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MICHAEL DAVIS,

Plaintiff,

v.

HOLLINS LAW, A PROFESSIONAL  
CORPORATION,

Defendant.

No. CIV. S-12-3107 LKK/AC

**ORDER**

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Plaintiff Michael Davis sued defendant Hollins Law, A Professional Corporation, alleging violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 - 1692p ("FDCPA") and California's Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788 - 1788.33 ("Rosenthal Act"). The gravamen of plaintiff's complaint was that defendant placed collection calls to his home phone, and left a voicemail message which failed to disclose that the communication was from a debt collector, thereby violating both statutes.

On April 15, 2014, a bench trial was held in this matter, where plaintiff was represented by Matthew Rosenthal, and defendant by Kathleen Hollins and Tamara Heathcote. At the

1 trial's conclusion, the court found that defendant had violated  
2 the FDCPA and the Rosenthal Act. The court deferred its ruling on  
3 damages, and directed plaintiff to file a petition for attorney's  
4 fees. The court will now turn to these issues.

5 **I. DAMAGES**

6 Plaintiff seeks statutory damages of \$1000.00 under each of  
7 the FDCPA and the Rosenthal Act, for a total of \$2000.00.<sup>1</sup>

8 **A. Damages under the FDCPA**

9 **1. Standard**

10 The FDCPA provides for statutory damages. "[A]ny debt  
11 collector who fails to comply with any [FDCPA] provision . . .  
12 with respect to any person is liable to such person in an amount  
13 equal to the sum of . . . any actual damage sustained by such  
14 person as a result of such failure [and] in the case of any  
15 action by an individual, such additional damages as the court may  
16 allow, but not exceeding \$1,000 . . . ." 15 U.S.C. § 1692k(a)(1),  
17 (2)(A). The Ninth Circuit has held that courts must award FDCPA  
18 statutory damages on proof of violation. "The FDCPA's statutory  
19 language makes an award of fees mandatory." Camacho v. Bridgeport  
20 Fin., Inc., 523 F.3d 973, 978 (9th Cir. 2008) (citing Tolentino

21 <sup>1</sup> Courts have typically interpreted both Acts as providing  
22 statutory damages on a per-lawsuit, not a per-violation, basis.  
23 See, e.g., Nelson v. Equifax Info. Servs., LLC, 522 F. Supp. 2d  
24 1222, 1238 (C.D. Cal. 2007) ("The jury's decision to award \$1,000  
25 in statutory damages per violation, rather than per lawsuit, is a  
26 manifest error of law."); Marseglia v. JP Morgan Chase Bank, 750  
27 F. Supp. 2d 1171, 1180 (S.D. Cal. 2010) ("After a careful review  
28 of the authority cited, as well as the authority unearthed by  
this Court's own research, this Court agrees with defendant that  
statutory damages under the Rosenthal Act are limited to \$1,000  
per plaintiff, not per violation."). Plaintiff makes no argument  
to the contrary.

1 v. Friedman, 46 F.3d 645, 651 (7th Cir. 1995), cert. denied, 515  
2 U.S. 160 (1995)). No proof of actual damages is required to  
3 support an award of statutory damages. Baker v. G.C. Servs.  
4 Corp., 677 F.2d 775, 780 (9th Cir. 1982). Plaintiff seeks only  
5 statutory damages herein.

6 In determining the amount of statutory damages, "the court  
7 shall consider, among other relevant factors . . . the frequency  
8 and persistence of noncompliance by the debt collector, the  
9 nature of such noncompliance, and the extent to which such  
10 noncompliance was intentional . . . ." 15 U.S.C. § 1692k(b).

## 11 **2. Analysis**

12 No evidence was introduced to suggest that defendant's  
13 violation was anything other than a one-time occurrence. To the  
14 extent that the frequency and persistence of noncompliance is a  
15 factor, a *de minimis* award appears appropriate.

16 Similarly, the nature of the violation - omitting a required  
17 disclosure from a voicemail, itself left only after the parties  
18 had already communicated several times - also does not support a  
19 significant award, as the court can discern no harm to plaintiff  
20 from the act. Contrast, e.g., Miranda v. Law Office of D. Scott  
21 Caruthers, No. 1:10-cv-01487-BAM, 2012 WL 78236, 2012 U.S. Dist.  
22 LEXIS 2866 (E.D. Cal. Jan. 10, 2012) (awarding \$1000.00 in  
23 statutory damages on the basis of a collection letter that read  
24 "NOTICE OF PENDING COURT PROCEEDINGS," when in fact no lawsuit  
25 was pending.); Bretana v. Int'l Collection Corp., No. C 07-5934  
26 JF (HRL), 2010 WL 1221925, 2010 U.S. Dist. LEXIS 27786 (N.D. Cal.  
27 Mar. 24, 2010) (awarding \$1000.00 in statutory damages where  
28 "[d]efendants sent multiple letters to [plaintiff], citing

1 liability for interest and fees that did not apply, and  
2 improperly sued [plaintiff] in a California state court." ).

3 Finally, while there is nothing in the record to suggest  
4 that the violation was intentional, the fact that defendant is a  
5 law firm, and that the statutory provision in question is so  
6 easily followed,<sup>2</sup> suggests that defendant ought to have exercised  
7 a higher degree of diligence in policing its employees.

8 In light of the foregoing, the court will award plaintiff  
9 \$250.00 in statutory damages under the FDCPA.

#### 10 **B. Damages under the Rosenthal Act**

11 The Rosenthal Act, like the FDCPA, provides for both actual  
12 and statutory damages. But unlike the FDCPA, the Rosenthal Act  
13 premises any award of statutory damages on the defendant's state  
14 of mind:

15 Any debt collector who **willfully and**  
16 **knowingly** violates this title with respect to  
17 any debtor shall, in addition to actual  
18 damages sustained by the debtor as a result  
19 of the violation, also be liable to the  
20 debtor only in an individual action, and his  
21 additional liability therein to that debtor  
22 shall be for a penalty in such amount as the  
23 court may allow, which shall not be less than  
24 one hundred dollars (\$100) nor greater than  
25 one thousand dollars (\$1,000).

22 Cal. Civ. Code § 1788.30(b). Accord Yu v. Signet Bank/Virginia,  
23 69 Cal. App. 4th 1377, 1395-96 (1999) ("The [Rosenthal] Act  
24 provides for recovery in an individual action of . . . a fine of

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26 <sup>2</sup> To wit: "The following conduct is a violation of this  
27 section: . . . the failure to disclose in subsequent  
28 communications that the communication is from a debt  
collector . . . ." 15 U.S.C. § 1692e(11).

1 \$100 to \$1,000 if the creditor's violation is willful and  
2 knowing.") (citing Cal. Civ. Code § 1788.30(b)).

3 At trial, plaintiff failed to show, by a preponderance of  
4 the evidence, that defendant acted "wilfully and knowingly" in  
5 leaving the subject voicemail. Accordingly, plaintiff is not  
6 entitled to statutory damages under the Rosenthal Act.

## 7 **II. PLAINTIFF'S BILL OF COSTS**

8 Plaintiff has filed a bill of costs, seeking \$2,392.90 in  
9 litigation costs. (ECF No. 90.) Under Local Rule 292(b), a bill  
10 of costs may only be filed and served "[w]ithin fourteen (14)  
11 days after entry of judgment or order under which costs may be  
12 claimed . . . ." Defendant is correct in noting that the court  
13 reserved its ruling on damages when trial ended. (Response to  
14 Petition for Attorney's Fees and Costs ("Response") 19-21, ECF  
15 No. 96.) The U.S. Supreme Court has "long held that an order  
16 resolving liability without addressing a plaintiff's requests for  
17 relief is not final." Riley v. Kennedy, 553 U.S. 406, 419 (2008).  
18 Accord Charles Alan Wright & Arthur R. Miller, 15B Federal  
19 Practice and Procedure: Jurisdiction § 3915.2 (2d ed. 2014)  
20 ("Determinations of liability that leave unresolved questions of  
21 remedy ordinarily are not final . . . .").

22 As the judgment herein will be final only upon entry of this  
23 order, plaintiff's bill of costs will be denied, without  
24 prejudice, as premature. After this order issues, plaintiff may  
25 submit a costs bill in accordance with Local Rule 292 and other  
26 applicable federal law.

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1 **III. ATTORNEY'S FEES**

2 Plaintiff, as prevailing party, seeks \$46,334.20 in  
3 attorney's fees under the FDCPA and the Rosenthal Act.

4 **A. Standard**

5 The prevailing party in an FDCPA action may recover  
6 reasonable attorney's fees, and costs, from the other side. 15  
7 U.S.C. § 1692k(a)(3). "The FDCPA's statutory language makes an  
8 award of fees mandatory." Camacho, 523 F.3d at 978. The purpose  
9 of the fee-shifting provision is to ensure private enforcement of  
10 the statute. Baker, 677 F.2d at 780-81 ("[T]he [FDCPA's]  
11 legislative history shows that Congress clearly intended that  
12 private enforcement actions would be the primary enforcement tool  
13 of the Act."); see also Tolentino, 46 F.3d at 651 ("The reason  
14 for mandatory fees is that [C]ongress chose a 'private attorney  
15 general' approach to assume enforcement of the FDCPA.").

16 Under Ninth Circuit precedent, district courts are to employ  
17 the "lodestar" method in determining reasonable attorney's fees  
18 in FDCPA cases. Ferland v. Conrad Credit Corp., 244 F.3d 1145,  
19 1149 n. 4 (9th Cir. 2001). The "lodestar" is derived by  
20 multiplying the number of hours the prevailing party reasonably  
21 expended on the litigation by a reasonable hourly rate. Id. "In  
22 determining reasonable hours, counsel bears the burden of  
23 submitting detailed time records justifying the hours claimed to  
24 have been expended. Those hours may be reduced by the court where  
25 documentation of the hours is inadequate; if the case was  
26 overstaffed and hours are duplicated; if the hours expended are  
27 deemed excessive or otherwise unnecessary." Chalmers v. City of  
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1 Los Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986) (citing Hensley  
2 v. Eckerhart, 461 U.S. 424, 433-34 (1983)). "In determining a  
3 reasonable hourly rate, the district court should be guided by  
4 the rate prevailing in the community for similar work performed  
5 by attorneys of comparable skill, experience, and reputation."  
6 Id. at 1210-11 (citing Blum v. Stenson, 465 U.S. 886 (1984)).

7 "Although in most cases, the lodestar figure is  
8 presumptively a reasonable fee award, the district court may, if  
9 circumstances warrant, adjust the lodestar to account for other  
10 factors which are not subsumed within it." Ferland, 244 F.3d at  
11 1149 n. 4.

12 The Rosenthal Act also provides for an award of attorney's  
13 fees and costs to the prevailing party, which "shall be entitled  
14 to costs of the action. Reasonable attorney's fees, which shall  
15 be based on time necessarily expended to enforce the liability,  
16 shall be awarded to a prevailing debtor." Cal. Civ. Code  
17 § 1788.30.<sup>3</sup> Courts determining awarding attorney's fees under the  
18 Rosenthal Act also employ the lodestar method. See Komarova v.  
19 Nat'l Credit Acceptance, Inc., 175 Cal. App. 4th 324 (2009).

## 20 **B. Reasonableness of Hourly Rate**

### 21 **1. Attorney rates**

22 Plaintiff has submitted time records for work billed on this  
23 case by five attorneys: Matthew Rosenthal, Douglas Baek, Jessica  
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25 <sup>3</sup> Despite plaintiff's failure to secure any Rosenthal Act damages,  
26 he was the prevailing debtor, as he established a violation of  
27 Cal. Civ. Code § 1788.17, which incorporates many FDCPA  
28 provisions (including 15 U.S.C. § 1692e(11), which defendant  
violated) by reference, thereby turning violations of these  
provisions into Rosenthal Act violations.

1 Pascale, and Rory Leisinger, for each of whom plaintiff claims an  
2 hourly rate of \$290 per hour, and Ryan Lee, for whom plaintiff  
3 claims an hourly rate of \$387 per hour.<sup>4</sup> Defendant does not  
4 object to the hourly rates claimed by these attorneys.

5 According to plaintiff, Rosenthal was admitted to practice  
6 in California in December 2011 (Decl. Rosenthal ¶ 2, ECF No. 91-  
7 2), while Lee was admitted in March 2004 (Decl. Lee ¶ 2, ECF  
8 No. 91-2). Plaintiff does not specify when Baek, Pascale, and  
9 Leisinger were admitted, but a search of the State Bar of  
10 California website shows that they were admitted in December  
11 2008, February 2009, and August 2011, respectively.<sup>5</sup> The billing  
12 records submitted by plaintiff therefore show that, when they  
13 last worked on this case, Baek had 4.5 years of experience,  
14 Pascale had 4 years of experience, and Leisinger had 2 years of  
15 experience.

16 In support of the claimed rates, plaintiff has submitted the  
17 declarations of Steven Solomon, Nicholas Bontrager, Todd  
18 Friedman, G. Thomas Martin III, and James Pacitti, all California  
19 attorneys who aver that they are experienced in consumer  
20 litigation. "Affidavits of the plaintiffs' attorney and other  
21 attorneys regarding prevailing fees in the community, and rate  
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23 <sup>4</sup> According to plaintiff, Baek, Pascale, and Leisinger are no  
24 longer employed by plaintiff's counsel. (Plaintiff's Petition at  
7 n. 4, ECF No. 91.)

25 <sup>5</sup> The court may take judicial notice of the State Bar of  
26 California's website regarding attorneys' dates of admission to  
27 the Bar. These facts can be "accurately and readily determined"  
28 from the website, and the site's accuracy regarding this  
information "cannot reasonably be questioned." Fed. R. Evid.  
201(b).



1 determinations in other cases, particularly those setting a rate  
2 for the plaintiffs' attorney, are satisfactory evidence of the  
3 prevailing market rate." United Steelworkers of America v. Phelps  
4 Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990).

5 In support, plaintiff also submits a recent order in Castro  
6 v. Commercial Recovery Sys., No. 12-cv-00630 (N.D. Cal. Mar. 13,  
7 2014) (ECF No. 91-5), awarding Lee \$387 per hour.

8 Plaintiff also relies on the United States Consumer Law  
9 Attorney Fee Survey Report 2010-2011, compiled by Ohio-based  
10 attorney Ronald L. Burdge. (ECF No. 91-3.) According to the  
11 Survey Report, attorneys practicing consumer law in California  
12 for 1-3 years (e.g., attorney Leisinger) have an average hourly  
13 rate of \$237, those practicing for 3-5 years (e.g., Baek and  
14 Pascale) have an average hourly rate of \$347, and those who have  
15 practiced for 6-10 years (e.g., attorney Lee) have an average  
16 hourly rate of \$387. (Id. at p. 24 of 67.) The court has reviewed  
17 the methodology underlying the Survey, and finds it credible.  
18 (Id. at pp. 9-11 of 67.)

19 District courts in California have differed on the  
20 appropriateness of considering the Survey Report when determining  
21 fee awards. In recent years, the majority have been willing to  
22 consider the Report's results as evidence of prevailing hourly  
23 rates in FDCPA and Rosenthal Act cases. See Brown v. Mandarich  
24 Law Grp., No. 13-cv-04703-JSC, 2014 WL 1340211, 2014 U.S. Dist.  
25 LEXIS 47020 (N.D. Cal. Apr. 2, 2014); Delalat v. Syndicated  
26 Office Sys., No. 10CV1273-DMS(NLS), 2014 WL 930162, 2014 U.S.  
27 Dist. LEXIS 33756 (S.D. Cal. Jan. 23, 2014); Crawford v. Dynamic  
28 Recovery Servs., No. 13cv1328 BTM (RBB), 2014 WL 130458, 2014

1 U.S. Dist. LEXIS 4057 (S.D. Cal. Jan. 10, 2014); Garcia v.  
2 Resurgent Capital Servs., No. C-11-1253 EMC, 2012 WL 3778852,  
3 2012 U.S. Dist. LEXIS 123889 (N.D. Cal. Aug. 30, 2012); Ramirez  
4 v. N. Am. Asset Servs., LLC, No. CV 11-10237-GHK, 2012 WL  
5 1228086, 2012 U.S. Dist. LEXIS 54641 (C.D. Cal. Apr. 9, 2012);  
6 Krapf v. Nationwide Credit Inc., No. SACV 09-00711 JVS (MLGx),  
7 2010 WL 4261444, 2010 U.S. Dist. LEXIS 116689 (C.D. Cal. Oct. 21,  
8 2010).

9 Not all district courts agree. A number of the California  
10 decisions rejecting the Survey Report's results originate in this  
11 judicial district. See, e.g., Fitzgerald v. The Law Office of  
12 Curtis O. Barnes, No. 1:12-cv-00071-LJO-GAS, 2013 WL 1627740,  
13 2013 U.S. Dist. LEXIS 53642 (E.D. Cal. Apr. 15, 2013) ("The Court  
14 finds [the Survey Report] inapposite for determining hourly rates  
15 prevailing in the forum in which this Court sits, *i.e.*, the  
16 Eastern District of California, Fresno Division."); Branco v.  
17 Credit Collections Servs., No. 2:10-cv-01242-MCE-EFB, 2011 WL  
18 6003877, 2011 U.S. Dist. LEXIS 138329 (E.D. Cal. Dec. 1, 2011)  
19 ("Plaintiff's contention that the rates are reasonable as  
20 evidenced by the United States Consumer Law Attorney Fee Survey  
21 Report is unavailing because it does not take into account the  
22 reasonable rate for attorneys in *this* district.").

23 In determining whether to consider the findings of the  
24 Survey Report, the court begins by observing that debt collectors  
25 located in Los Angeles (such as the defendant herein), the San  
26 Francisco Bay Area, or San Diego can freely attempt to collect  
27 from consumers located in the Eastern District using telephone  
28 calls, letters, credit reporting, and/or collection actions.

1 Moreover, defendants in recent FDCPA and Rosenthal Act cases  
2 filed in the Eastern District regularly rely on attorneys from  
3 elsewhere in the state to defend them. See, e.g., *Alonso v.*  
4 *Blackstone Fin. Grp. LLC*, 962 F. Supp. 2d 1188 (E.D. Cal. 2013)  
5 (defense counsel from Irvine, California); *Wilson v. Gordon &*  
6 *Wong Law Grp., P.C.*, No. 2:13-cv-00609-MCE-KJN, 2013 WL 6858975,  
7 2013 U.S. Dist. LEXIS 180366 (E.D. Cal. Dec. 24, 2013) (defense  
8 counsel from San Francisco, CA); *Green v. Creditor Istus*  
9 *Remedium, LLP*, No. 1:13-cv-01414-LJO-JLT, 2013 WL 6000967, 2013  
10 U.S. Dist. LEXIS 161298 (E.D. Cal. Nov. 12, 2013) (defense  
11 counsel from San Diego, CA); *Laugenour v. Northland Grp. Inc.*,  
12 No. 2:12-cv-2995-GEB-DAD, 2013 WL 3745727, 2013 U.S. Dist. LEXIS  
13 98565 (E.D. Cal. Jul. 15, 2013) (defense counsel from Los  
14 Angeles, CA).

15 In the court's view, consumers in the Eastern District ought  
16 to enjoy similar flexibility in responding to unfair collection  
17 practices that debt collectors do in defending themselves. While  
18 the Ninth Circuit has observed that "[g]enerally, when  
19 determining a reasonable hourly rate, the relevant community is  
20 the forum in which the district court sits[,] "*Prison Legal News*  
21 *v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010), this is not  
22 an absolute rule. "[R]ates outside the forum may be used if local  
23 counsel was unavailable, either because they are unwilling or  
24 unable to perform because they lack the degree of experience,  
25 expertise, or specialization required to handle properly the  
26 case." *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)  
27 (citation and internal quotation omitted). Moreover, as I have  
28 previously noted, "To insist on awarding significantly-lower

1 hourly rates in the Eastern District than those in the other  
2 judicial districts in California would discourage attorneys from  
3 bringing meritorious lawsuits in this district." Adoma v. Univ.  
4 of Phoenix, 913 F. Supp. 2d 964, 984 (E.D. Cal. 2012). Further,  
5 "[J]udges are justified in relying on their own knowledge of  
6 customary rates and their experience concerning reasonable and  
7 proper fees." Ingram v. Oroudjian, 647 F.3d 925, 926 (9th Cir.  
8 2011). The court is informed, and takes into consideration, the  
9 fact that many consumer attorneys in California, who work under  
10 fee-shifting statutes such as the FDCPA, the Truth in Lending  
11 Act, and the Fair Credit Reporting Act, prefer not to bring cases  
12 in the Eastern District because they fear that they will be  
13 shortchanged in their fees. Given the choice of two meritorious  
14 cases, one of which is in the Eastern District and another  
15 elsewhere in California, skilled attorneys will generally choose  
16 the latter in order to safeguard their fees. The consequence, in  
17 many (though not all) instances, is to leave cases in this  
18 district to less-skilled attorneys. While the cost of living in  
19 the Eastern District is somewhat lower than other parts of  
20 California, the fact remains that the majority of consumer  
21 attorneys are clustered in the coastal cities and must pay the  
22 costs of living there. Forcing them to accept lower rates reduces  
23 their willingness to accept cases in this judicial district, and  
24 thereby tacitly weakens the protections available to consumers in  
25 this part of the state relative to consumers in the rest of the  
26 state. That result is unacceptable.

27 Accordingly, I will award Lee his requested rate of \$387 per  
28 hour, and Rosenthal, Baek, and Pacal their requested rates of

1 \$290 per hour. Nevertheless, I will reduce Leisinger's rate to  
2 \$237 per hour, per the data in the Consumer Law Attorney Fee  
3 Survey Report 2010-2011.

## 4 **2. Paralegal rates**

5 Plaintiff has also submitted time records for work billed on  
6 this case by a paralegal, one Ricardo Teamor, for whom he claims  
7 an hourly rate of \$145.

8 Defendant correctly objects that plaintiff has failed to  
9 present any evidence of Teamor's qualifications and experience.  
10 This is contrary to accepted practice in fee litigation. See,  
11 e.g., Garcia, 2012 WL 3778852, 2012 U.S. Dist. LEXIS 123889  
12 ("Payne has twelve years of experience in the legal field, and  
13 Alba-Bermejo has two, and the requested rates equal their current  
14 hourly rates as billed by [counsel].")

15 As a result, per defendant, there is no way for the court to  
16 determine if Teamor is actually a paralegal, or else an office  
17 administrator or secretary. Much of the work for which Teamor's  
18 time is billed, such as preparing courtesy copies of documents  
19 for the court and booking flights, is administrative or  
20 secretarial in nature. The only salient evidence defendant  
21 presents is a sentence in the Consumer Law Attorney Fee Survey  
22 Report 2010-2011, which reads, "The average California Consumer  
23 Law firm employs 1 paralegal whose median billable hourly rate is  
24 \$137 . . . ." (Id. at p. 51 of 67.) However, this information is  
25 insufficient, standing alone, to justify the requested fees.

26 Under such circumstances, the court must deny any recovery  
27 for the alleged paralegal's time.

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1                   **C. Reasonableness of Hours Expended**

2           For the purposes of calculating the lodestar figure, the  
3 court has discretion in determining the number of hours  
4 reasonably expended on this case. See Chalmers, 796 F.2d at 1210;  
5 see also Hensley, 461 U.S. at 437 (stating that district court's  
6 exercise of discretion "is appropriate in view of the district  
7 court's superior understanding of the litigation and the  
8 desirability of avoiding frequent appellate review of what  
9 essentially are factual matters.").

10                   **1. Defendant's objections to time expended**

11           According to plaintiff, his attorneys devoted a total of  
12 139.8 hours to this case: 49.1 hours by Lee, 43.9 by Rosenthal,  
13 32.6 by Baek, 8.7 by Pascale, and 5.5 by Leisinger. (ECF No. 91-  
14 1.)

15           Defendant objects that much of this time was "duplicative,  
16 unreasonable, or excessive." (Response 2.) Most of defendant's  
17 objections are not well-taken. For example, defendant objects to  
18 plaintiff's billing 0.3 hours apiece for preparing requests for  
19 production, interrogatories, and requests for admission, and goes  
20 to great lengths to show that plaintiff has propounded similar,  
21 though not identical, discovery requests in other FDCA cases.  
22 (Response 3-5.) This objection is not well-taken. It is perfectly  
23 reasonable to take more than 12 minutes and as much as 18 minutes  
24 (*i.e.*, the time increment encapsulated when billing 0.3 hours) to  
25 locate pre-existing discovery requests, modify these to reflect  
26 the facts of the new case, and then read them over for internal  
27 consistency. In the court's view, defendant's objections to these  
28 tasks, and many others, as taking too long are simply meritless.

1 That said, the court has reviewed all of the time entries  
2 that defendant contests and will reduce the following tasks,  
3 which each took too much time, to 0.1 hours apiece:

4	Dec 28, 2012	0.2	J. Pascale	Receive ECF notice of case filed and supporting documents
5	Dec 31, 2012	0.3	J. Pascale	Received ECF notice of Order setting Scheduling Conference; diaried dates and set to serve copy of Order on Defendant
6	Feb 5, 2013	0.2	J. Pascale	Receive and review ECF notice of stipulation and order to extend motion hearing date
7	Mar 7, 2013	0.3	J. Pascale	Received and reviewed Defendant's notice to appear by telephone or continue hearing

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11 In other words, Pascale will only be allowed to bill 0.4 hours,  
12 rather than 1.0 hours, for these tasks.

13 Plaintiff also seeks to bill the 1.5 hours devoted by local  
14 counsel Leland Moglen to plaintiff's July 5, 2013 deposition at  
15 attorney Baek's rate. This is impermissible. Moglen's time must  
16 be billed at his own rate. Therefore, 1.5 hours of Baek's time  
17 will be stricken.

18 Finally, defendant objects to attorney Rosenthal billing 2.0  
19 hours for preparation of a trial brief in support of a motion for  
20 judgment as a matter of law. (Response 13.) As defendant points  
21 out, under Fed. R. Civ. P. 50, this motion is available only in a  
22 jury trial. Accordingly, this time will be stricken.

## 23 **2. Defendant's objections to venue**

24 According to defendant, plaintiff incurred unnecessary  
25 expenses in traveling to Sacramento when he could have filed this  
26 case in the Central District of California, where defendant is  
27 located.

1 Under 28 U.S.C. § 1391(b), a case may be properly filed  
2 either in a judicial district in which defendant resides or a  
3 judicial district in which a substantial part of the events or  
4 omissions giving rise to the claim occurred. It was reasonable to  
5 file the action in the Eastern District based on the convenience  
6 to the plaintiff for deposition and trial. If defendant objected  
7 to the chosen venue, it could have brought a motion to transfer  
8 under 28 U.S.C. § 1404. Objecting to venue at this late date is  
9 churlish.

10 **3. Defendant's arguments regarding proportionality**  
11 **of fees and recovery**

12 Despite defendant's arguments to the contrary, the court  
13 sees no basis to require proportionality in FDCPA cases between  
14 the amount recovered and the amount of attorney's fees available  
15 thereon. Given the relatively low value of the prescribed  
16 statutory damages, and in many instances, the unavailability of  
17 actual damages, imposing a proportionality requirement would  
18 entirely defeat the deterrence value of FDCPA lawsuits. If debt  
19 collectors who engage in unfair collection practices could be  
20 assured that they could avoid both significant damages and  
21 significant attorney's fees, they would have little incentive to  
22 comply with the FDCPA's requirements. Wronged debtors would also  
23 be less likely to find counsel absent the guarantee of fee-  
24 shifting, as the damages involved are often too low to support  
25 contingency-based representation. "As there rarely will be  
26 extensive damages, a rule of proportionality would discourage  
27 vigorous enforcement of the FDCPA." Kottle v. Unifund CCR, LLC,  
28 \_\_\_ F. Supp. 2d \_\_\_, 2014 WL 243140, 2014 U.S. Dist. LEXIS 9271



1 (C.D. Cal. Jan. 13, 2014) (awarding \$10,782 in attorney's fees  
2 based on \$2001.00 recovery). For these reasons, district courts  
3 in the Ninth Circuit "have been reluctant . . . to reduce damages  
4 on the basis of a low monetary recovery in FDCPA cases,  
5 recognizing that [statutory] damages are capped at \$1,000." De  
6 Amaral v. Goldsmith & Hull, No. 12-cv-03580-WHO, 2014 WL 1309954,  
7 2014 U.S. Dist. LEXIS 45730 (N.D. Cal. Apr. 1, 2014) (awarding  
8 \$118,978.30 in attorney's fees and costs on recovery of \$1000.00  
9 in FDCPA statutory damages).

10 The court discerns no principled justification to deviate  
11 from these precedents. There exists no requirement of  
12 proportionality between the damages recovered and the attorney's  
13 fees and costs ultimately awarded in FDCPA cases.

14 **C. Initial lodestar calculation**

15 Based on the foregoing, the initial lodestar figure in this  
16 case amounts to \$44,404.20, calculated as follows:

	Hours	Hourly Rate	Fees
Ryan Lee	49.1	\$387	\$19,001.70
Matthew Rosenthal	41.9	\$290	\$12,151.00
Douglas Baek	31.1	\$290	\$9,019.00
Jessica Pascale	8.1	\$290	\$2,349.00
Rory Leisinger	5.5	\$237	\$1,303.50
<b>Total</b>			<b>\$43,824.20</b>

25  
26 Nevertheless, the court finds that a downward adjustment in  
27 the lodestar amount is merited.  
28

1                   **D. Downward adjustment to lodestar**

2           This case is unusual in that some portions of the litigation  
3 were meritorious, while others were entirely unnecessary. If  
4 either party had taken a few simple steps, the matter could have  
5 concluded far sooner. How this distinction between meritorious  
6 and needless activities should affect the attorney's fee award is  
7 a difficult question.

8           Let us first turn to the meritorious portion. Defendant  
9 initially moved to dismiss and/or strike plaintiff's Rosenthal  
10 Act claim on the grounds that (i) as a law firm, it was exempt  
11 from the Act, and (ii) the voicemail it left plaintiff was  
12 protected activity under California's anti-SLAPP statute. See  
13 Davis v. Hollins Law, 942 F. Supp. 2d 1004 (E.D. Cal. 2013). Both  
14 arguments had merit and required examination, particularly the  
15 first, which has been the subject of some disagreement among the  
16 federal courts. See id. at 1008. In order to resolve the matter,  
17 the court engaged in both statutory interpretation and examined  
18 the Act's legislative history before concluding that plaintiff  
19 could in fact proceed against defendant. See id. at 1010-11. In  
20 the court's view, the time spent by plaintiff's counsel in  
21 opposing these motions was properly spent.

22           Defendant later filed a motion for summary judgment, arguing  
23 that, since the subject debt had been incurred on a business  
24 credit card, the collection voicemail was beyond the ambit of the  
25 FDCPA and the Rosenthal Act, which both address the collection of  
26 consumer debts. See Davis v. Hollins Law, 968 F. Supp. 2d 1072  
27 (E.D. Cal. 2013). This was an open question of law, and to  
28 resolve it, the court had to reconcile three Ninth Circuit

1 precedents. See id. at 1076-1079. Again, any hours spent opposing  
2 this motion were appropriate.

3 At this point, the inquiry becomes more complicated.  
4 Plaintiff cross-moved for summary judgment, contending that  
5 defendant had violated the FDCPA and the Rosenthal Act by leaving  
6 him a voicemail which failed to identify defendant as a debt  
7 collector. However, plaintiff failed to adduce sufficient  
8 evidence to demonstrate that the subject debt had been incurred  
9 "primarily for personal, family, or household purposes," rather  
10 than for business expenses. See id. at 1081. As a result, a  
11 triable issue of material fact as to the nature of the debt  
12 remained.

13 In the court's view, this issue, of the alleged debt's  
14 composition, could easily have been resolved earlier. But the  
15 blame for the failure appears to lie with both parties. At trial,  
16 it was evident that plaintiff had simply been unprepared for his  
17 July 5, 2013 deposition. Yet it was plaintiff's deposition  
18 testimony - that his wife used the subject credit card for  
19 business purposes some ten years previously - that gave defendant  
20 ammunition for trial. The submitted billing records show that  
21 plaintiff was prepared by his attorneys for no more than 0.5  
22 hours for his deposition. This was evidently far too little.  
23 Counsel's failure to adequately prepare plaintiff for deposition  
24 is inexcusable.

25 On the other hand, defendant could have easily requested the  
26 billing statements for the subject debt from the original  
27 creditor, American Express, in order to verify whether the debt  
28 was primarily incurred for business purposes. If so, this case

1 could easily have been disposed of at summary judgment. And if  
2 the bills instead showed that the debt was incurred "primarily  
3 for personal, family, or household expenses," then defendant  
4 would have been duty-bound under Fed. R. Civ. P. 11 not to argue  
5 otherwise at trial, and may have settled the case.

6 In other words, both parties failed to take actions that  
7 might have ended this case much earlier. Counsel's failure to  
8 adequately prepare plaintiff for his deposition meant that this  
9 case could not be resolved on the cross-motion for summary  
10 judgment. Consequently, in order to penalize plaintiff's counsel  
11 for its errors, the court will reduce the lodestar amount  
12 available for the cross-motion, as follows.

13 In several instances, the court is unable to determine, from  
14 the submitted time records, how many hours were spent on  
15 plaintiff's cross-motion for summary judgment, as opposed to  
16 plaintiff's opposition to defendant's motion. These mixed-billing  
17 entries total 21.4 hours, all by attorney Lee. The court will  
18 reduce this time by 50%, to 10.7 hours.

19 Plaintiff also devoted 10.0 hours preparing its reply to  
20 defendant's opposition to the cross-motion for summary judgment.  
21 These hours will be stricken.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 The final award amount, then, will be \$35,813.30, broken  
2 down as follows:

	Hours	Hourly Rate	Fees
Ryan Lee	28.4	\$387	\$10,990.80
Matthew Rosenthal	41.9	\$290	\$12,151.00
Douglas Baek	31.1	\$290	\$9,019.00
Jessica Pascale	8.1	\$290	\$2,349.00
Rory Leisinger	5.5	\$237	\$1,303.50
<b>Total</b>			<b>\$35,813.30</b>

11  
12 **III. CONCLUSION**

13 In light of the foregoing, the court hereby orders as  
14 follows:


15 [1] Plaintiff is AWARDED \$250.00 in statutory damages under  
16 the FDCPA.

17  
18 [2] Plaintiff's motion for costs is DENIED without  
19 prejudice.

20  
21 [3] Plaintiff is AWARDED \$35,813.30 in attorney's fees under  
22 the FDCPA and the Rosenthal Act.

23 IT IS SO ORDERED.

24 DATED: June 10, 2014.

25  
26   
27 LAWRENCE K. KARLTON  
28 SENIOR JUDGE  
UNITED STATES DISTRICT COURT