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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
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7 OSCAR RENTERIA and DENISE)
8 RENTERIA, individually and in their)
9 capacities as Co-Trustees of the)
10 RENTERIA FAMILY TRUST,)

3:11-cv-00534-ECR-CWH

11 Plaintiffs,)

12 vs.)

Order

13 EUGENE CLEVELAND CANEPA, an)
14 individual,)

15 Defendant.)
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29 Now pending is a Motion for Judgment on the Pleadings (#11) by
30 Plaintiffs, Oscar Renteria and Denise Renteria ("Plaintiffs"),
31 individually and in their capacities as Co-Trustees of the Renteria
32 Family Trust, against Defendant, Eugene Cleveland Canepa
33 ("Defendant").

34 The motion is ripe, and we now rule on it.

35 **I. Factual and Procedural Background**

36 Between September 20, 2006, and December 29, 2006, Plaintiffs,
37 who are residents of Napa, California, issued a series of loans,
38 evidenced by demand promissory notes, to an entity known as French
39 Quarter, Inc. ("French Quarter") and its principal, Defendant, a
40 resident of Nevada. (Compl. ¶¶ 1-4 (#1).) Both parties agree that

1 the aggregate principal amount on the loans was \$845,000. (Compl. ¶
2 4 (#1); Pls.' Mot. for J. on the Pleadings, Ex. 1 (#11).) Both
3 parties further agree on the existence of the first four promissory
4 notes, with principal amounts of \$100,000, \$70,000, \$100,000, and
5 \$200,000, respectively. (Compl. ¶ 4 (#1); Answer ¶ 4 (#8).) Each
6 of the first four notes has an interest rate of 12% per annum.
7 Plaintiffs allege the existence a fifth promissory note with a
8 principal amount of \$375,000 and a per annum interest rate of 10%,
9 (Compl. ¶ 4 (#1)), which Defendant denies. (Answer ¶ 4 (#8).)
10 Plaintiffs provide copies of all five promissory notes, signed by
11 Defendant individually and by Defendant as President of French
12 Quarter. (Compl. Exs. 1-5 (#1).) Each note provides that Defendant
13 promises to pay Plaintiffs, on demand, the principal sum of the
14 notes along with the accrued interest charges, with all payment
15 going toward the accrued interest before the principal. (Id.) The
16 notes further stipulate that Defendant must pay a 5% late charge if
17 the notes are not timely paid as well as reasonable attorneys' fees
18 in the event that Plaintiffs are required to bring suit to collect
19 the money owed. (Id.)

20 On April 9, 2007, Plaintiffs demanded that Defendant pay the
21 notes. (Id. Ex. 6 (#1).) Plaintiffs allege that Defendant failed
22 to pay the notes, amounting to a default under the notes' contracts
23 and triggering a total of \$44,250.00 in late fees. (Id. ¶ 8.)
24 Defendant denies these allegations. (Answer ¶ 8 (#8).)

25 On August 3, 2007, French Quarter filed a voluntary petition
26 for relief under Chapter 11 of the Bankruptcy Code. (Compl. ¶ 9
27 (#1).) In August 2007, Plaintiffs, Defendant, French Quarter, and
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1 others executed a settlement agreement resolving disputes between
2 French Quarter, its creditors, and other parties. (Id. ¶ 10.) The
3 settlement agreement gives Plaintiffs "an allowed unsecured claim
4 against [French Quarter's estate] in the amount of \$887,000 . . .
5 without prejudice to [Plaintiffs] claiming any pre- or postpetition
6 Interest and attorneys fees as allowed by the Bankruptcy Code."
7 (Id. Ex. 7. pp.10-11) The agreement further explains that "[t]he
8 parties hereto agree, and [Defendant] further warrants and
9 represents, that [Defendant] was a co-maker on [Plaintiffs' notes]
10 in the amount of \$845,000 and that these loans are valid and
11 binding." (Id.) Finally, the agreement provides that "[Plaintiffs]
12 expressly reserve[] all rights and claims against [Defendant] for
13 the full balance of [Plaintiffs' notes] including without
14 limitation, unpaid principal, interest and attorneys fees." (Id.)
15 The settlement was approved by the United States Bankruptcy Court
16 for the District of Nevada on September 8, 2008. (Id. Ex. 8.)

17 On November 30, 2008, Plaintiffs filed a post-settlement claim
18 against French Quarter, seeking a total of \$1,158,216.48 in
19 principal charges, interest accrued through August 3, 2007, late
20 charges up to that date, and attorneys' fees. (Pls.' Mot. for J. on
21 the Pleadings Ex. 1-A (#11).) On September 30, 2009, Defendant
22 filed an objection to Plaintiffs' claim against French Quarter,
23 objecting to the amount of the attorneys' fees as well as the
24 accrual of postpetition interest. (Id. Ex. 1.)

25 In May 2010, the bankruptcy estate of French Quarter
26 distributed \$354,800 to Plaintiffs. (Id. ¶ 16.) Plaintiffs allege
27 that they applied this amount to the notes, covering the accrued
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1 interest up to May 2010 as well as \$4,146.85 of the late fees,
2 leaving approximately \$38,103.15 in late fees. (Id. ¶ 16.) The
3 interest accrued on the notes from May 2010 through July 2011 is
4 approximately \$115,767.12. (Id. ¶¶ 17-18.) Plaintiffs allege that
5 Defendant owes Plaintiffs \$1,003,017.70, reflecting the principal,
6 \$845,000, the interest accrued from May 2010 through July 2011,
7 \$115,767.12, remaining late fees, \$38,103.15, and attorneys' fees,
8 \$4,147.43.

9 Plaintiffs filed their Complaint (#1) on July 26th, 2011.
10 Defendant filed his Answer (#8) on September 19, 2011. On October
11 12, 2011, Plaintiffs filed a Motion for Judgment on the Pleadings
12 (#11). Defendant has failed to file an opposition.

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14 **II. Judgment on the Pleadings Standard**

15 After the pleadings are closed but within such time as not to
16 delay the trial, any party may move for judgment on the pleadings.
17 FED. R. CIV. P. 12(c). "A judgment on the pleadings is properly
18 granted when, taking all the allegations in the pleadings as true,
19 the moving party is entitled to judgment as a matter of law." Milne
20 ex rel. Coyne v. Stephen Slesinger, Inc., 430 F.3d 1036, 1042 (9th
21 Cir. 2005) (internal quotation marks omitted).

22 The standard applied on a Rule 12(c) motion is similar to that
23 standard which is applied on Rule 12(b)(6) motions. See Dworkin v.
24 Hustler Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). As
25 with Rule 12(b)(6) motions, review on a motion pursuant to Rule
26 12(c) is normally limited to the pleadings. See Lee v. City of
27 L.A., 250 F.3d 668, 688 (9th Cir. 2001). The Court should assume

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1 the allegations of the non-moving party to be true and construe them
2 in the light most favorable to the non-moving party, and the moving
3 party must clearly establish that no material issue of fact remains
4 to be resolved. McGlinchey v. Shell Chem. Co., 845 F.2d 802, 810
5 (9th Cir. 1988). Without more, "conclusory allegations . . . are
6 insufficient" to defeat a motion for judgment on the pleadings. Id.

7 If the district court relies on materials outside the pleadings
8 in making its ruling, it must treat the motion to dismiss as one for
9 summary judgment and give the non-moving party an opportunity to
10 respond. FED. R. CIV. P. 12(d); see United States v. Ritchie, 342
11 F.3d 903, 907 (9th Cir. 2003). "A court may, however, consider
12 certain materials – documents attached to the complaint, documents
13 incorporated by reference in the complaint, or matters of judicial
14 notice – without converting the motion . . . into a motion for
15 summary judgment." Ritchie, 342 F.3d at 908.

16 17 **III. Discussion**

18 **A. Breach of Contract**

19 Plaintiffs seek damages for a breach of contract by Defendant.
20 "To succeed on a claim for breach of contract, the plaintiff must
21 show that a contractual relationship existed between it and the
22 defendant, and that the defendant materially breached a duty owed to
23 the plaintiff under the contract." Chamani v. Mackay, 124 Nev.
24 1457, 238 P.3d 800, at *1 (Nev. 2008). See also Brown v. Kinross
25 Gold U.S.A., Inc., 531 F. Supp.2d 1234, 1240 (D. Nev. 2008).

26 Defendant does not dispute the validity of the first four
27 promissory notes. (Answer ¶ 4 (#8).) Nor is the validity of the

1 bankruptcy settlement agreement in contention. (Id. ¶¶ 10-15.)
2 Defendant denies the existence of the fifth promissory note. (Id. ¶
3 4.) However, Defendant admits the validity of a settlement
4 agreement that states that he is responsible for \$845,000 in loans,
5 the aggregate total of all of the promissory notes detailed in
6 Plaintiffs' Complaint, including the fifth note. (Compl. Ex. 7
7 pp.10-11 (#1).) Moreover, Defendant has provided this court no
8 reason to doubt the authenticity of the fifth promissory note
9 attached to Plaintiffs' Complaint. (Id. Ex. 5.) Defendant has made
10 no plausible denial of the existence of a contract.

11 Defendant's denial of a breach of contract is similarly
12 implausible. Defendant denies that he failed to make any payments
13 under the notes when they were first demanded, (Answer ¶ 8 (#8).),
14 but, again, he admits the validity of a settlement stating that he
15 is required to pay \$845,000 plus accrued interest and attorneys'
16 fees. (Id. ¶¶ 10-15.) Additionally, in his objection to
17 Plaintiff's post-settlement claim against French Quarter for the
18 full principal under the notes plus accrued interest and attorneys'
19 fees, Defendant fails to contest the principal amount of \$845,000
20 and disputes only the attorneys' fees and interest accrued after the
21 petition for bankruptcy. (Pls.' Mot. for J. on the Pleadings Ex. 1
22 (#11).) Defendant also provides no evidence of any payment on his
23 part. In short, none of Defendant's allegations attempting to
24 dismiss his contractual obligations rise above the level of
25 "conclusory allegations." McGlinchey, 845 F.2d at 810. This court
26 therefore finds a breach by Defendant of the five promissory notes
27 as well as the bankruptcy settlement agreement.

1 B. Postpetition Interest

2 In his objection to Plaintiff's post-settlement claim against
3 French Quarter, (Id.), Defendant objects to the "post-interest"
4 claimed by Plaintiff, stating that such interest is "not provided
5 for by the Bankruptcy Code. (Id.) "Post-interest," interest that
6 accrues after a debtor has filed its petition for bankruptcy, is
7 limited by 11 U.S.C. § 502(b)(2), which prohibits courts from
8 allowing the accrual of postpetition interest upon objection by an
9 interested party.¹

10 Nonetheless, this court has held that §502(b)(2) "applies only
11 to claims against the bankruptcy estate." In re Washington Group
12 Intern., Inc., 460 B.R. 280, 288 (D. Nev. 2011). Accord In re El
13 Paso Refining, Inc., 192 B.R. 144, 146 (W.D. Tex. 1996) ("Section
14 502(b)(2) only prevents unmatured interest from becoming an *allowed*
15 *claim* against the debtor's estate . . . the obligation to pay
16 interest vis-a-vis a guarantor is not tolled or eliminated by
17 operation of section 502(b)(2)"); Bruning v. United States, 376 U.S.
18 358, 362 n.4 (1964) (explaining that claims do not lose their
19 interest bearing quality during bankruptcy and that the rule against
20 postpetition interest is a rule of liquidation practice designed to
21 protect the interest of creditors, not a substantive law with a
22 policy of relieving a debtor from its interest obligations).
23 Because Defendant was not a debtor in French Quarter's bankruptcy

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25 ¹11 U.S.C. §502(b)(2) does not explicitly mention postpetition interest,
26 instead referring to claims for "unmatured interest." However, "unmatured interest"
27 has been interpreted to mean interest that "was not yet due and payable at the time
28 the debtor filed its bankruptcy petition," exactly the type of postpetition interest
Defendant contests before this court. In re Thrifty Oil Co., 249 B.R. 537, 543
(S.D. Cal. 2000).

1 proceedings, §502(b)(2) is inapplicable to him, and he is liable for
2 the interest accrued during and after French Quarter's bankruptcy
3 proceedings.

4 C. Attorneys' Fees

5 Plaintiffs seek relief for a total of \$1,003,017.70, with
6 \$845,000 as the principal, \$115,767.12 in accrued interest, and
7 \$38,103.15 in remaining late fees, leaving a total of \$4,147.43 for
8 attorneys' fees. Under Nevada statutory law, parties are permitted
9 to contractually provide for reasonable attorneys' fees in the event
10 they are needed. N.R.S. § 18.010(1), (4); In re Dinan, 448 B.R.
11 775, 785 (9th Cir. 2011). Each promissory note between Plaintiffs
12 and Defendant provides that, upon default, Defendant will be liable
13 for reasonable attorneys' fees expended in collecting the money
14 owed. (Compl. Exs. 1-5 (#1).)

15 In determining the reasonableness of attorneys' fees, a Nevada
16 district court is "tempered only by reason and fairness."
17 University of Nevada v. Tarkanian, 110 Nev. 581, 879 P.2d 1180, 1186
18 (Nev. 1994). "The court is not limited to one specific approach;
19 its analysis may begin with any method rationally designed to
20 calculate a reasonable amount." Shuette v. Beazer Homes Holdings
21 Corp., 121 Nev. 837, 124 P.3d 530, 549 (Nev. 2005). Courts should,
22 however, consider the fees in light of certain factors, namely "the
23 advocate's professional qualities, the nature of the litigation, the
24 work performed, and the result." Id. at 549. See also Brunzell v.
25 Golden Gate Nat. Bank, 85 Nev. 345, 455 P.2d 31, 33 (Nev. 1969).

26 Plaintiffs' attorneys are known professionals in the state of
27 Nevada. The case at bar is a routine breach of contract case that

1 appears to have involved minimal discovery for Plaintiffs'
2 attorneys. Plaintiffs fail to provide any receipts or other
3 documents to account for the money requested for attorneys' fees.
4 The requested amount of attorney's fees, \$4,147.43, 0.4 % of the
5 total relief requested, appears reasonable, especially in light of
6 the fact that Defendant has failed to provide any substantive
7 evidence as to why the attorneys' fees are unreasonable and has
8 failed to file a response to Plaintiffs' motion. However, because
9 Plaintiffs have failed to attach any documentation supporting their
10 request for attorney's fees, we shall deny those fees at this time.
11 Plaintiffs may submit a separate motion for attorney's fees.

12 D. Unjust Enrichment

13 Plaintiffs further seek relief under a theory of unjust
14 enrichment. (Compl. ¶¶ 41-47 (#1).) The elements of unjust
15 enrichment are "(1) an enrichment; (2) an impoverishment; (3) a
16 connection between the enrichment and the impoverishment; (4)
17 absence of justification for the enrichment and the
18 impoverishment[;] and (5) an absence of a remedy provided by law."
19 Telesaurus VPC, LLC v. Power, 623 F.3d 998, 1009 (9th Cir. 2010)
20 (quoting Community Guardian Bank v. Hamlin, 182 Ariz. 627 P.2d 1005,
21 1008 (Ariz.App.1995)). Plaintiffs have failed to allege that
22 Defendant has been enriched and Plaintiffs have been impoverished by
23 any amount exceeding the money accounted for under the breach of
24 contract theory. Unjust enrichment is therefore inapplicable
25 because the damages sought under this theory are provided for by the
26 breach of contract remedy granted to Plaintiffs.

1 E. Money Lent and Money Had and Received

2 Plaintiffs seek relief under money lent and money had and
3 received theories. (Compl. ¶¶ 28-40 (#1).) Both theories are
4 common law remedies designed to provide relief for plaintiffs in the
5 absence of a written contract. See generally Williams v. Glasgow, 1
6 Nev. 533, 536 (Nev. 1865) (holding that to qualify for relief under
7 a money lent theory, a plaintiff need only prove "indebtedness for
8 money loaned at the defendant's request, the promise to pay, and the
9 refusal to do so"); Kondas v. Washoe County Bank, 51 Nev. 134, 271
10 P. 465, 466 (Nev. 1928) ("[a]n action for money had and received can
11 be maintained whenever one man has received or obtained the
12 possession of the money of another, which he ought in equity and
13 good conscience to pay over") (internal citations omitted). Because
14 Plaintiffs are already entitled to recover the full contractual
15 amount under a breach of contract theory, these additional theories
16 are inapplicable.

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18 **IV. Conclusion**

19 Even construed in the light most favorable to Defendant, there
20 remain no genuine issues of material fact in this case. This court
21 finds Defendant liable for damages for breach of contract on five
22 promissory notes owed to Plaintiffs in the amount of \$998,870.27,
23 reflecting the principal, \$845,000, the interest accrued from May
24 2010 through July 2011, \$115,767.12, remaining late fees,
25 \$38,103.15, without the requested attorneys' fees, \$4,147.43. As
26 Plaintiffs have obtained the full relief they are entitled to under
27 a breach of contract theory, Plaintiffs are not entitled to further

1 relief under theories of unjust enrichment, money lent, or money had
2 and received.

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4 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's Motion for
5 Judgment on the Pleadings (#11) is GRANTED on the basis of breach of
6 contract. Plaintiff shall be awarded the full contractual amount of
7 \$845,000, plus \$115,767.12 in interest accrued between May 2010 and
8 July 2011, and \$38,103.15 in late fees.

9 **IT IS FURTHER ORDERED** that Plaintiffs may submit a Motion for
10 Attorney's Fees in accordance with Rule 54.

11 The Clerk shall enter the judgment accordingly.

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14 DATED: July 3, 2012.

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UNITED STATES DISTRICT JUDGE

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