hourly  
10 rates will be reduced to a reasonable hourly rate. Blum, 465 U.S. at 895  
11 n.11.

12 Defendants' counsel, Matthew Pearson, has provided a  
13 declaration in which he avers the prevailing market rates in the  
14 community for similar services are as follows:

15 Most attorneys with 8-10 years experience in the  
16 Sacramento region set their rates around \$250.00  
17 per hour for business or trademark litigation.  
18 . . . Generally, junior associate rates are between  
\$100 and \$75 per hour less than the partners in the  
same firm. . . . Paralegal rates are . . .  
generally \$100 per hour or less in Sacramento.

19 (Pearson Decl. ¶ 4, ECF No. 99.) The hourly rates in Pearson's  
20 declaration are within rate ranges previously found reasonable in this  
21 community, and are not controverted by Plaintiff. Therefore, Plaintiff's  
22 hourly rates shall be reduced to the following hourly rates: \$250 for  
23 partners, \$150 for associates, and \$75 for paralegals.

24 Plaintiff also requests fees for the work of a "consultant".  
25 (Mot. 10:23-24.) However, Plaintiff has not explained what services the  
26 consultant provided, nor offered any support for these fees; therefore,  
27 the fees' claimed for the consultant are excluded entirely.

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1 Defendants also argue that certain charges should be excluded  
 2 from Plaintiff's request because of "block billing". (Opp'n 9:6-9.)  
 3 However, the time claimed by Plaintiff is reasonable and will not be  
 4 reduced. Consequently, Plaintiff's reasonable fees are as follows:

5 NAME	Title	HOURS	HOURLY 6 RATE	FEE AMOUNT
7 Aimee Furness	Partner	200.4	\$250	\$50,100
8 Jason Gonder	Associate	225.2	\$150	\$33,780
9 Melissa Celeste	Associate	244.3	\$150	\$36,645
10 Jennifer Lantz	Partner	24.3	\$250	\$6,075
11 Jan Gilbert	Partner	16.4	\$250	\$4,100
12 George Graves	Associate	24.3	\$150	\$3,645
13 Charlie Jones	Associate	10.9	\$150	\$1,635
14 Ben Mesches	Partner	1.5	\$250	\$375
15 David Bell	Partner	0.7	\$250	\$175
16 Dorthea Carr	Paralegal	54	\$75	\$4,050
17 Ricky Cabrera	Paralegal	36.8	\$75	\$2,760
18 Steven Burge	Paralegal	13.5	\$75	\$1,012.50
19 Denise Wilson	Paralegal	3.0	\$75	\$225
20 Carol Finn	Paralegal	0.2	\$75	\$15
21 Michael Brockwell	Consultant	0.7	-	0

22 In total, Plaintiff is awarded \$144,592.50 for the attorneys'  
 23 fees it incurred to enforce the Franchise Agreement.

24 In addition, Plaintiff is entitled to the fees it incurred  
 25 preparing its motion for attorneys fees since "time spent in  
 26 establishing the entitlement to and amount of the fee is compensable."  
 27 Camacho, 523 F.3d at 981 (citation and internal quotation marks  
 28 omitted). Furness includes in her declarations the time she, two  
 associates, and a paralegal spent preparing the motion and reply. (Decl.

1 of Furness in Supp. of Mot. ¶ 11; Decl. of Furness in Supp. of Reply ¶  
2 3.) Defendants do not address this request.

3 Plaintiff's request is reduced by the amount of time Furness  
4 anticipated spending "preparing and participating in oral argument",  
5 since this matter was submitted without oral argument. (ECF No. 103.)  
6 Using the reduced hourly rates discussed *supra*, Plaintiff's reasonable  
7 fees for the preparation of this motion are as follows:

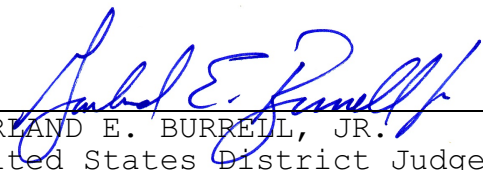
8 NAME	Title	HOURS	HOURLY 9 RATE	FEE AMOUNT
10 Aimee Furness	Partner	5.5	\$250	\$1,375
11 Jason Gonder	Associate	1.6	\$150	\$240
12 George Graves	Associate	40	\$150	\$6,000
13 Katherine Rogers	Paralegal	7.1	\$75	\$532.5

14 Therefore, Plaintiff is awarded \$8,147.50 for the attorneys'  
15 fees it incurred preparing this motion.

16 Defendants do not address Plaintiff's request for costs. Since  
17 the Franchise Agreement specifically allows for an award of costs,  
18 Plaintiff's request for \$22,972.48 in costs is granted.

19 For the foregoing reasons, Plaintiff is awarded \$175,712.48 in  
20 attorneys' fees and costs.

21 Dated: December 14, 2011

22  
23   
24 GARLAND E. BURRELL, JR.  
United States District Judge