



1 hour. The undersigned asked attorney Ballister if counsel could provide the court with a citation  
2 to the case referred to by attorney Potter. Attorney Ballister answered that such citation could not  
3 be provided without additional legal research. The undersigned then asked attorney Ballister to  
4 address the determination of a reasonable hourly rate. Attorney Ballister stated that a reasonable  
5 hourly rate would be \$250 per hour and amended plaintiff's requested attorney hourly rate to  
6 \$250 per hour.

7 After the October 13, 2017 hearing, attorney Ballister filed a declaration in support of the  
8 motion for default judgment. (ECF No. 25.) Therein, attorney Ballister states that "the case of  
9 Johnson v. Bai, USDC Civ No. 2:16-1698 . . . found as reasonable . . . \$300.00 per hour for  
10 attorney Mark Potter's time in that case." (Id. at 2.) Moreover, attorney Ballister stated, "I  
11 amend my comments made during today's hearing to show that I believe that the reasonable  
12 hourly rate for attorney Mark Potter is, as Judge Shubb found, \$300.00 per hour."<sup>1</sup> (Id.)

13 Local Rule 230(b) provides:

14 The moving party shall file a notice of motion, motion,  
15 accompanying briefs, affidavits, if appropriate, and copies of all  
16 documentary evidence that the moving party intends to submit in  
support of the motion . . . not less than twenty-eight (28) days after  
service and filing of the motion.

17 If an opposition is filed, the moving party may file a reply "[n]ot less than seven (7) days  
18 preceding the date of the hearing . . . ."<sup>2</sup> Local Rule 230(d).

19 In this regard, the Local Rules do not allow for the filing of a declaration in support of a  
20 motion after the hearing of the motion and without leave of court. Moreover, attorney Ballister's  
21 declaration provides no explanation for why this information was not contained in plaintiff's  
22 moving papers or presented at the October 13, 2017 hearing.

23 Accordingly, IT IS HEREBY ORDERED that:

24 1. Attorney Ballister's October 13, 2017 declaration in support (ECF No. 25) is stricken;

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27 <sup>1</sup> No explanation has been provided for why attorney Potter asserted that the Johnson v. Bai  
opinion supported an award of an hourly rate of \$350 per hour.

28 <sup>2</sup> Neither defendant filed an opposition to plaintiff's motion for default judgment.

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2. If plaintiff wishes to submit any supplement briefing in support of plaintiff's September 13, 2017 motion for default judgment, plaintiff shall first seek leave of court to file such briefing; and

3. If plaintiff files a motion seeking leave of court to file supplemental briefing, plaintiff shall notice that motion for hearing before the undersigned in compliance with Local Rule 230, and serve notice of the motion on the defendants.

Dated: October 16, 2017



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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