



1 (1) breach of contract, (2) money had and received, (3) unjust enrichment, and (4)  
2 disgorgement. (ECF No. 1.) On May 22, 2014, Plaintiff moved for summary judgment  
3 on the breach of contract cause of action. (ECF No. 14.) On July 29, 2014, the Court  
4 granted Plaintiff summary judgment on the breach of contract cause of action. (ECF  
5 No. 18.)

6 On August 12, 2014, Plaintiff filed this motion for attorney fees and costs  
7 incurred: (1) through July 31, 2014; (2) after July 31, 2014, in relation to this motion;  
8 and (3) anticipated to be incurred for post-collection work. (ECF No. 19.) On  
9 September 4, 2014, Defendant filed an opposition to Plaintiff's motion. (ECF No. 22.)  
10 On September 19, 2014, Plaintiff filed a response to Defendant's opposition. (ECF No.  
11 23.)

### 12 III. FACTUAL BACKGROUND

13 On March 13, 2013, the Court appointed Plaintiff as permanent receiver over  
14 Western Financial Planning Corporation ("Western") in the main action out of which  
15 this action arises: SEC v. Schooler (the "SEC Action"). Sec. and Exch. Comm'n v.  
16 Schooler, et al., No. 3:12-cv-2164-GPC-JMA (S.D. Cal. Mar. 13, 2013), ECF No. 174.  
17 On May 23, 2013, Plaintiff moved in the SEC Action for authority to pursue  
18 enforcement of promissory notes executed in favor of Western by Defendant and other  
19 entities. SEC v. Schooler, No. 3:12-cv-2164-GPC-JMA (S.D. Cal. May 23, 2013), ECF  
20 No. 192. On August 16, 2013, the Court granted Plaintiff's motion for authorization.  
21 SEC v. Schooler, No. 3:12-cv-2164-GPC-JMA, 2013 WL 4548525 (S.D. Cal. Aug. 16,  
22 2013), ECF No. 470. On September 13, 2013, Plaintiff instituted three actions pursuant  
23 to the Court's order (the "LinMar Lawsuits"). Hebrank v. LinMar Management, Inc.,  
24 et al., No. 3:13-cv-2179-GPC-JMA (S.D. Cal. Sept. 13, 2014), ECF No. 1; Hebrank v.  
25 LinMar III, LLC, et al., No. 3:13-cv-2179-GPC-JMA (S.D. Cal. Sept. 13, 2014), ECF  
26 No. 1; Hebrank v. LinMar IV, LLC, et al., No. 3:13-cv-2179-GPC-JMA (S.D. Cal.  
27 Sept. 13, 2014), ECF No. 1.

28 On April 14, 2009, Defendant executed a promissory note evidencing a loan by

1 Western to Defendant in the amount of \$40,000. (ECF No. 19-1, Ex. A.) The  
2 promissory note provides that:

3 Lender may hire or pay someone else to help collect this Note if Borrower  
4 does not pay. Borrower also will pay Lender that amount. This includes,  
5 subject to any limits under applicable law, Lender's attorneys' fees and  
6 Lender's legal expenses whether or not there is a lawsuit, including  
7 attorneys' fees and legal expenses for bankruptcy proceedings (including  
8 efforts to modify or vacate any automatic state or injunctions), appeals,  
9 and any anticipated post-judgment collection services. Borrower will pay  
10 any court costs, in addition to all other sums provided by law.  
11 (Id. ¶ 8.) Further, the promissory note states that it is "governed by and construed in  
12 accordance with the laws of the State of California." (Id. ¶ 9.) On February 12, 2013,  
13 Plaintiff issued a demand to Defendant for full repayment of the loan. (ECF No. 1, ¶  
14 13.) After Plaintiff issued the demand, the parties engaged in document production and  
15 settlement negotiations. (Id. ¶¶ 13–14.)

#### 12 IV. LEGAL STANDARD

##### 13 A. Attorney Fees

14 California Civil Code § 1717 allows for the recovery of attorney fees and costs  
15 incurred to enforce the contract where the contract specifically provides for such  
16 recovery. CAL. CIV. CODE § 1717; PLCM Group, Inc. v. Drexler, 997 P.2d 511, 515  
17 (Cal. 2000). "[T]he trial court has broad authority to determine the amount of a  
18 reasonable fee." PLCM Group, 997 P.2d at 515. First, the trial court must determine  
19 the "lodestar": "the number of hours reasonably expended multiplied by the reasonable  
20 hourly rate." Id. (citation omitted). The reasonable hourly rate is the prevailing hourly  
21 rate "in the community for similar work." Id. In federal cases, the relevant legal  
22 community is "the forum in which the district court sits." Camacho v. Bridgeport Fin.,  
23 Inc., 523 F.3d 973, 979 (9th Cir.2008).

24 The party seeking an award of attorney fees bears the burden of proving that the  
25 fees it seeks are reasonable. Yenidunya Invs., Ltd. v. Magnum Seeds, Inc., No.  
26 2:11-cv-01787-WBS-CKD, 2012 WL 538263, at \*7 (E.D. Cal. Feb. 17, 2012), aff'd,  
27 562 Fed. Appx. 560 (9th Cir. 2014) (citations omitted). The party opposing an award  
28 of attorney fees has the "burden of rebuttal" which requires submitting evidence

1 “challenging the accuracy and reasonableness of the hours charged or the facts  
2 asserted.” Gates v. Deukmejian, 987 F.2d 1392, 1397–98 (9th Cir. 1992) (citations  
3 omitted). If the party seeking an award of attorney fees fails to adequately document  
4 the hours or the hours are deemed excessive, the Court may reduce the award.  
5 Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986) opinion  
6 amended on denial of reh’g, 808 F.2d 1373 (9th Cir. 1987).

### 7 **B. Costs**

8 Federal Rule of Civil Procedure 54 allows a prevailing party to recover litigation  
9 costs. FED. R. CIV. P. 54(d)(1). Civil Local Rule 54.1 allows for the recovery of various  
10 additional costs. CivLR 54.1.

### 11 **C. Judicial Notice**

12 A court may take notice of undisputed “matters of public record” subject to  
13 judicial notice. Lee v. City of Los Angeles, 250 F.3d 668, 688–89 (9th Cir. 2001)  
14 (citing FED. R. EVID. 201; MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 504 (9th Cir.  
15 1986)). Under Federal Rule of Evidence 201, a district court may take notice of facts  
16 not subject to reasonable dispute that are capable of accurate and ready determination  
17 by resort to sources whose accuracy cannot reasonably be questioned. FED. R. EVID.  
18 201(b); see also Lee, 250 F.3d at 689.

## 19 **V. DISCUSSION**

### 20 **A. Judicial Notice**

21 Defendant seeks judicial notice of the three dockets and case files for the SEC  
22 Action and the two other LinMar Lawsuits. (ECF No. 22, at 4 n.1.) Defendant’s request  
23 for judicial notice is properly noticeable. The docket and case files in a federal court  
24 case are matters of public record and are capable of accurate and ready determination.  
25 Finding the dockets and case files of the SEC Action and two other LinMar Lawsuits  
26 relevant, the Court takes judicial notice of all three dockets and case files.

### 27 **B. Attorney Fees**

28 Plaintiff argues that he is entitled to \$35,910.30 in attorney fees. (ECF No. 19,

1 at 6.) Defendant does not challenge that Plaintiff should be awarded attorney fees, but  
2 does challenge the specific amount Plaintiff proposes as unreasonable. (See ECF No.  
3 22, at 1–2.) As Plaintiff has prevailed on his breach of contract claim against Defendant  
4 and that contract provides for attorney fees, the Court finds that Plaintiff is entitled to  
5 an award of attorney fees for work done through this motion and any anticipated post-  
6 judgment collection work.

7 Because of the similarity of the three LinMar Lawsuits, Plaintiff arrives at the  
8 \$35,910.30 figure by calculating all of the attorney fees for the three suits and dividing  
9 by three. (ECF No. 19, at 1–2.) Plaintiff breaks down the hourly rates he is requesting  
10 for work done through July 31, 2014, \$29,532.00, as follows:

- 11 1. \$585–\$616.50 per hour for 7.0 hours by partner David Zaro;
- 12 2. \$418.50–\$445.50 per hour for 98.30 hours by senior associate Ted Fates;
- 13 3. \$351 per hour for 37.30 hours by junior associate Josi Swonetz;
- 14 4. \$265.50–\$297 per hour for 82.80 hours by junior associate Kim Bui;
- 15 5. \$279 per hour for 6.6 hours by junior associate Alana Thorbourne;
- 16 6. \$238.50 per hour for 4.9 hours by paralegal Sara Cramton; and
- 17 7. \$279 per hour for 0.9 hours by paralegal Rhonda Reid.

18 (ECF No. 19-2 ¶¶ 5–9.) Plaintiff requests approximately 106 hours for preparing the  
19 partial summary judgment motions and reply papers and approximately 132 hours for  
20 all other work done through July 31, 2014. (Id. ¶ 9; ECF No. 19-2, Ex. A.) Plaintiff  
21 estimates the attorney fees for preparing this motion and its response and for  
22 anticipated post-judgment collection work at \$6,378.30. (ECF No. 19-2 ¶ 10.)

23 Defendant argues that Plaintiff’s attorney fees amount is unreasonable for two  
24 reasons: (1) because of the settlement negotiations between the parties, and (2) because  
25 the LinMar Lawsuits are simple and involve “pleadings, motions, and discovery” that  
26 are “straightforward” and “heavily duplicative.” (ECF No. 22, at 2–4.)

27 Defendant has provided no authority for its contention that the alleged  
28 unreasonableness of Plaintiff’s settlement offer or Plaintiff’s rejection of Defendant’s

1 settlement offer justifies reducing an award of attorney fees and costs. Moreover, courts  
2 in this circuit and in others have found that rejections of settlement offers do not justify  
3 reducing an award of attorney fees and costs. See, e.g., Ortiz v. Regan, 980 F.2d 138,  
4 at 140 (2d Cir. 1992); Joe Hand Promotions, Inc. v. Albright, No. 2:11-cv-2260-WBS-  
5 CMK, 2013 WL 4094403, at \*5 (E.D. Cal. Aug. 13, 2013); Mformation Techs., Inc.  
6 v. Research in Motion Ltd., No. 08-cv-4990-EMC, 2012 WL 6025746, at \*2 (N.D. Cal.  
7 Dec. 4, 2012). Accordingly, the Court finds that the settlement negotiations between  
8 the parties does not serve to reduce Plaintiff's award of attorney fees and costs.

9 In support of his attorney fee rates, Plaintiff cites Hess v. Ramona Unified  
10 School District, No. 3:07-cv-0049-W-CAB, 2008 WL 5381243, at \*3 (S.D. Cal. Dec.  
11 19, 2008), and Brighton Collectibles, Inc. v. Coldwater Creek Inc., No. 3:06-cv-1848-  
12 H-POR, 2009 WL 160235, at \*4 (S.D. Cal. Jan. 20, 2009). In Hess, the court found  
13 rates of \$250–\$500 for attorneys and \$125 for paralegals reasonable. 2008 WL  
14 5381243, at \*3. In Brighton Collectibles, the court found rates of \$125–\$625 for  
15 attorneys and \$90–210 for paralegals reasonable. 2009 WL 160235, at \*4. Plaintiff's  
16 highest rates are \$616.50 for David Zaro, a partner with 27 years of litigation  
17 experience and \$445.50 for Ted Fates, a senior associate with 10 years of litigation  
18 experience. (ECF No. 19-2 ¶ 6.) Plaintiff proposes rates of \$279–\$351 for three junior  
19 associates, and \$238.50–\$279 for two paralegals with over 20 years of experience. (Id.)  
20 Plaintiff's overall blended rate is \$372.57. (Id. ¶ 5.) In light of the amounts charged by  
21 other attorneys and paralegals of similar skill and experience in the Southern District  
22 of California, the Court finds that Plaintiff's proposed rates are reasonable.

23 For work done through July 31, 2014, Plaintiff proposes a total of 237.8 attorney  
24 and paralegal hours worked on the LinMar Lawsuits through July 31, 2014. (ECF No.  
25 19-2 ¶ 5.) This includes a demand letter, a document subpoena, Plaintiff's motion for  
26 authority in the SEC Action, a motion for summary judgment, and settlement  
27 negotiations, among other work. (Id. ¶ 9.) While Defendant is correct that much of the  
28 work performed by Plaintiff's attorneys and paralegals in the three LinMar Lawsuits

1 is similar, Plaintiff's attorneys and paralegals must still complete the work for three  
2 lawsuits that involve three different loans given to three different entities.

3       Following a thorough review of Plaintiff's summary of fees incurred relating to  
4 the three LinMar lawsuits, the Court finds that approximately 132 attorney and  
5 paralegal hours is reasonable for all of the work other than the summary judgment  
6 motions. However, the Court finds the approximately 106 hours spent on the partial  
7 summary judgment motions and replies to be excessive. The partial summary judgment  
8 motions contain approximately 6 pages of points and authorities, 5 pages of facts, and  
9 5 pages of declaration. (See, e.g., ECF Nos. 14-1, 14-2, 14-3, 14-4.) The replies in  
10 support of the partial summary judgment motions contain approximately 8 pages of  
11 legal argument and responses to approximately 13 material facts. (See, e.g., ECF Nos.  
12 17, 17-1.) Plaintiff contends that spending approximately 66 hours on the motions and  
13 40 hours on the replies is reasonable. (See ECF No. 19-2, Ex. A.) Plaintiff's summary  
14 judgment motions were on straightforward breach of contract causes of action with  
15 minimal facts. The facts underlying the three motions were very similar and the law for  
16 all three was the same. In light of the motions' simplicity and brevity, spending over  
17 60 hours drafting three nearly identical motions is excessive. See Chalmers, 796 F.2d  
18 at 1211 (instructing that district courts are to consider the "novelty or the difficulty of  
19 the question presented"). The Court finds that a more reasonable total for the motions  
20 would be approximately 46 hours preparing the motions and 40 hours preparing the  
21 replies. See id. at 1210. Accordingly, the Court reduces the amount proposed by  
22 Plaintiff by 20 hours at the blended rate of \$372.57, for a total reduction of \$7,451.40  
23 which, divided across the three LinMar lawsuits, results in a reduction of \$2,483.80 for  
24 this case. See, e.g., Cataphora Inc. v. Parker, 848 F. Supp. 2d 1064, 1070–71 (N.D. Cal.  
25 2012) (reducing hours deemed excessive); Marshall v. Kirby, No. 3:07-cv-0222-RAM,  
26 2010 WL 4923486, at \*11–12 (D. Nev. Nov. 29, 2010) (same). For work done through  
27 July 31, 2014, the Court awards a total of \$27,038.20 in attorney fees for this case.

28       For work done after July 31, 2014, Plaintiff does not include a detailed hours

1 breakdown and instead makes vague references to approximate hour numbers that fails  
2 to include hourly rates. (See ECF No. 19-2 ¶ 10.) Plaintiff knew, at the time he  
3 submitted his reply brief, the number of hours worked by his attorneys and paralegals  
4 on this motion, yet has not included such a breakdown in his reply brief. For post-  
5 judgment collection work, Plaintiff again makes vague references to approximate hour  
6 numbers and fails to include hourly rates. (See id.)

7 The Court finds that Plaintiff has failed to provide an adequately detailed  
8 breakdown of hourly rates and time spent on this motion, and failed to provide an  
9 adequately detailed breakdown of hourly rates and time anticipated for post-judgment  
10 collection work. The Court hereby requires that Plaintiff submit supplemental briefing  
11 breaking down the attorney fees spent on this motion after July 31, 2014, and breaking  
12 down any anticipated post-judgment collection work. As Plaintiff failed to include a  
13 more detailed breakdown in his reply brief—when Plaintiff knew the exact amount  
14 spent on this motion—the breakdown in Plaintiff’s supplemental brief shall not include  
15 any time spent on the supplemental brief.

### 16 **C. Costs**

17 Plaintiff argues that he is entitled to \$400 in costs, the filing fees paid in this  
18 case. (ECF No. 19, at 10.) Defendant does not challenge that Plaintiff is entitled to  
19 costs. As Plaintiff has prevailed on his breach of contract claim against Defendant and  
20 that contract provides for costs, the Court finds that Plaintiff is entitled to \$400 in  
21 costs.

## 22 **VI. CONCLUSION AND ORDER**

23 For the reasons stated above, **IT IS HEREBY ORDERED** that:

- 24 1. Plaintiff’s Motion for Attorney Fees and Costs, (ECF No. 19), is  
25 **DENIED** as to the proposed \$29,532.00 in attorney fees incurred through  
26 July 31, 2014, and \$6,378.30 in attorney fees for work done and  
27 anticipated after July 31, 2014; **GRANTED** as to the modified \$27,038.20  
28 in attorney fees for work done through July 31, 2014; **GRANTED** as to




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the \$400 in costs incurred through July 31, 2014; **GRANTED** as to attorney fees incurred in relation to Plaintiff's Motion for Attorney Fees and Costs incurred after July 31, 2014; **GRANTED** as to anticipated post-collection work;

2. Plaintiff shall submit a supplemental brief identifying the attorney fees incurred after July 31, 2014 in relation to this Motion for Attorney Fees and Costs and identifying the anticipated post-collection work on or before **October 17, 2014**, and Defendant may file a supplemental brief in opposition on or before **October 24, 2014**;

3. The hearing set for October 10, 2014, is **VACATED**.

DATED: October 9, 2014

  
HON. GONZALO P. CURIEL  
United States District Judge