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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABDON SANTIAGO,
Plaintiff,

v.

CACH LLC, et al.,
Defendants.

Case No. 13-cv-02234-JST

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
ATTORNEY’S FEES AND COSTS**

Re: ECF No. 10

In this action for violations of the Federal Debt Collection Practices Act (“FDCPA”) and of the Rosenthal Fair Debt Collection Practices Act (“RFCPA”), Plaintiff Santiago moves for an award of attorney’s fees and costs following his acceptance of a Rule 68 offer of judgment.

Defendants oppose the motion, arguing that some of the hours claimed by Santiago’s attorney are not recoverable and that the requested hourly fee is excessive. For the reasons set forth below, the motion is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

Santiago filed this action on May 16, 2013, against Susan Blush d/b/a Kentwood Law Group and CACH, LLC (“Defendants”) for violations of the FDCPA and RFDCPA. ECF No. 1. Specifically, Santiago alleges that Defendants violated these statutes because Defendants improperly sued him in the wrong judicial district to collect a debt (“the collection lawsuit”) and used false information to collect that debt.

About five weeks after Santiago filed this action, Santiago accepted Defendants’ Rule 68 offer of judgment, ECF No. 8, and the Court entered judgment in favor of Santiago and against Defendants. ECF No. 9. The offer of judgment provides that Santiago “shall” be awarded attorney’s fees and costs under the FDCPA and RFDCPA’s fee-shifting provisions.

1 Santiago now moves for an award of \$9,765 in attorney’s fees and \$706.31 in costs for a
2 total of \$10,471.31. ECF No. 10 at 1-2. The requested attorney’s fees award is the product of
3 21.7 hours times an hourly rate of \$450. Berg Decl., Ex. 1, ECF No. 11. Santiago’s attorney,
4 Irving L. Berg, filed a declaration in support of the motion, which itemizes the hours he expended
5 in connection with Santiago’s claims.

6 Defendants oppose the motion on the ground that the requested fees and costs are
7 excessive given that this case involved nothing more than the filing of a “simple complaint,” the
8 transmission of a letter, and the acceptance of a Rule 68 offer. ECF No. 14. Defendants also
9 argue that many of the requested fees must be denied on the ground that they are not compensable
10 or that Berg’s billing records are inaccurate. Finally, Defendants argues that Berg’s requested
11 billing rate of \$450 is higher than the market rate for comparable legal service in this legal market,
12 and his time should therefore be compensated at a lower rate. Defendants request that the Court
13 reduce the requested award to no more than \$1,530 in fees and \$481.31 in costs.

14 In his reply, Santiago states that the hours Berg expended in connection with this action
15 total 23.27 hours and not 21.7 hours, as he previously stated. ECF No. 16 at 1. Santiago also
16 notes that he “voluntarily” has reduced his hourly rate by 10% to \$425 “to account for any
17 duplication or non-compensable time inadvertently included in” Berg’s declaration. Id.

18 **II. LEGAL STANDARD**

19 Although litigants in the United States generally pay their own attorneys’ fees regardless of
20 the outcome of the proceedings, Congress has provided a statutory right to recover for such fees
21 under the FDCPA. Camacho v. Bridgeport Financial, Inc., 523 F.3d 973, 978 (9th Cir. 2008).
22 The prevailing party in actions brought under the FDCPA may recover reasonable attorney’s fees
23 and costs from the opposing side. Id.; see also 15 U.S.C. § 1692k(a)(3). “The FDCPA’s statutory
24 language makes an award of fees mandatory.” Camacho, 523 F.3d at 978 (citation omitted). The
25 purpose of this fee-shifting provision is to encourage private enforcement of the FDCPA. Id.

26 To calculate an award of attorneys’ fees, district courts use the lodestar method. The
27 lodestar is calculated “by multiplying the number of hours the prevailing party reasonably
28 expended on the litigation by a reasonable hourly rate.” Id. at 978. Although the lodestar figure is

1 generally presumed to be a reasonable fee award, a district court “may, if circumstances warrant,
2 adjust the lodestar to account for other factors which are not subsumed within it.” Id. District
3 courts have “a great deal of discretion in determining the reasonableness of the fee.” Id.

4 The party seeking an award of fees bears the burden of submitting evidence supporting the
5 hours worked and the rates claimed. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). “Where the
6 documentation of hours is inadequate, the district court may reduce the awards accordingly.” Id.
7 To determine what is a reasonable lodestar amount, the court may “exclude from a fee request
8 hours that are excessive, redundant, or otherwise unnecessary.” Id. at 434. Additionally, the court
9 must determine a reasonable hourly rate by considering “the experience, skill, and reputation of
10 the attorney requesting fees.” Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210 (9th Cir.
11 1986).

12 **III. DISCUSSION**

13 **A. The Hours Requested Are Subject to Reductions**

14 The party requesting attorney’s fees bears the burden of “submitting detailed time records
15 justifying the hours claimed to have been expended.” Chalmers, 796 F.2d at 1210. The court may
16 reduce these hours “where documentation of the hours is inadequate; if the case was overstaffed
17 and hours are duplicated; [or] if the hours expended are deemed excessive or otherwise
18 unnecessary.” Id.

19 In his motion, Santiago claims to have expended a total of 21.7 hours working on this
20 action. See Berg Decl., Ex. 1, ECF No. 11. In his reply, however, Santiago states that Berg
21 expended a total of 23.27 hours, which is 1.57 hours more than the 21.7 hours claimed in Berg’s
22 declaration. See ECF No. 16 at 1. Because Santiago has not explained how or when these
23 additional 1.57 hours were expended, the Court will not compensate Santiago for these hours.
24 Accordingly, the starting point for this analysis is 21.7 hours (“the requested hours”).

25 **1. Hours Expended on the Collection Lawsuit**

26 Defendants argue that the requested hours should be reduced by 9.1 hours, which is the
27 time that Berg allegedly spent defending the collection lawsuit. Defendants contend that, under
28 the terms of the Rule 68 offer of judgment, the award of fees and costs in this action is limited to

1 those that can be recovered under the FDCPA and RFDCPA’s fee-shifting provisions, which limit
2 the scope of recoverable fees to those incurred in connection with an action to enforce liability
3 under those statutes. Defendants argue that any hours expended in connection with collection
4 activities that gave rise to an enforcement action fall outside of this scope.

5 Santiago responds that the fees at issue are recoverable under the FDCPA’s fee-shifting
6 provision because “[a]n attorney’s wrongful conduct in state court is bound by provisions of the
7 FDCPA.” ECF No. 16 at 4. Santiago cites McCullough v. Johnson, Rodenburg & Lauinger, LLC,
8 637 F.3d 939 (9th Cir. 2011) in support of this proposition.

9 The Court concludes that attorney’s fees and costs expended in connection with activities
10 that fall outside of the scope of an enforcement action under the FDCPA or RFDCPA are not
11 recoverable under the fee-shifting provisions of those statutes. The Ninth Circuit has not
12 addressed this question. Nevertheless, the text of these fee-shifting provisions makes clear that the
13 scope of the fees and costs that a prevailing party may recover is limited to those expended in
14 connection with an action to enforce the FDCPA or the RFDCPA. The FDCPA’s fee-shifting
15 statute provides that:

16 [A]ny debt collector who fails to comply with any provision of this
17 subchapter with respect to any person is liable to such person in an
18 amount equal to the sum of, in the case of any successful action to
enforce the foregoing liability, the costs of the action, together with
a reasonable attorney’s fee as determined by the court.

19 15 U.S.C. § 1692k(a)(3) (emphasis added).

20 Likewise, the RFDCPA’s fee-shifting statute provides that:

21 In the case of any action to enforce any liability under this title, the
22 prevailing party shall be entitled to costs of the action. Reasonable
23 attorney's fees, which shall be based on time necessarily expended to
enforce the liability, shall be awarded to a prevailing debtor;
24 reasonable attorney's fees may be awarded to a prevailing creditor
upon a finding by the court that the debtor's prosecution or defense
of the action was not in good faith.

25 Cal. Civ. Code § 1788.30(c) (emphasis added).

26 Both of these fee-shifting provisions provide for an award of fees and costs to the
27 prevailing party if such fees and costs were incurred in connection with an action to enforce
28 liability under the FDCPA and RFDCPA. Here, the fees at issue were expended by Santiago in

1 connection with the collection lawsuit that Defendants filed in state court to collect a debt. That
2 collection lawsuit was not an enforcement action under the FDCPA or the RFDCPA. The
3 collection lawsuit’s only connection to this case is that the filing of that lawsuit gave rise to
4 purported violations of the FDCPA and RFDCPA at issue in this enforcement action. Because the
5 fees at issue were not expended in connection with this enforcement action, such fees are not
6 recoverable under the FDCPA and RFDCPA’s fee-shifting provisions.

7 Santiago cites to McCullough v. Johnson, Rodenburg & Lauinger, LLC, 637 F.3d 939 (9th
8 Cir. 2011) for the proposition that the fees at issue are recoverable on the ground that “[a]n
9 attorney’s wrongful conduct in state court is bound by provisions of the FDCPA.” ECF No. 16 at
10 4. This argument appears to presuppose that a prevailing party in an enforcement action may
11 recover fees and costs expended as a result of wrongful conduct that gave rise to that action.
12 Neither McCullough nor the text of the FDCPA support this premise. McCullough holds merely
13 that litigation activities may form the basis of an FDCPA action; it does not speak to the
14 recoverability of fees expended in connection with conduct that gave rise to an enforcement
15 action. See id. at 950-52. Moreover, as discussed above, the text of the FDCPA’s fee-shifting
16 provision contemplates awards of fees and costs only with respect to an action to enforce liability,
17 and not with respect to the acts or omissions that gave rise to an enforcement action.

18 Accordingly, any hours spent on the collection lawsuit must be deducted from the
19 requested hours. The Court’s independent review of Berg’s billing records reveals that the hours
20 Berg spent on the collection lawsuit total 8.33 hours, and not 9.1 hours as Defendants claim.¹

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23 ¹ The entries pertaining to the collection lawsuit include ones for: December 6, 2010 (.2 hours,
24 “Prepare letter to adverse re attorney representation); October 8, 2012 (.4 hours, “ Prepare
25 response to state complaint - Bill of Particular”); October 8, 2012 (.5 hours, “Review response to
26 state complaint”); October 9, 2012 (1.5 hours, “Review to file answer”); February 15, 2013 (1
27 hour, “Review file for response to case management; prepare first draft CMS”); February 1, 2013
28 (.4 hours, “Prepare response to state request for production”); February 18, 2013 (1.5 hours,
“Respond to state discovery”); February 19, 2013 (2 hours, “Receive and review defendants’
discovery response”); February 20, 2013 (.43 hours, “Prepare CMS review and revise” and
“Review and revise RFP response”); and February 22, 2013 (.4 hours, “Review and revise CMS”).
Berg Decl., Ex. 1.

1 **2. Hours Expended on Clerical Tasks**

2 Defendants argue that the requested hours should be further reduced by 1.5 hours, which is
3 the time Berg expended on clerical tasks.

4 Santiago responds that the hours at issue are recoverable because “[d]elegation of tasks to
5 clerical staff in Mr. Berg’s one attorney firm creates unnecessary bureaucracy which undermines
6 the efficiency of Mr. Berg’s practice thereby increasing the time Mr. Berg must spend reviewing
7 these matters in delegating these important matters to non-professionals. This activity is necessary
8 and reasonable for any attorney participating in the litigation in order to be apprised of the status
9 of the progress of the case.” ECF No. 16 at 2-3.

10 The Court concludes that the hours at issue must be deducted from requested hours,
11 because time billed for administrative tasks is not compensable. See Nadarajah v. Holder, 569
12 F.3d 906, 921 (9th Cir. 2009) (holding that tasks “clerical in nature” should be “subsumed in firm
13 overhead rather than billed” and that “[w]hen clerical tasks are billed at hourly rates, the court
14 should reduce the hours requested to account for the billing errors”). Accordingly, the requested
15 hours are further reduced by 1.5 hours.²

16 **3. Duplicative or Excessive Hours**

17 Defendants argue that the requested hours should be further reduced (1) by 1.1 hours on
18 the ground that these hours are duplicative of other time entries, (2) by 4 hours on the ground that
19 the preparation of the complaint filed in this action should not have taken more than two hours to
20 draft, and (3) by 1 hour on the ground that the time entries for the drafting of a letter that Berg sent
21 on May 20 and for a phone call to Defendant Blush on June 17 are inaccurate.

22 Santiago does not respond to the argument that his hours should be reduced by 1.1 hours
23 on the ground that these hours are duplicative or that his hours should be further reduced by 1 hour
24 because the entries corresponding to the May 20 letter or to the June 17 phone call are inaccurate.

25 _____
26 ² The clerical entries at issue include those for: May 19, 2013 (.5 hours, “Prepare service
27 documents to Cach; research registered agent”); May 20, 2013 (.3 hours, “Review and revise filed
28 documents for calendar and service”); June 4, 2013 (.45, “Review file for service of documents re
Blush” and “Prepare service letter; telephone call to process server”); and June 13, 2013 (.25
hours, “Review and revise POS from process server”). Berg Decl., Ex. 1.

1 With respect to the argument that his request hours for the time he spent on the complaint should
2 be reduced, Santiago's only statement is that he did not bill 6.7 hours in connection with the
3 complaint as Defendants claim, but rather, he claims to have billed only 2.5 hours. ECF No. 16
4 at 4.

5 The Court concludes that a reduction of 1.1 hours is appropriate, as the hours expended on
6 April 1 (.4 hours), June 18 (.2 hours), and June 19 (.5 hours) appear to be duplicative of other time
7 entries. See Berg Decl., Ex. 1 at 2-4; ECF No. 14 at 7. Notably, Berg has offered no explanation
8 to establish that these entries are not duplicative.

9 The Court also concludes that a reduction of 1 hour is appropriate because neither Berg's
10 declaration nor Santiago's reply establishes that the hours billed in connection with the May 20
11 letter (.4 hours) and June 17 phone call (.6 hours) are not inaccurate.

12 Finally, the Court also concludes that a further reduction of 2 hours is appropriate. Berg
13 billed a total of 5.7 hours in connection with the drafting of the complaint in this action, but the
14 Court is persuaded that any work on the complaint, which is four pages long and appears to be
15 based on a template, should not have taken longer than 3.7 hours, particularly given Berg's
16 experience in this area of the law.³

17 In sum, the requested hours are further reduced by 4.1 hours.

18 **4. Calculation of Total Hours that Santiago May Recover**

19 Based on the deductions described above, the Court reduces the requested 21.7 hours by
20 13.93 hours for a total of 7.77 hours.

21 **B. The Requested Hourly Rate is Excessive**

22 In determining a reasonable hourly rate, courts must look to (1) the relevant community
23 and (2) the prevailing market rate in that community "for similar work performed by attorneys of
24 comparable skill, experience and reputation." Barjon v. Dalton, 132 F.3d 496, 502 (9th Cir.
25 1997). The relevant community is "the forum in which the district court sits," which in this case is
26

27 ³ The hours spent on the complaint are as follows: October 9, 2012 (1.5 hours); December 26,
28 2013 (3.3 hours); February 16, 2013 (.1 hours); and April 1, 2013 (.8 hours). See Berg Decl., Ex
1.

1 the Northern District of California. See Camacho, 523 F.3d at 979. The fee applicant bears the
2 burden to produce evidence that establishes the prevailing market rate. Id. at 980. Such evidence
3 may include attorney declarations and rate determinations in other cases. Id. (citations omitted).

4 Santiago seeks an hourly rate of \$450 on the ground that another judge in this district
5 approved an hourly rate of \$425 in 2010 in another FDCPA case he litigated. See Berg Decl. at 2
6 (citing Hunt v. Imperial Merchant Services, Case No. 05-cv-4993, 2010 WL 3958726, *6 (N.D.
7 Cal., Oct. 7, 2010)). Santiago argues that a rate of \$450 is reasonable because it “reflects only a
8 modest cost-of-living increase” from the hourly rate approved in Hunt. In his reply, Santiago
9 voluntarily agreed to reduce his requested rate to \$425. ECF No. 16 at 3. Santiago argues that
10 this new rate is justified because “[t]his was not a simple case” given “Defendants’ renunciation of
11 settlement offers.” Id. at 3.

12 Defendants argue that the requested fee is excessive because Hunt and other FDCPA cases
13 in which a court approved an hourly rate of more than \$400 involved complex claims that were
14 litigated for several years. Defendants contend that courts in this district cap hourly rates in
15 FDCPA “garden variety, non-complex case such as this one” at \$250 per hour. ECF No. 14 at 8-
16 9. Additionally, Defendants submitted a declaration from an attorney that routinely litigates
17 FDCPA cases in this district, which states that market rates for cases of similar complexity to this
18 one range from \$250 to \$300 per hour. See Coleman Decl. ¶ 12, ECF No. 14, Ex. 1.

19 The Court concludes that an hourly rate of \$300 is appropriate. Judges in this district
20 routinely consider the complexity of a case in determining hourly rates. See, e.g., Lea v. Cypress
21 Collections, Case No. 06-cv-4288 JF, 2007 WL 988184, at *2 (N.D. Cal. Apr. 2, 2007) (approving
22 hourly rate of \$250.00 because no dispositive motions were filed and “the [FDCPA] action was
23 simple and did not require sophisticated knowledge of the FDCPA”); Abad v. Williams, Cohen &
24 Gray, Case No. 06-cv-2550 SBA, 2007 WL 1839914, at *1 (N.D. Cal. Jun. 26, 2007) (approving
25 hourly rate of \$250.00 because the FDCPA action involved no motion practice and the case settled
26 within five months of the date the complaint was filed). Here, like in Abad, the case involved no
27 motion practice and the action settled soon after the complaint was filed. Because the complexity
28 of Santiago’s claims and the procedural posture of this case are substantially similar to those in

1 Abad, the Court concludes that an hourly rate of \$300 is proper. The court in Abad approved an
2 hourly rate of \$250 in 2007. The Court reasons that an increase of \$50 per hour from the rate
3 awarded in Abad is warranted to adjust for inflation.

4 The cases that Santiago cites for the proposition that a fee of \$425 is appropriate are
5 inapposite, as those cases involved complex claims that were litigated over the course of several
6 years. See Hunt v. Imperial Merch. Servs., Case No. 05-cv-04993DMR, 2010 WL 3958726, at *6
7 (N.D. Cal. Oct. 7, 2010) (involving class action claims litigated for more than four years); see also
8 Santiago v. Equable Ascent, Case No. 11-cv-3158, 2013 WL 3498079, at *2 (N.D. Cal. July 12,
9 2013) (involving class action claims litigated for two years).

10 **C. The Requested Costs Must Be Reduced**

11 Plaintiff requests \$706.31 in costs.

12 Defendants request that the Court reduce the requested costs by \$225, which is the amount
13 that Santiago spent on filing an answer in the collection lawsuit.

14 As discussed above, fees and costs expended on activities that fall outside of the scope of
15 an enforcement action are not recoverable. Because the \$225 at issue were spent in connection
16 with the collection lawsuit and not in connection with this enforcement action, the requested costs
17 are reduced by \$225, for a total of \$481.31.

18 **IV. CONCLUSION**

19 Santiago may recover \$2,331 in attorney's fees, which is the product of 7.77 hours times
20 an hourly rate of \$300. Santiago also may recover \$481.31 in costs. The total amount of
21 Santiago's award is \$2,812.31.

22 **IT IS SO ORDERED.**

23 Dated: November 3, 2013

24 
25 JON S. TIGAR
26 United States District Judge
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28