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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Kristi Bray, an individual,
10 Plaintiff,

No. CV-17-00486-PHX-DGC

ORDER

11 v.

12 Maxwell & Morgan PC, an Arizona
13 professional corporation, et al.,
14 Defendants.

15
16 Plaintiff Kristi Bray has filed a motion for attorneys' fees pursuant to 15 U.S.C.
17 § 1692k(a)(3), A.R.S. § 33-420(c), and Defendants' offer of judgment. Doc. 27. The
18 motion is fully briefed, and no party has requested oral argument. Docs. 29, 31. The
19 Court will grant the motion in part and award Plaintiff fees in the amount of \$11,009.75.

20 **I. Background.**

21 Bray filed this case in February 2017 alleging that Defendant Maxwell & Morgan,
22 P.C. ("M&M") and two of its attorneys violated the Fair Debt Collection Practices Act
23 ("FDCPA") and an Arizona wrongful lien statute, A.R.S. § 33-420(C), in attempting to
24 collect payment from Bray on behalf of a homeowner's association. Doc. 1. Defendants
25 made two offers of judgment under Rule 68, and Plaintiff accepted the second offer on
26 August, 1, 2017. Doc. 24. Pursuant to the offer of judgment, Plaintiff is entitled to
27 damages of \$2,566.98, release of the lien from her property, and "all attorneys' fees and
28 costs that were reasonably incurred by Plaintiff through the date of acceptance of the

1 offer in connection with this case.” Doc. 24-1 at 3. After judgment was entered, the
2 parties were unable to agree on a reasonable amount of fees. *See* Doc. 27 at 12. Plaintiff
3 therefore filed this motion, requesting a fee award of \$16,232.50. Doc. 27. Plaintiff’s
4 motion is supported by affidavits from lead counsel Jonathan Dessales and local
5 attorney Kevin Harper, as well as a 2016 Economics in Law Practice in Arizona report.
6 *See* Doc. 27 at 14-17, 30-31, 33. Plaintiff also submits her engagement agreement with
7 counsel and counsel’s task-based itemized statement of fees. *Id.* at 19-28.

8 **II. Legal Standard.**

9 A party requesting an award of attorneys’ fees must show that it is (a) eligible for
10 an award, (b) entitled to an award, and (c) requesting a reasonable amount. *See* LRCiv
11 54.2(c). Defendants’ offer of judgment provides for attorneys’ fees. *See* Doc. 24-1.
12 Additionally, pursuant to both the FDCPA and state law, Plaintiff is entitled to reasonable
13 attorneys’ fees. *See* 15 U.S.C. § 1692k(a)(3); A.R.S. § 33-420(C); *see also Camacho v.*
14 *Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (“The FDCPA’s statutory
15 language makes an award of fees mandatory.”). Defendants do not dispute that Plaintiff
16 is entitled to attorneys’ fees, but contend that the hourly rates sought by Plaintiff’s
17 attorneys are too high and the amount of time for which they seek compensation should
18 be reduced. Doc. 29.

19 To determine the reasonableness of requested attorneys’ fees, federal courts
20 generally use the “lodestar” method. *See Hensley v. Eckerhart*, 461 U.S. 424, 437
21 (1983); *United States v. \$186,416.00 in U.S. Currency*, 642 F.3d 753, 755 (9th Cir.
22 2011). The Court must first determine the initial lodestar figure by taking a reasonable
23 hourly rate and multiplying it by the number of hours reasonably expended on the
24 litigation. *Hensley*, 461 U.S. at 433. In determining whether the hourly rate or hours
25 expended are reasonable, the Court should consider the *Kerr* factors that have been
26 subsumed within the initial lodestar calculation. *See Kerr v. Screen Extras Guild, Inc.*,
27 526 F.2d 67, 70 (9th Cir. 1975); *Cunningham v. City of L.A.*, 879 F.2d 481, 487 (9th Cir.
28 1988). These factors are: “(1) the novelty and complexity of the issues, (2) the special

1 skill and experience of counsel, (3) the quality of representation, and (4) the results
2 obtained.” *Jordan v. Multnomah Cty.*, 815 F.2d 1258, 1262 n.6 (9th Cir. 1987).

3 **III. Analysis.**

4 Plaintiff was represented in this action by attorneys Jonathan Dessaulles and
5 Douglas Wigley. Mr. Dessaulles spent 4.7 hours on the litigation at the rate of \$325 per
6 hour, which equates to \$1,527.50. Mr. Wigley’s total fee is \$14,600, based on the 58.4
7 hours he worked on the case at the hourly rate of \$250. Counsel also employed a
8 paralegal, Jenna Pitchel, who spent 1.4 hours on the litigation at the rate of \$75 per hour,
9 which equates to \$105. Counsel avow that the time spent was necessary to the successful
10 outcome of the litigation, and that they made every effort to avoid duplicative work,
11 including striking certain time entries. Doc. 27 at 16. Counsel began working on this
12 case in September 2016, filed the complaint in February 2017, and accepted the second
13 offer of judgment in August 2017. *See* Doc. 27 at 25-28. The judgment awards Plaintiff
14 her actual damages, maximum statutory damages, and the injunctive relief she sought.

15 **A. Hourly Rates.**

16 Reasonable hourly rates are not determined by the rates actually charged in a case,
17 but “by the rate prevailing in the community for similar work performed by attorneys of
18 comparable skill, experience, and reputation.” *Schwarz v. Sec’y of Health & Human*
19 *Servs.*, 73 F.3d 895, 908 (9th Cir. 1995). Mr. Dessaulles and Mr. Wigley have been
20 practicing law for approximately 20 and 8 years respectively. Doc. 27 at 3. Plaintiff
21 submits an affidavit from Mr. Dessaulles avowing that their respective rates of \$325 and
22 \$250 are reasonable for attorneys of comparable skill, experience, and reputation in the
23 community. Doc. 27 at 15. Plaintiff’s counsel states that the rates are particularly
24 reasonable in light of the contingent nature of their arrangement with Plaintiff and the
25 associated risk. *Id.* Plaintiff also submits an affidavit from a local attorney who is
26 familiar with Mr. Dessaulles’s work and prevailing rates in the community, averring that
27 \$325 is a reasonable rate for Mr. Dessaulles. *Id.* at 30-31. Finally, Plaintiff submits her
28 engagement agreement, which contains these rates, and a 2016 Economics of Law

1 Practice in Arizona report, which lists a mean hourly rate of \$288 and a median of \$299
2 for the “litigation/civil practice: plaintiff” category. Doc. 27 at 19-23, 33.

3 Defendants assert that the hourly rates charged by Mr. Dessaulles and Mr. Wigley
4 are out of line with those prevailing in the community for attorneys of comparable skill
5 and reputation. Doc. 29 at 13. Defendants rely on the \$288 mean rate contained in the
6 2016 report and argue that there is “no basis for awarding Mr. Dessaulles more than the
7 mean rate,” and “a seventh year associate [Mr. Wigley] should charge much less than the
8 average of all plaintiffs’ attorneys in the state.” Doc. 29 at 14. Defendants argue that
9 their rates should be reduced to \$288 and \$200 respectively. *Id.*

10 The parties cite various competing cases, including two cases from this Court
11 involving fee requests from Mr. Dessaulles and Mr. Wigley. *Compare Easter v. Maxwell*
12 *& Morgan P.C.*, No. 16-CV-00192-PHX-SRB, Doc. 33 at 2-5 (D. Ariz. Feb. 24, 2017)
13 (finding the respective rates of \$325 and \$250 for Mr. Dessaulles and Mr. Wigley to be
14 reasonable in a similar FDCPA action), *with Ryan v. Am. Inst. of Tech., Inc.*, No. 2:10-
15 CV-00979 JWS, 2011 WL 995940, at *2 (D. Ariz. Mar. 21, 2011) (finding that a
16 combined average hourly rate of \$200 for Mr. Dessaulles, Mr. Wigley, a paralegal, and a
17 legal assistant was reasonable in an FLSA collective action). Plaintiff has adequately
18 supported her assertion that the rates of \$325 and \$250 are reasonable in the community
19 based on counsel’s skill, experience, and reputation. An attorney with 20 years of
20 experience could reasonably charge a rate higher than the average, and Defendants
21 provide no evidence to support their assertion that an attorney with eight years of
22 experience must charge well below the average. Other than Defendants’ bare assertions
23 that the rates are unreasonable and unexplained proposed reductions, Defendants have
24 presented no evidence tending to show that the rates are unreasonable.

25 **B. Compensable Hours.**

26 Defendants argue that the hours spent on various tasks are excessive. First, they
27 assert that 43.4 hours to investigate, research, and prepare the complaint is unreasonable
28 because Plaintiff’s attorneys have filed substantially similar complaints against M&M in

1 the past and this complaint was simply a form. Doc. 29 at 8-11. Defendants submit
2 complaints filed by Plaintiff’s counsel in three previous cases which allege similar
3 violations of the FDCPA. Doc. 29-1 at 14-110. In one case, Judge Bolton found that 24
4 hours to prepare the complaint was excessive, and a 75% reduction was appropriate.
5 *Easter*, No. 16-CV-00192-PHX-SRB, Doc. 33 at 5-6 (D. Ariz. Feb. 24, 2017).
6 Defendants also cite a case that held that an experienced attorney should spend between 2
7 and 5 hours researching and drafting an FDCPA complaint. *See St. Bernard v. State*
8 *Collection Serv., Inc.*, 782 F. Supp. 2d 823, 827 (D. Ariz. 2010). Defendants seek an
9 85% reduction, which would bring the compensable hours spent on the complaint to 6.54.
10 Doc. 29 at 10.

11 Plaintiff responds that although certain generic portions of the complaint were
12 recycled, “the vast majority” were new and case-specific. Doc. 31 at 2. Plaintiff also
13 explains that much of counsel’s time was spent investigating the factual history of
14 Plaintiff’s situation in order to determine the appropriate course of action, as opposed to
15 drafting the complaint. *Id.* at 2-3. Plaintiff asserts that in prior cases, M&M has argued
16 that complaints were insufficient for failure to plead specific theories. *Id.* at 2. Plaintiff’s
17 counsel, therefore, spent the necessary time to draft a detailed complaint in anticipation
18 of this attack. *Id.* This case also involved state law claims and additional defendants,
19 unlike the previous cases. *Id.* at 2-3.

20 The Court has reviewed the complaints and finds that while much of the language
21 is substantially similar, there are unique portions. None of the prior cases involved the
22 state law claims at issue in this case. The factual circumstances are also unique. And
23 Defendants have presented no evidence to refute Plaintiff’s claim that her attorneys had
24 to expend significant time investigating whether Plaintiff owed money and the amount,
25 and creating a timeline of Defendants’ transactions and communications with Plaintiff
26 before they could determine the appropriate course of action or begin drafting. Neither
27 party has identified the specific amount of time spent investigating versus drafting the
28 complaint. The Court’s review of the time entries reveals that on October 14, 2016, Mr.

1 Wigley began drafting the complaint. Doc. 27 at 25. At that point, Mr. Wigley and Mr.
2 Dessaulles had already spent 14.1 hours on pre-drafting investigation and strategizing.
3 The Court finds that, even considering the state law claims and additional defendants
4 involved in this case, it was excessive to spend an additional 29.3 hours to draft the
5 complaint. The Court will reduce the compensable hours for drafting the complaint to 10
6 hours. This amounts to a total of 24.1 compensable hours, or \$6,154.75, for
7 investigating, researching, and drafting the complaint.¹

8 Next, Defendants assert that it is unreasonable to spend 4.8 hours preparing a joint
9 case management plan and attending a scheduling conference, 4.4 hours preparing initial
10 disclosures, 2.4 hours preparing a settlement demand, 3.6 hours reviewing two offers of
11 judgment, and 2.6 hours preparing a proposed amended complaint with only “simple
12 changes.” Doc. 29 at 11-13. The Court agrees that 4.8 hours to prepare a routine joint
13 case management plan and attend a 20-minute scheduling conference is excessive. The
14 Court will reduce the compensable hours for preparing the joint case management plan
15 and attending the conference to 3 hours. As to the remaining hours, the Court finds that
16 Plaintiff has shown they were reasonably expended. Plaintiff’s initial disclosures were
17 extensive, including 400 pages of documents to refute Defendants’ denial that they are
18 debt collectors. Doc. 31 at 3. Plaintiff asserts that the amended complaint added a new
19 defendant and two causes of action, and that the amended complaint drove Defendants to
20 make the second offer of judgment. *Id.* at 4. Plaintiff’s counsel successfully litigated this
21 case to achieve the maximum relief Plaintiff was seeking. Defendants cannot second
22 guess the reasonable strategies counsel adopted in order to achieve these results. The
23 Court finds that, with the exception of the 29.3 hours spent drafting the complaint and the
24 4.8 hours spent preparing the joint case management plan, the hours expended were

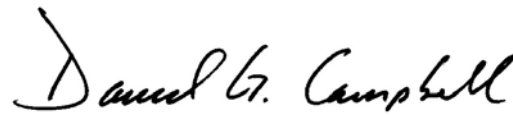
25
26 ¹ The breakdown of the 43.4 hours between Mr. Dessaulles, Mr. Wigley, and Ms.
27 Pitchel is 4.3, 37.7, and 1.4 respectively. Doc. 27 at 25-26. After reducing the hours
28 spent drafting the complaint (beginning with Mr. Wigley’s entry on October 14)
proportionately among Mr. Dessaulles, Mr. Wigley, and Ms. Pitchel to equal 10 total
hours, their respective compensable hours for investigating and drafting combined are
2.85, 20.77, and .48.

1 reasonable. After considering Defendants' arguments and the *Kerr* factors, the Court
2 concludes that the lodestar amount of \$11,009.75 is an appropriate fee award.²

3 **IT IS ORDERED:**

- 4 1. Plaintiff's motion for attorneys' fees (Doc. 27) is **granted in part**. Plaintiff
5 is awarded \$11,009.75 in attorneys' fees.
6 2. The Clerk is directed to **terminate** this action.

7 Dated this 27th day of November, 2017.
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12 David G. Campbell
13 United States District Judge
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² This figure is calculated based on 3.25 hours of Mr. Dessaulles's time, 39.67 hours of Mr. Wigley's time, and .48 hours of Ms. Pitchel's time.