

1 **I. BACKGROUND**

2 On or about April 15 and 16, 2006, Plaintiff incurred financial obligations by writing two
3 checks to Harrah’s Casino in Reno, Nevada. The checks subsequently were returned for
4 insufficient funds. Sometime thereafter, the debt was sent to Defendants for collection.
5 Defendants mailed a series of letters to Plaintiff, seeking to recover the debt, interest, and treble
6 damages. Defendants threatened to inform credit reporting agencies of Plaintiff’s failure to pay
7 the debt and to file a lawsuit if the amounts demanded were not paid.

8 On February 19, 2008, Plaintiff filed the instant action, claiming that Defendants violated
9 the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692 *et seq.* On June 2, 2008,
10 this Court denied Defendants’ motion to dismiss, and Defendants filed their answer on June 9,
11 2008. On October 1, 2008, then-Magistrate Judge Seeborg granted Plaintiff’s motion to compel
12 written discovery. On July 31, 2009, the parties filed cross-motions for summary judgment. On
13 September 30, 2009, the Court granted Plaintiff’s motion for summary judgment, denied
14 Defendants’ motion, and entered judgment in Plaintiff’s favor. Defendants have appealed that
15 decision. On December 18, 2009, the Court granted in part Plaintiff’s motion to alter or amend
16 the judgment, awarding \$1,000 in statutory damages pursuant to 15 U.S.C. § 1692k(a)(3) and
17 reasonable attorneys’ fees and costs according to proof. On March 24, 2010, the Court denied
18 Defendants’ motion for reconsideration. Plaintiff, by and through her attorney Fred Schwinn
19 (“Schwinn”), now moves for attorneys’ fees and costs, seeking to recover \$36,229.81.²

20 **II. LEGAL STANDARD**

21 The FDCPA provides that a plaintiff may recover “the costs of the action, together with a
22 reasonable attorney’s fee as determined by the court.” 15 U.S.C. § 1692k(a)(3); *see Johnson v.*
23 *Credit Int’l*, No. 05-16696, 2007 WL 3332813 (9th Cir. Oct. 17, 2007) (awarding attorneys’ fees
24 under the FDCPA). “The starting point for determining a reasonable fee is the ‘lodestar’ figure,
25 which is the number of hours reasonably expended multiplied by a reasonable hourly rate.”

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² This figure includes Schwinn’s time spent replying the Defendants’ opposition to the instant motion.

1 *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992). “Although in most cases, the lodestar
 2 figure is presumptively a reasonable fee award, the district court may, if circumstances warrant,
 3 adjust the lodestar to account for other factors which are not subsumed within it.” *Ferland v.*
 4 *Conrad Credit Corp.*, 244 F.3d 1145, 1149 fn 4 (9th Cir. 2001). The court must articulate “the
 5 reasons for its findings regarding the propriety of the hours claimed or for any adjustment it
 6 makes either to the prevailing party’s claimed hours or to the lodestar.” *Id.* at 1148 (quoting
 7 *Gates*, 987 F.2d at 1398). In some circumstances, it is appropriate for the court to make “across-
 8 the-board percentage cuts either in the number of hours claimed or in the final lodestar figure.”
 9 *Id.* at 1149-51. However, such cuts are controversial, *Gates*, 987 F.2d at 1399, and do not
 10 discharge the court from “its responsibility to set forth a ‘concise but clear’ explanation of its
 11 reasons for choosing a given percentage reduction nor from its duty to independently review the
 12 applicant’s fee request,” *Ferland*, 244 F.3d at 1149 (citation omitted).

13 **III. DISCUSSION**

14 Plaintiff seeks \$32,692.50 in attorneys’ fees and \$2,854.81 in costs, plus an additional
 15 \$682.50 in attorney’s fees in responding to Defendants’ opposition to the instant motion.³
 16 Schwinn claims that he spent 68.1 hours on behalf of Plaintiff and that his associates Raeon R.
 17 Roulston (“Roulston”) and Jovanna R. Longo (“Longo”) – both of whom are Class of 2007 law
 18 school graduates – spent 15.4 and 37.4 hours, respectively. He asserts that the prevailing market
 19 rate for the time and quality for his services is \$325 per hour and for his associates’ services is
 20 \$200 per hour. In total, Plaintiff requests the following attorneys’ fees based on the lodestar
 21 formula:

| Name | Position | Hours | Rate | Total |
|----------|----------|-------|----------|-------------|
| Schwinn | Attorney | 68.1 | \$325.00 | \$22,132.50 |
| Roulston | Attorney | 15.4 | \$200.00 | \$3,080.00 |
| Longo | Attorney | 37.4 | \$200.00 | \$7,748.00 |

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 27 ³ Schwinn claims to have spent an additional 2.1 hours, at \$325 per hour, responding to
 28 Defendant’s opposition to the instant motion. (Supplemental Schwinn Decl. in Support of Mot. ¶
 2.)

1 Schwinn also contends that his firm, the Consumer Law Center, Inc. (“CLC”), incurred costs and
2 expenses of \$2,854.81. Schwinn has submitted detailed time records of the fees and expenses,
3 breaking down the discrete tasks and the time associated with each task. (See Schwinn Decl. in
4 Support of Mot., Ex. A.) Defendants oppose the motion, arguing that Plaintiff incurred no actual
5 fees or, in the alternative, that the amount of fees is unreasonable.

6 **A. Plaintiff’s actual fees**

7 Defendants argue that Plaintiff cannot recover attorneys’ fees and costs in excess of the
8 amount actually incurred.⁴ Defendants contend that there is no evidence that Plaintiff incurred
9 any legal fees. While the litigation on the merits was pending, Defendants made written and oral
10 requests for Plaintiff to produce her retainer agreement, but she refused. However, Plaintiff
11 disclosed at her deposition that her counsel was acting on a contingency basis. (See Def.’s Opp’n
12 at 4:2-6 (Q: . . . And what were the terms of the agreement? . . . [Y]ou receive money, and then
13 he gets part of that money? A: Yes.”).⁵) Defendants do not claim to have requested a more
14 detailed accounting of Plaintiff’s attorneys’ fees or hours while the litigation on the merits was
15 pending. Moreover, it is not entirely clear whether that information would have been relevant at
16 the time. See *Abels v. JBC Legal Group, P.C.*, NO. C04 02345 JW (RS), 233 F.R.D. 645, 647
17 (N.D. Cal. 2006) (denying a party’s motion to compel the production of attorneys’ fee records
18 and a retainer agreement because the case had not progressed to the point at which attorneys’ fees
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20 ⁴ 15 U.S.C. § 1692k(a)(3) provides that a successful plaintiff may recover “the costs of
21 the action, together with a reasonable attorney’s fee as determined by the court”. The statute
22 discusses only reasonable attorney’s fees rather than incurred attorney’s fees.

23 ⁵ “[W]hen the statute permits an award of ‘reasonable’ attorneys’ fees, it makes no
24 difference whether a plaintiff has a contingency fee agreement with his or her attorney, and
25 courts have devised various formulas for determining what is a ‘reasonable fee.’” *Gotro v. R & B*
26 *Realty Group*, 69 F.3d 1485, 1489-1490 (9th Cir. 1995) (O’Scannlain, J., dissenting) (noting a
27 distinction between 28 U.S.C. § 1447(c), providing for “just costs and any actual expenses,
including attorney fees, incurred as a result of the removal”, and 15 U.S.C. § 1692k(a)(3), which
provides for “the costs of the action, together with a reasonable attorney’s fee as determined by
the court”) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433-37 (1983)).

1 were in issue). Though Defendants argue that Plaintiff’s failure to produce evidence of her legal
2 fees interfered unfairly with their attempts to settle the case, Defendants’ requests for the retainer
3 agreement did not occur in the context of a settlement conference or similar negotiation. In
4 connection with the instant motion, Plaintiff’s counsel has produced detailed records of their fees
5 and costs.

6 **C. Recovery was more than nominal**

7 Defendants contend that no attorneys’ fees should be awarded because Plaintiff’s recover
8 was nominal. Defendants rely upon *Farrar v. Hobby*, 506 U.S. 103 (1992) (concluding that
9 “[w]hen a plaintiff recovers only nominal damages because of his failure to prove an essential
10 element of his claim for monetary relief, [Citation], the only reasonable fee is usually no fee at
11 all.”). However, Plaintiff’s recovery was more than nominal, as she recovered \$1,000 in
12 statutory damages.

13 **D. Reasonableness of counsel’s hourly rate**

14 “[T]he established standard when determining a reasonable hourly rate is the rate
15 prevailing in the community for similar work performed by attorneys of comparable skill,
16 experience and reputation.” *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 971 (9th Cir.
17 2008). “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the
18 community and rate determinations in other cases . . . are satisfactory evidence of the prevailing
19 market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.3d 403, 407 (9th Cir.
20 1990). Plaintiff’s counsel has provided the Court with his own declaration as well as the
21 declaration of Ronald Wilcox, an attorney practicing in the San Francisco Bay Area, stating that
22 the prevailing rate in this district ranges from \$280 to \$465 per hour, “depending on the skill,
23 experience, and reputation of the attorney”. (Wilcox Decl. ¶ 9.)

24 Schwinn has been awarded \$325 per hour on at least one prior occasion, *Owens v.*
25 *Brachfeld*, C07-04400-JF-PVT (N.D. Cal. Dec. 5, 2008), and commonly has been awarded \$300
26 per hour, *see, e.g., Chan v. North American Collectors, Inc.*, C06-0016-JL (N.D. Cal January 26,
27 2007), *Wallat v. Roush*, C05-3518-JF-HRL (September 21, 2006), and *Maundu v. The Barnes*
28 *Law Firm*, C05-1939-JF-PVT (N.D. Cal. May 23, 2006). Roulston has been awarded \$200 per

1 hour. *See AFS v. Gonzales*, No. 1-08-CV-104393 (Cal. Sup. Ct. Nov. 25, 2008) and *LVNV*
2 *Funding, LLC v. Taylor*, No. 1-08-CV-119003 (Cal. Sup. Ct. Sept. 8, 2009). The Court
3 concludes that these are fair and reasonable rates for calculating the fees for Plaintiff's counsel.

4 **E. Reasonableness of Hours Expended by Plaintiff's Counsel**

5 "Counsel for the prevailing party should exclude from a fee request hours that are
6 excessive, redundant, or otherwise unnecessary, just as a lawyer in a private practice is ethically
7 obligated to exclude hours from his fee submission." *Hensley v. Eckerhart*, 461 U.S. 424, 433-
8 434 (1983) (citations omitted). The party seeking the fee bears the burden of documenting the
9 appropriate hours expended in the litigation and must submit evidence in support of those hours
10 worked. *Gates*, 987 F.2d at 1398-99. Including the time associated with the instant motion,
11 Plaintiff's counsel claim to have expended 123 hours litigating this action, resulting in
12 \$33,375.00 in attorneys' fees. The Court concludes that this amount is excessive.

13 Schwinn billed 6.6 hours in discrete six-minute increments, including a six-minute charge
14 for reviewing a notice by Defendants' counsel of an appearance by telephone, often with multiple
15 entries of .10 hours in a single day. Consolidating some tasks would have been more reasonable.
16 Schwinn personally spent five hours drafting the complaint. His firm expended eleven hours
17 drafting opposition to Defendants' motion to dismiss, 6.5 hours drafting a motion to compel
18 discovery, 12.1 hours drafting a mediation statement, and 12.8 hours drafting the motion for
19 summary judgment. The memorandum in connection with Plaintiff's motion for summary
20 judgment contains several sections that are substantially identical to those in the memorandum
21 filed in connection with a similar motions in *Bretana v. International Collection Corp., et al.*,
22 5:07-cv-5934-JF (HRL) (docket no. 75),⁶ *Maundu v. The Barnes Law Firm, et al*, Case No.

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24 ⁶ The following sections of Plaintiff's motion for summary judgment ("MSJ") in *Bretana*
25 contain language nearly identical to that in the instant case: "Standard of Review" (MSJ at 6-7),
26 "The 'Least Sophisticated Consumer' Standard Is Used to Analyze Violations of the FDCPA"
27 (MSJ at 8-9), "Under the Strict Liability Standard of the FDCPA, Plaintiff has Pled Numerous
28 Violations of the Act, as Seen from the Perspective of 'Least Sophisticated Consumer'" (MSJ at
9-10), "Defendant, Charles D. Hendrickson, Is a Debt Collector as Defined by 12 U.S.C. §
1692e(6) and Cal. Civil Code §1788.2(c) (MSJ at 10-13) (in the instant case, Schwinn discusses
only 12 U.S.C. § 1692e(6), but the analysis is nearly identical), "Actions Which Cannot Legally

1 5:05-cv-01939-JF (PVT) (docket no. 22),⁷ and *Owens v. Brachfeld et al.*, Case No.
2 5:07-cv-04400-JF (PVT) (docket no. 17).⁸ In noting these similarities, the Court in no way
3 means to criticize Plaintiff’s counsel for choosing not to reinvent the wheel every time a fair debt
4 collection action is brought. Nonetheless, the similarities do suggest that the number of hours
5 claimed is at least somewhat excessive in light of the CLC’s experience with similar cases.
6 Accordingly, the Court will award fees for two-thirds of the hours claimed by each of Plaintiff’s
7 attorneys, plus the fees reasonably incurred by Schwinn in connection with the instant motion.
8 Applying the loadstar formula, the Plaintiff is entitled to \$22,656.17 in attorneys’ fees. Plaintiff
9 also is entitled to \$2,854.81 in costs.

10 **IV. ORDER**

11 Good cause therefor appearing, IT IS HEREBY ORDERED that the motion for attorneys’
12 fees and costs is GRANTED IN PART as set forth above.

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16 Be Taken – 15 U.S.C. § 1692e(5) (MSJ at 15-16), “False Representations – 15 U.S.C. §§ 1692e
17 and 1692e(10)” (MSJ at 16), “Unauthorized Charges and Fees – 15 U.S.C. § 1692f(1)” (MSJ at
18 16-17), “Defendants Attempted or Threatened to Collect Interest in Addition to a Check Fee
19 from Plaintiff, in Violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(5), 1692e(10), 1692f(1)”
20 (MSJ at 17-19), “Defendants Attempted or Threatened to Collect a Debt Based on a Negotiable
21 Instrument Without Possession of the Instrument, in Violation of 15 U.S.C. §§ 1692e,
22 1692e(2)(A), 1692(5), 1692e(10), 1692f(1)” (MSJ at 19-21), “Defendants Attempted to Collect
23 or Threatened to Collect a Gambling Debt in the State of California, in Violation of 15 U.S.C. §§
24 1692e, 1692e(2)(A), 1692e(5), 1692e(10), and 1692f(1)” (MSJ 21-23), and “Plaintiff Has a
25 Statutory Right to Attorney’s Fees and Costs” (MSJ at 29).

26 ⁷ The following sections of Plaintiff’s motion for summary judgment (“MSJ”) in *Maundu*
27 contain language nearly identical to that in the instant case: “Standard of Review” (MSJ at 6-7),
28 “Least Sophisticated Consumer” Standard (MSJ at 9-10), “This Court Should Award Plaintiff the
Maximum Statutory Damage Amount of \$1,000 Under FDCPA” (MSJ at 14) and “Statutory
Right to Attorney’s Fees and Costs” (MSJ at 14-15).

⁸ The following sections of Plaintiff’s motion for summary judgment (“MSJ”) in *Owens*
contain language nearly identical to that in the instant case: “Standard of Review” (MSJ at 3-4),
“Least Sophisticated Consumer” Standard (MSJ at 4-6), “This Court Should Award Plaintiff the
Maximum Statutory Damage Amount of \$1,000 Under FDCPA” (MSJ at 12-13), “Statutory
Right to Attorney’s Fees and Costs” (MSJ at 15).

1 DATED: 6/8/2010

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JEREMY FOGEL
United States District Judge

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