

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF CALIFORNIA

4 CRYSTAL NGUYEN, an individual,

5 Plaintiff,

6 v.

7 HOVG, LLC, dba BAY CREDIT
8 SERVICE, and DOES 1-10,

9 Defendants.

Case No.: 14cv837 BTM(RBB)

**ORDER GRANTING IN PART
AND DENYING IN PART
MOTION FOR AN AWARD OF
ATTORNEY'S FEES**

10 Plaintiff Crystal Nguyen has filed a motion for an award of attorney's fees.
11 For the reasons discussed below, Plaintiff's motion is **GRANTED IN PART** and
12 **DENIED IN PART**.

13
14 **I. BACKGROUND**

15 On April 8, 2014, Plaintiff commenced this action against Defendant HOVG,
16 LLC, dba Bay Credit Service. Plaintiff's Complaint alleged that Defendant violated
17 the Fair Debt Collection Practices Act ("FDCPA") and the California Rosenthal Fair
18 Debt Collection Practices Act ("Rosenthal Act") by (1) making false, deceptive, or
19 misleading representations in connection with the collection of a debt; (2) making
20

1 false representations concerning the character, amount, or legal status of a debt;
2 and (3) collecting an amount when such amount was not expressly authorized by
3 the agreement creating the debt or permitted by law.

4 On June 10, 2014, Plaintiff filed a First Amended Complaint (“FAC”). In the
5 FAC, Plaintiff narrowed her claims, alleging that Defendant engaged in a business
6 plan and practice of demanding 10% interest from consumers without a judgment
7 or contract authorizing the demand of interest.

8 On July 21, 2014, Plaintiff filed a motion to strike the affirmative defenses in
9 Defendant’s Answer to the FAC. The Court granted Plaintiff’s motion as to
10 seventeen affirmative defenses and denied the motion as to one affirmative
11 defense [Doc. 24].

12 On September 30, 2014, Defendant filed a motion to stay the action pending
13 the Ninth Circuit ruling in Diaz v. Kubler Corp., No. 14-55235, which dealt with the
14 issue whether, under California law, a debt collector must be entitled by a judgment
15 awarding prejudgment interest in order for the debt collector to be “permitted by
16 law” to collect prejudgment interest.

17 On November 20, 2014, Plaintiff filed a motion for leave to amend her
18 complaint to add class action allegations.

19 On November 26, 2014, before the Court had the opportunity to rule on the
20 pending motion to stay and motion to amend complaint, Plaintiff filed a Notice of

1 Acceptance of a Rule 68 Offer. The terms of the Offer were that (1) “Judgment
2 shall be entered in the amount of Three Thousand and Two Dollars (\$3,002.00)
3 for alleged damages to Plaintiff”; and (2) “Reasonable attorneys’ fees and costs in
4 connection with Plaintiff’s above-referenced action are to be added to the
5 Judgment as against Defendant. Said fees and costs are to be in an amount as
6 agreed by counsel for the parties, or if they are unable to agree, as determined by
7 the Court, upon Motion.”

8 9 **II. DISCUSSION**

10 Plaintiff seeks attorney’s fees in the amount of \$52,301 as the “prevailing
11 party.” Although the Court agrees that Plaintiff is entitled to her reasonable
12 attorney’s fees, the Court finds that the reasonable amount of fees is \$41,350.

13 Both the FDCPA and Rosenthal Act mandate an award of reasonable
14 attorney’s fees and costs to the prevailing party. 15 U.S.C. § 1692k(a)(3); Cal. Civ.
15 Code § 1788.30(c). Furthermore, Defendant’s Rule 68 Offer included reasonable
16 attorney’s fees and costs. Therefore, Plaintiff is entitled to an award of reasonable
17 attorney’s fees.

18 Under federal fee-shifting statutes, the lodestar approach is the “guiding
19 light” in determining a reasonable fee. Perdue v. Kenny A., 599 U.S. 542, (2010).
20 To calculate the “lodestar,” the court multiplies the appropriate hourly rate for the

1 work performed by the number of hours reasonably expended on the work. Id.
2 Although the lodestar calculation may be increased in “rare” and “exceptional”
3 circumstances, there is a strong presumption that the lodestar amount is sufficient.
4 Id. at 1673. In appropriate cases, the court may adjust the “presumptively
5 reasonable” lodestar figure based on the factors listed in Kerr v. Screen Extras
6 Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975), that have not already been
7 subsumed in the lodestar calculation. Intel Corp. v. Terabyte Int’l, Inc., 6 F.3d 614,
8 622 (9th Cir. 1993).

9
10 A. Reasonable Hourly Rates

11 “In determining a reasonable hourly rate, the district court should be guided
12 by the rate prevailing in the community for similar work performed by attorneys of
13 comparable skill, experience, and reputation.” Chalmers v. City of Los Angeles,
14 796 F.2d 1205, 1210-1211 (9th Cir. 1986).

15 Plaintiff seeks an hourly rate of \$325 for Eric LaGuardia. Based on his years
16 of experience (Mr. LaGuardia graduated from law school in 2010) and
17 specialization in FDCPA cases, the Court find that \$325 is a reasonable hourly
18 rate. See Decl. of Michael Vallee (Ex. A to LaGuardia Decl.); United States
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1 Consumer Law Attorney Fee Survey Report, 2010-2011 (“Fee Survey Report”),
2 Ronald L. Burdge (Ex. B. to LaGuardia Decl.)¹

3 The Court also finds that the requested rate of \$350 per hour for Andre
4 Verdun is reasonable. Mr. Verdun has over 5 years of experience and has litigated
5 approximately 60 FDCPA cases to completion. (Verdun Decl. ¶ 9.) In 2011, his
6 rate of \$300 per hour was approved in Stromme v. Legal Recovery Law Offices,
7 Inc., Case No. 11cv2608 BEN(JMA). Given Mr. Verdun’s additional years of
8 experience, a \$50 rate increase is not unreasonable. The reasonableness of the
9 hourly rate is bolstered by statistics that in 2010, the average attorney hourly rate
10 for consumer attorneys with 6-10 years of experience in California was \$387. Fee
11 Survey Report at 19.

12 In arguing that the rates of Mr. LaGuardia and Mr. Verdun are unreasonable,
13 Defendant points to a few Central District of California cases, where attorneys were
14 awarded hourly rates under \$300. However, these cases do not establish that the
15 rates sought here are unreasonable. In Mayer v. RSB Equity Group, LLC, 2011
16 WL 2650185 (C.D. Cal. July 5, 2011) and McClenning v. NCO Fin. Sys., 2011 WL
17 1375161 (C.D. Cal. Apr. 11, 2011), the rates awarded were the **requested** rates

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19 ¹ The majority of district courts in California will consider the Fee Survey Report as
20 evidence of prevailing hourly rates in FDCPA and Rosenthal Act cases. See Davis v. Hollins
Law, 25 F. Supp. 3d 1292, 1299 (E.D. Cal. 2014) (citing district court cases that have relied on
the report).

1 and the courts did not engage in any detailed analysis regarding prevailing rates
2 for attorneys with similar experience and skill. In Montoya v. Creditors Interchange
3 Receivable Mgmt., LLC, 2011 WL 2437474 (C.D. Cal. June 17, 2011), the decision
4 does not provide any information regarding the experience of the attorney in
5 question.

6 The Court finds that slight adjustments to the requested rates for the
7 attorneys and staff at Nicholas & Tomasevic LLP are warranted. The requested
8 rate for Craig Nicholas, founding partner of the firm with 20 years of experience, is
9 \$500 per hour. However, other than the fact that a judge in the Southern District
10 of Florida approved a \$550 hourly rate for Mr. Nicholas, Plaintiff does not provide
11 information establishing that the requested rate is reasonable when compared to
12 prevailing rates in the community. According to the Fee Survey Report, in 2010,
13 the average attorney hourly rate for consumer attorneys in California with 16-20
14 years of practice was \$419. Looking at San Diego specifically, the United States
15 Consumer Law Attorney Fee Survey Report 2010-2011, Top 10 Cities, 2nd Edition
16 (“Top 10 Cities Report”), by Ronald L. Burdge², shows that in 2010, the average
17 attorney rate for all attorneys was \$398 and the 75% median attorney rate for all

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20 ² This publication is available at: <http://ncbankruptcyexpert.com/wp/wp-content/uploads/2013/01/TOP-TEN-Cities-Edition-US-Consumer-Law-Attorney-Fee-Survey-2010-11.pdf>

1 attorneys was \$437 (75% of survey participants reported an hourly rate lower than
2 this number). Based on this data, which admittedly does not provide specific
3 information regarding current prevailing rates in San Diego, the Court finds that
4 \$450 is a reasonable rate for Mr. Nicholas.

5 The requested rate for Ms. Mei-Ying Imanaka, an associate at Nicholas &
6 Tomasevic LLP, is \$350. Ms. Imanaka graduated from law school in 2011, and
7 she has practiced less than five years. The Court finds that \$325, the approved
8 rate for Mr. LaGuardia (who graduated from law school in 2010), is also reasonable
9 for Ms. Imanaka.

10 Plaintiff requests \$165 per hour for a law clerk and paralegal at the firm.
11 According to the Top 10 Cities Report, in 2010, the average paralegal rate for all
12 paralegals was \$123. The Court finds that \$125 per hour is a reasonable hourly
13 rate for the law clerk and paralegal.

14
15 B. Hours Reasonably Worked

16 In determining the lodestar, the district court should exclude hours that were
17 not “reasonably expended.” Hensley v. Eckerhart, 461 U.S. 424, 434 (1983).
18 “Cases may be overstaffed, and the skill and experience of lawyers vary widely,”
19 so a court must exclude fees for hours that are “excessive, redundant, or otherwise
20 unnecessary.” Id.

1 Defendant generally argues that Plaintiff over-litigated this case and acted
2 unreasonably in refusing to stay this case pending the outcome of the Diaz appeal³
3 and declining to engage in meaningful settlement discussions. Defendant has not
4 provided evidence from which the Court can conclude that Plaintiff's attorneys
5 acted improperly with respect to settlement discussions. As for Plaintiff's refusal
6 to stay this case despite having agreed to stay similar cases, Plaintiff was not
7 required to agree to a stay and was engaging in a reasonable litigation strategy.

8 Defendant argues that Plaintiff's counsel should not recover for work prior to
9 the filing of the Complaint because the factual and legal issues in the case are
10 virtually identical to those in the Diaz case. However, Plaintiff did not narrow her
11 claims to the attempted collection of pre-judgment interest until her FAC.
12 Furthermore, Plaintiff's attorneys did not spend unreasonable amounts of time
13 meeting with the client and drafting the Complaint.

14 The Court will, however, deduct 3.3 hours of Mr. LaGuardia's time spent
15 meeting with Plaintiff and conducting an initial evaluation of the case. Defendant
16 points out that Mr. LaGuardia's website states that potential clients are given a free
17 case evaluation. Because the free evaluation is a way for Mr. LaGuardia to

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20 ³ In an opinion filed on May 12, 2015, the Ninth Circuit reversed the district court's
decision in Diaz. The Ninth Circuit held that Cal. Civ. Code § 3287 can entitle a creditor to
interest even without a prior judgment. Diaz v. Kubler Corp., 785 F.3d 1326 (9th Cir. 2015).

1 promote his services and obtain clients, the Court is of the opinion that fees for the
2 initial case evaluation should not be awarded.

3 Defendant argues that the Court should deny attorney's fees billed
4 following the date of the Offer of Judgment. But the Offer of Judgment does not
5 restrict the award of attorney's fees to fees incurred prior to the Offer of
6 Judgment. The Offer of Judgment provides for "[r]easonable attorneys' fees and
7 costs in connection with Plaintiff's above-referenced action." Waivers or
8 limitations of attorney's fees in a Rule 68 offer of judgment must be clear and
9 unambiguous. Nusom v. Comh Woodburn, Inc., 122 F.3d 830, 833 (9th Cir.
10 1997). Plaintiff did not agree to waive her right to fees incurred after the Offer of
11 Judgment and is entitled to seek those fees.

12 Defendant points out that Plaintiff's counsel have billed for duplicative work
13 – i.e., two or sometimes three attorneys will bill for the same or similar tasks.
14 Defendant identifies approximately 2 ½ hours of billed time that is duplicative.
15 Plaintiff stipulates to a reduction of 1 hour from each of Plaintiff's firm's bills. The
16 Court finds that this reduction will cover any duplicative billings.

17 Defendant argues that Plaintiff's counsel should not receive fees for
18 administrative work. Although the Court agrees with the general proposition that
19 attorneys should not be compensated for purely administrative tasks, the time
20 entries challenged by Defendant do not fall within the category of purely

1 administrative work. It is reasonable for an attorney to bill for researching entity
2 information for a defendant and for speaking to the process server about how to
3 serve the summons and complaint.

4 Including the deductions specified above, the Court has reduced the
5 requested hours as set forth below:

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7 **Eric LaGuardia:**

- 8 ● - 3.3 hours for initial communications with client and case evaluation.
- 9 ● - 3 hours for numerous entries of .1 or .2 for reviewing ECF Notices.

10 The Court allows .6 hours for review of all of the notices of electronic filing.

- 11 ● - 1.5 hours for consecutive entries of .1 for exchanged emails or
12 telephone calls/messages that cumulatively would not have taken as long as
13 reflected on the bill. See, e.g., billing entries on 8/15/2014: .1 for leaving client
14 voicemail regarding conversion of ENE to telephonic attorneys only conference;
15 .1 for follow-up email to voicemail to client; .1 for reviewing email from client
16 confirming that she got the email and voicemail.

- 17 ● - .1 hour for revision of the class action fee agreement (10/29/2014).

18 Although Plaintiff's counsel chose to consult and work with another law firm
19 regarding the class action aspect of the case, the Court will not award fees for
20 time spent working on the class action fee agreement.

1 ● - .2 hour for counsel mistakenly sending order to extend time to the
2 Magistrate Judge instead of the District Court Judge (5/14/14).

3 ● - 1 hour as agreed by Plaintiff for duplicate billings.
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5 **Andre Verdun:**

6 ● - .3 for multiple entries of .1 for reviewing ECF Notices. The Court will
7 allow .3 hours for review of all of the notices of electronic filing.

8 ● - 1 hour for consecutive entries of .1 or .2 for exchanged emails or
9 telephone calls/messages that cumulatively would not have taken as long as
10 reflected on the bill.

11 ● - 1.4 hours for time entries of .5 and .9 on 8/18/2014 for attending court
12 hearing. According to Doc. 16, only Mr. LaGuardia attended the telephonic ENE.

13 ● - 1.5 hours for meeting with class counsel on 10/13/14.

14 ● - .9 hour for reviewing class action co-counsel agreement on 10/29/14.

15 ● - 2.5 hours on 10/31/14 for reviewing motion to stay action and legal
16 research regarding motion to stay because the opposition was already researched
17 and drafted by Mr. LaGuardia.

18 ● - .1 hour for phone conference with co-counsel on 2/27/15.

19 ● - 1 hour as agreed by Plaintiff for duplicate efforts.
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1 **Nicholas & Tomasevic, LLP:**

2 ● - .2 hours billed by Mr. Nicholas on 10/16/14 for reviewing duties of class
3 representatives and contract of legal services.

4 ● 6.5 hours billed by Mr. Nicholas on 10/16/14 for researching factual basis
5 for complaint and researching FDCPA and Rosenthal Act will be awarded at Ms.
6 Imanaka's lower rate because this work could have been done by an associate.

7 ● - 1.6 hours billed by paralegal on 10/16/14 for reviewing class action
8 contract for legal services and duties of class representative.

9 ● - .3 hour (out of .4) billed by paralegal on 10/29/14 – excessive time for
10 creating a contact card for co-counsel and reviewing correspondence re: filing of
11 SAC.

12 ● - .4 hour (out of .6) billed by paralegal on 11/6/14 – excessive time for
13 preparing notices of appearance and filing them.

14 ● - 1.9 hours for excessive time billed on 11/10/14, 11/21/14, 11/24/14,
15 12/9/14, 1/14/15, 1/16/15, 1/26/15 for reviewing filings for dates and calendaring
16 deadlines.

17 ● - 1 hour of Ms. Imanaka's billed time for duplicate efforts as agreed by
18 Plaintiff.

19 ● - 3.2 hours for Alex Tomasevic, a partner with a billing rate of \$400 per
20 hour, for reviewing and revising the motion for attorney's fees. The Court has

1 awarded the fees requested by Eric LaGuardia for preparing the motion for
2 attorney's fees (15.6 hours) and is not inclined to grant additional fees for this work.

3 • - 2 hours requested for Alex Tomasevic for anticipated work in preparing
4 for and attending the hearing on the motion for attorney's fees. There was no
5 hearing on the motion.

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7 **C. Lodestar**

8 Based on the reasonable hours and rates found by the Court, the lodestar is
9 \$41,350.

10	Mr. LaGuardia: 65.8 hours x \$325 =	\$21,385
11	Mr. Verdun: 36.8 hours x \$350 =	\$12,880
12	Mr. Nicholas: 10 hours x \$450 =	\$ 4,500
13	Ms. Imanaka: 7.3 hours x \$ 325 =	\$ 2,372.50
14	Law Clerk: .4 hours x \$125 =	\$ 50.00
15	Paralegal: 1.3 x \$125 =	<u>\$ 162.50</u>
16	Total:	\$41,350.00

17 The Court does not find that adjustment of the lodestar amount is warranted
18 under the Kerr factors.

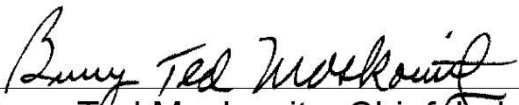
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1 **III. CONCLUSION**

2 For the reasons discussed above, Plaintiff's motion for attorney's fees is
3 **GRANTED IN PART** and **DENIED IN PART**. The Court awards Plaintiff
4 reasonable attorney's fees in the amount of \$41,350.00. The Clerk shall enter
5 judgment for Plaintiff and against Defendant in the amount of \$44,352.00
6 (consisting of \$3,002.00 for damages per the terms of the Rule 68 Offer and
7 \$41,350.00 in reasonable attorney's fees).

8 IT IS SO ORDERED.

9 Dated: September 15, 2015

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11 Barry Ted Moskowitz, Chief Judge
12 United States District Court
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