United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ALEX LOPEZ, et al.,

Plaintiffs,

v.

CIT BANK, N.A., et al.,

Defendants.

Case No. 15-cv-00759-BLF

ORDER GRANTING IN PART AS MODIFIED AND DENYING IN PART PLAINTIFFS' MOTION FOR FEES AND COSTS

[Re: ECF No. 71]

This matter arises from a years-long credit reporting dispute between Plaintiffs, Alex and Maria Lopez, and Defendants credit lender OneWest Bank, N.A. ("OneWest," now known as CIT Bank, N.A.), loan servicer Ocwen Loan Servicing LLC ("Ocwen"), and credit reporting agency Equifax Information Systems LLC ("Equifax"). At the heart of the dispute is Plaintiffs' allegation that Defendants furnished and reported false credit information about Plaintiffs' credit accounts in violation of the Fair Credit Report Act ("FCRA"), 15 U.S.C. § 1681, *et seq.*, and California's Consumer Credit Reporting Agencies Act ("CCRAA"), Cal. Civ. Code § 1785.1, *et seq.* Equifax settled with Plaintiffs in January 2016. Thereafter, the remaining two Defendants, OneWest and Ocwen presented a settlement offer pursuant to Federal Rule of Civil Procedure 68, which Plaintiffs accepted. The only matter left unresolved is the issue of attorney's fees and costs for Plaintiffs' counsel, Mr. Balam O. Letona.

Plaintiffs request an Order from this Court awarding reasonable fees and costs. For the

following reasons, the Court GRANTS AS MODIFIED Plaintiffs' request for reasonable attorney's fees, and DENIES Plaintiffs' request for costs.[1]

I. BACKGROUND

In May 2004, Plaintiffs took out a $100,000 mortgage loan from OneWest on their property. Declaration of Alex Lopez in Support of Motion for Attorney Fees and Costs ("Lopez Decl.," ECF No. 77), Exh. 1. They experienced financial difficulties and eventually defaulted on that loan in 2008. *Id.* ¶ 3. In March 2009, Plaintiffs filed a petition for Chapter 13 bankruptcy in the Bankruptcy Court for the Northern District of California. *Id.* In accordance with the court-ordered bankruptcy plan, Plaintiffs made periodic payments to a specified trustee until they fulfilled their total obligation. *Id.* Upon completion of their plan payments, the bankruptcy court granted a Chapter 13 discharge on June 13, 2012. Declaration of Michael K. Mehr in Support of Motion for Attorney Fees and Costs ("Mehr Decl.," ECF No. 78), Exhs. 2, 6. The same day, the bankruptcy court also entered an order discharging a junior mortgage debt and a junior mortgage lien owned and serviced by OneWest. *Id.* The bankruptcy court entered judgment voiding the OneWest lien, and on August 1, 2012, recorded the judgment with the Santa Cruz County Recorder's Office. *Id.* ¶ 3.

Plaintiffs thereafter learned that in spite of the discharge, OneWest continued to report to credit reporting agencies, including Equifax, that Plaintiffs held an outstanding mortgage balance of over $96,000 and were delinquent more than 180 days in the months post-discharge. Lopez Decl. ¶¶ 4, 14, 16; Mehr Decl. ¶¶ 4, 5. When the debt was later transferred to Ocwen, Ocwen similarly reported the amounts outstanding. Lopez Decl. ¶¶ 28, 29; Mehr Decl. ¶¶ 10–13. Plaintiffs attempted to resolve the matter informally with Defendants, but were unable to do so. Mehr Decl. ¶ 13.

In February 2015, Plaintiffs filed an initial Complaint in the Northern District of California, alleging that the manner in which OneWest, Ocwen, and Equifax reported the amount

[1] Because Equifax had already settled with Plaintiffs, this Motion for Fees and Costs involves a dispute only as to Plaintiffs and the two remaining Defendants, OneWest and Ocwen. Therefore, as used in the balance of this Order, "Defendants" will refer to OneWest and Ocwen, and not Equifax, unless otherwise specified.

allegedly outstanding violated both the FCRA and the CCRAA. (ECF No. 1). Equifax filed an answer, (ECF No. 20), while OneWest and Ocwen jointly filed a Rule 12(b)(6) motion to dismiss the Complaint, (ECF No. 22). Plaintiffs later filed a First Amended Complaint ("FAC"), (ECF No. 24), and the Court entered an order denying the dismissal motion as moot, (ECF No. 29). Upon stipulation of the parties, on November 11, 2013, Plaintiffs filed a Second Amended Complaint ("SAC") against OneWest, Ocwen, and Equifax. (ECF No. 52); *see also* Order Granting Stipulation to File a Second Amended Complaint (ECF No. 51).

In her declaration, counsel for Ocwen and OneWest, Ms. Elena Kouvabina, attested that her clients favored an early resolution to the case. Declaration of Elena Kouvabina in Support of Response to Plaintiffs' Motion for Attorney Fees ("Kouvabina Decl.," ECF No. 89) ¶ 3. Defendants requested Plaintiffs to offer a settlement demand, but Plaintiffs declined to submit one at the time. *Id.* The parties instead agreed to mediate the dispute. *Id.* They attended a July 20, 2015, court-sponsored mediation, but were unable to resolve the matter. *Id.* ¶ 4; Declaration of Balam O. Letona in Support of Motion for Attorney Fees and Costs ("Letona Decl.," ECF No. 73) ¶ 19.

The case then proceeded through discovery. *See* (ECF No. 39). On July 31, 2015, Ocwen and OneWest served written discovery requests on Plaintiffs to determine the evidentiary basis for the damages Plaintiffs claimed. Kouvabina Decl. ¶ 5. However, as Ms. Kouvabina attested in her declaration, Plaintiffs' responses "were evasive and boilerplate." *Id.* ¶ 7. Moreover, Ms. Kouvabina explained that while Plaintiffs agreed to provide supplemental responses to Defendants' discovery requests, those responses were never produced. *Id.*

Similarly, Mr. Letona attested in his declaration that Defendants' Rule 26 initial disclosures were deficient, as they failed to identify witnesses or even the proper designee for depositions. Supplemental Declaration of Balam O. Letona in Support of Reply to Opposition to Motion for Attorney Fees and Costs ("Supplemental Letona Decl.," ECF No. 93) ¶¶ 4, 5. Over the course of a protracted meet and confer process, Plaintiffs tried unsuccessfully over six times to meet in person with Ms. Kouvabina to coordinate the deposition of a former OneWest employee, located in Michigan. *Id.* ¶ 6. The inability to meet and confer, as required by Magistrate Judge

Lloyd's standing orders, was apparently so intractable that Plaintiffs eventually filed an *ex parte* application for permission to conduct the deposition by remote means. *See* Order Granting Motion to Permit Depositions by Remote Means ("Deposition Order," ECF No. 55). Judge Lloyd granted the application in an order dated December 18, 2015, in part because of Ms. Kouvabina's refusal to meet and confer in person. *Id.* at 2–3. The deposition occurred on January 20, 2016. Supplemental Letona Decl. Exh. 2.

Toward the end of December 2015, the parties attempted to schedule a second mediation session to resolve the dispute. *Id.* ¶ 12; Kouvabina Decl. ¶ 12. However, they were unable to agree on terms and conditions for the proposed mediation, and the second session never occurred. Supplemental Letona Decl. ¶ 12.

On January 8, 2016, Plaintiffs and Equifax settled the case, and filed a joint stipulation to dismiss Equifax from the matter. *See* Order Granting Stipulation of Dismissal (ECF No. 66).

On February 8, 2016, Plaintiffs accepted a Rule 68 offer of judgment from Defendants OneWest and Ocwen that provided $50,000 in damages and injunctive relief. Notice of Acceptance of Offer of Judgment (ECF No. 68). The Court entered judgment the same day. (ECF No. 70).

Thereafter, on February 22, 2015, Plaintiffs filed the present Motion for Fees and Costs. Motion for Attorney Fees ("Mot.," ECF No. 71). In support of the Motion, Plaintiffs offered nine declarations from six individuals, and numerous exhibits that included detailed billing records of Mr. Letona's work in the course of prosecuting this case. *See* (ECF Nos. 73–78, 84, 93, 94). In their Opposition, Defendants Ocwen and OneWest provided a declaration from Ms. Kouvabina, with attached exhibits. Response re: Motion for Attorney Fees ("Opp.," ECF No. 89). Plaintiffs filed a Reply on April 4, 2016. Reply re: Motion for Attorney Fees ("Reply," ECF No. 92). On April 18, 2016, the Court ordered counsel for Plaintiffs to submit a summary of hours to help clarify the time requested in Plaintiffs' Motion. (ECF No. 95). Mr. Letona submitted a response to the Order on April 19, 2016. (ECF No. 96). The Court heard arguments on the Motion on April 21, 2016, and took the matter under submission. (ECF No. 97).

II. LEGAL STANDARD

Under the FCRA, a successful party in an action to enforce liability under the statute may recover costs and reasonable attorney's fees. *See* 15 U.S.C. § 1681n(a)(3) ("In the case of any successful action to enforce any liability under this section, [the court may award] the costs of the action together with reasonable attorney's fees as determined by the court," against "[a]ny person who willfully fails to comply" with the FCRA); 15 U.S.C. § 1681o(a)(2) (same for negligent violations of the FCRA). The CCRAA similarly provides that "the prevailing plaintiffs in any action commenced under this section shall be entitled to recover court costs and reasonable attorney's fees." *See* Cal. Civ. Code § 1785.31(d).

When evaluating a motion for reasonable attorneys' fees under the FCRA and CCRAA, the Court undertakes a two-step process. *Fischer v. SJB–P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the Court calculates the presumptive fee award, also known as the "lodestar figure," by taking the number of hours reasonably expended on the litigation and multiplying it by a reasonable hourly rate. *Id.* (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). The Court "must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation." *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (citation omitted). "The reasonable hourly rate is that prevailing in the community for similar work." *PLCM Grp. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000).

Second, in "appropriate cases" the court may enhance or reduce the lodestar figure based on an evaluation of the factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–70 (9th Cir. 1975), that were not taken into account in the initial lodestar calculation. *Intel Corp. v. Terabyte Intern., Inc.*, 6 F.3d 614, 622 (9th Cir. 1993) (citation omitted). The *Kerr* factors include, but are not limited to, the time and labor required, the novelty and difficulty of the questions involved, the skill required to perform the legal services properly, the preclusion of other employment by the attorney due to acceptance of the case, whether the fee is fixed or contingent, and the experience, reputation, and ability of the attorneys. *Kerr*, 526 F.2d at 70. The Ninth Circuit has cautioned that there is a "strong presumption" that the lodestar figure represents a reasonable fee and that adjustment upward or downward is "the exception rather than the rule."

D'Emanuele v. Montgomery Ward & Co., Inc., 904 F.2d 1379, 1384 (9th Cir. 1990).

III. DISCUSSION

The Court normally begins by considering whether or not an award of attorneys' fees is proper. However here, there is no dispute that Defendants' Rule 68 offer of judgment stipulated to an award reasonable attorney's fees, and in any case, the FCRA and CCRAA permit Plaintiffs in this case to collect fees upon a successful action to enforce liability under those statutes. Instead, the dispute centers around whether the amount of fees requested in this case is reasonable.

A. Amount of Fees

i. Reasonableness of Rates

In determining whether the amount of fees requested in this case is reasonable, the Court must first determine whether Plaintiffs' attorney's rates are reasonable. To do so, the Court must weigh the "experience, skill, and reputation of the attorney requesting fees," and compare the requested rates to prevailing market rates. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *opinion amended on denial of reh'g*, 808 F.2d 1373 (9th Cir. 1987); *see also Blum v. Stenson*, 465 U.S. 886, 886 (1984). The relevant community for analyzing reasonable hourly rates "is the forum in which the district court sits," here the Northern District of California. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).

Plaintiffs' attorney, Mr. Balam O. Letona, seeks fees at the hourly rate of $450. Mot. at 6–7. In support of his request, Plaintiffs, who bear the burden of establishing that the rates are reasonable, *see Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992), offer Mr. Letona's self-attested declaration, as well as the declarations of three of Mr. Letona's colleagues knowledgeable about his credentials and the prevailing hourly rates in Northern California for attorneys who specialize in consumer protection litigation. Defendants do not object to the declarations, nor for that matter to Mr. Letona's $450 hourly rate.

The Court finds persuasive the papers submitted in support of Mr. Letona's hourly fee of $450. Mr. Letona's declaration explains in detail his role and work in prosecuting this matter. Letona Decl. ¶¶15–33. Mr. Letona has over thirteen years of experience litigating consumer credit disputes, including those arising under the FCRA. *Id.* ¶¶ 2–4. His experience includes

work in about half a dozen class action suits on behalf of classes of consumers. *Id.* ¶ 3. Most recently, Mr. Letona requested fees for his role in a class action lawsuit alleging violations of the FCRA. *See Holman v. Experian Info. Sols., Inc.*, No. 11-CV-0180 CW (DMR), 2014 WL 7186207, at *1 (N.D. Cal. Dec. 12, 2014). There, Judge Wilken found his hourly rate of $450 to be reasonable given his education and legal experience. *Id.* at *4–5.

The declarations from Mr. Letona's colleagues support this hourly rate. Mr. Andrew J. Ogilvie, a lawyer in San Francisco whose practice focuses on FCRA litigation, has worked with Mr. Letona on a number of cases, including three class action suits. Declaration of Andrew J. Ogilvie in Support of Motion for Attorney Fees and Costs (ECF No. 74). Mr. Scott Maurer, Associate Clinical Professor of Law at Santa Clara Law School, stated that he believed Mr. Letona's requested fee to be reasonable based on market rates in this geographical area, and his knowledge of Mr. Letona's level of skill and experience. Declaration of Scott Maurer in Support of Motion for Attorney Fees and Costs (ECF No. 75). Similarly, Mr. Ronald Wilcox, an attorney with extensive experience as a consumer law attorney, explained that Mr. Letona's hourly rate is reasonable "given his experience, qualifications and expertise in the representation of consumers in debtor-creditor litigation." Declaration of Ronald Wilcox in Support of Motion for Attorney Fees and Costs (ECF No. 76). The Court finds these papers in support of Mr. Letona's hourly rate persuasive, and agrees that his fee of $450 per hour is reasonable.

ii. Reasonableness of Hours

Next, the Court considers the reasonableness of the hours expended. To determine whether the hours requested are reasonable, the Court may not "uncritically" accept the plaintiff's representations of time expended. *Sealy, Inc. v. Easy Living, Inc.*, 743 F.2d 1378, 1385 (9th Cir. 1984). The Court may reduce hours when documentation is inadequate, or when the requested hours are redundant, excessive, or unnecessary. *Hensley*, 461 U.S. at 433–34.

Mr. Letona requests fees for 236.8 hours expended in prosecuting this case. *See* Supplemental Declaration of Balam O. Letona in Support of Motion for Attorney Fees and Costs (ECF No. 84) ¶ 6, Exh. 5. In support of the request, Mr. Letona submits the following summary of hours, divided into categories of work, and which the Court reproduces below:

Task	Hours
Pre-Suit Investigation	6.1
Drafting Initial Complaint	14.0
Motion to Dismiss by Ocwen and OneWest	2.3
Drafting Amended Complaints	3.4 – First Amended Complaint 7.8 – Second Amended Complaint
Discovery, Including Motions Related to Ocwen and OneWest	136.3
Case Management Conference and Filings	5.4
ADR and Settlement Discussions and Briefs	7.0
Miscellaneous (describe)	
Review and Evaluation of Documents Produced by Ocwen and OneWest	19.8
Rule 26 Meet and Confer & Preparation	1.7
Initial Disclosures Draft and Preparation	7.5
Research – Legal and Other	13.5
Meet and Confer to File Second Amended Complaint	1.3
Motion to Strike Amended Answer filed by Ocwen and OneWest	8.6
Miscellaneous Client Communication	1.6
Other Miscellaneous Communication & Review	0.5
Total	236.8

Defendants argue that the amounts billed are unreasonable in light of "Mr. Letona's

experience in consumer credit litigation and the straightforward nature of this dispute." Opp. at 4. In support of this argument, Defendants point to certain categories of Mr. Letona's fee motion. For instance, Defendants argue that the requested 14.0 hours "drafting a basic complaint" is excessive, because the initial Complaint was "along the lines of what Plaintiffs' counsel has undoubtedly drafted numerous times before." *Id.* Defendants also request a reduction in the hours related to Plaintiffs' meet and confer regarding discovery responses, because they are "beyond excessive," "given the simple nature of this dispute." *Id.* at 4–5. Similarly, Defendants argue that the 19.7 hours spent preparing for the deposition is unreasonable because Mr. Letona "refused to postpone [the deposition] so that the parties could mediate the dispute in late January." *Id.* at 5.

Defendants request the Court undertake an across-the-board reduction "because a review of a sample of individual tasks reveals a pattern of overbilling by at least 50%." *Id.* at 6. In support of the argument, Defendants cite to *Giovannoni v. Bidna & Keys*, No. 06-15640, 255 F. App'x 124, 126 (9th Cir. 2007), in which the Ninth Circuit affirmed the district court's decision to reduce the plaintiff's counsel's fee request by half. However, the Ninth Circuit has consistently cautioned against the use of across-the-board fee reductions—or as it described, the "meat axe approach" to "trim[] the fat from a fee application"—when the record does not present complicated or voluminous billing statements. *Gates*, 987 F.2d at 1399 (citations omitted). Indeed, in cases where the underlying dispute is "not a complicated one," *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1150 (9th Cir. 2001), nor the billing records "massive," *Gates*, 987 F.2d at 1399, across-the-board fee reductions are inappropriate, and the Court should instead carefully inspect the billing records to assess the reasonableness of the hours requested.

Such is the case here. The Court declines Defendants' invitation to an across-the-board reduction in hours for two reasons. First, this case does not present the sort of "voluminous" or "massive fee application" that precludes the Court from considering, as a practical matter, the fees requested on an hour-by-hour basis. Indeed, the parties' competing billing summaries, the Plaintiffs' billing statements offered as exhibits to their fee application, as well as Plaintiffs' response to the Court's April 18, 2016, order requesting clarification for Mr. Letona's fee request, provide ample guidance for the Court to consider, by task and hour, the hours sought. Second, the

Court also declines to apply an across-the-board reduction of Plaintiffs' fees because, besides Defendants' general contention that the hours billed are excessive, they have given no justification for why, specifically, a fifty percent reduction is warranted. Defendants argue that Plaintiffs' fee request "reveals a pattern of overbilling by at least 50% . . . as compared to what someone of [Mr. Letona's] experience and hourly rate would have billed his clients," Opp. at 6, but provide no such evidence at all for that comparison. In light of the "heightened scrutiny" for across-the-board fee reductions, *Gates*, 987 F.2d at 1400, Defendants give short shrift to justify why this case merits an across-the-board reduction generally, and why that reduction should be fifty percent, specifically. Accordingly, although the Court recognizes the utility in generalized fee reductions, it declines to employ that method in this case to reach Plaintiffs' reasonable hours.

In considering the reasonableness of the hours requested, the Court makes the following observations. Mr. Letona is a consumer protection attorney with over a decade of experience litigating plaintiff-side consumer disputes. Letona Decl. ¶¶ 2–6. His representative matters include involvement in about half a dozen class action lawsuits brought under various consumer protection statutes, including California's Rees-Levering Motor Vehicle Sales Act, California's Unfair Competition Law, and the FCRA. *Id.* ¶¶ 8,9. Given Mr. Letona's areas of expertise and extensive experience litigating consumer protection disputes, the Court expects that the hours he bills in prosecuting this case reflect a discerning judgment and level of efficiency higher than would an attorney otherwise unfamiliar with this subject matter. This is especially so in light of the fact that this case—when compared to Mr. Letona's previous representative matters—is relatively uncomplicated and presents only four causes of action brought under two statutes, against three parties.

That said, the Court also recognizes that here, counsel for Defendants mounted a stalwart defense over the course of this dispute. The litigation is ill-served when, for instance, a party fails to properly make initial disclosures as required under Rule 26. *See* Supplemental Letona Decl. ¶¶ 4, 5. As counsel are undoubtedly aware, the failure to disclose witnesses or other discoverable information does not hide the ball completely, but only makes it more difficult for opposing counsel to eventually discover it. Similarly, the lack of a good-faith basis to not meet in person

about outstanding discovery disputes before filing joint reports unnecessarily expends time and effort for all the parties involved. And in this case, Defendants' counsel's refusal to meet face-to-face was in violation of Judge Lloyd's standing orders. Deposition Order at 2–3. Moreover here, when the parties were eventually able to meet to depose a witness, Ms. Kouvabina at times interposed every other question with long-speaking and coaching objections, to the confusion of not just Plaintiffs' counsel but also the witness. *See, e.g.*, Supplemental Letona Decl., Exh. 2 at 4:11–5:13; 8:10–9:13; 9:19–11:9. Such tactics needlessly prolong the course of litigation and balloon the costs of prosecuting a case—even for a case as relatively uncomplicated as the one here.

With this in mind, the Court has reviewed all of the papers submitted, and makes the following modifications to the hours requested.

a. Initial Complaint

Plaintiffs request 14.0 hours for drafting the initial Complaint. The Court finds this time unreasonable. As discussed above, this case presents a relatively straightforward dispute regarding the alleged false reporting of credit information. The Complaint pleads only four causes of action based on the FCRA and the CCRAA against three defendants, OneWest, Ocwen, and Equifax. In addition, much of the facts alleged in the Complaint occurred during the time when Plaintiffs were represented by prior counsel in their Chapter 13 bankruptcy. Presumably, the records from prior counsel that were necessary to draft this initial Complaint were not difficult to obtain. Given the low degree of complexity presented in this case, the records available from Plaintiffs' prior litigation, and Mr. Letona's own experience in litigating consumer credit disputes, the Court finds the 14.0 hours requested for drafting the initial Complaint excessive. The Court decreases the hours requested by 7.0 hours, for a total of 7.0 hours.

b. Second Amended Complaint

Next, Plaintiffs request 7.8 hours for drafting the SAC. In reviewing the SAC in comparison with the FAC and initial Complaint, the Court finds these requested hours also to be unreasonable. No new claims are added to the SAC; indeed, it still pleads the same four causes of action against the same three Defendants. The only difference between the SAC and FAC is that

the SAC adds a handful of new allegations regarding two other credit reporting agencies previously unidentified in the FAC or initial Complaint. The Court finds that this minimal addition of new allegations does not warrant the hours requested from Plaintiffs' counsel. The Court decreases the request by 4.8 hours, for a total of 3.0 hours.

c. Discovery-Related Hours

By far the lion's share of hours requested by Plaintiffs' counsel relates to discovery. Here, Mr. Letona requests 136.3 hours, encompassing work for motions related to Defendants OneWest and Ocwen.

Of this sum, 34.5 hours are attributed to time spent drafting discovery responses to Defendants' requests, and 34.1 hours for time spent reviewing Defendants' discovery responses to Plaintiffs' requests. The Court recognizes that the time Mr. Letona spent on these tasks may have been prolonged to some degree by Defendants' position during discovery. However, even with that in mind, the Court finds the combined 68.6 hours to be an inordinate amount of time spent on these two routine discovery tasks. Given Mr. Letona's subject matter expertise in consumer credit disputes, the Court presumes he is able to capably and efficiently review the records related to Plaintiffs' consumer credit, as provided by Defendants. Similarly, the responses to Defendants' discovery requests are unreasonable given the fact that they were nearly identical for each Plaintiff, were mostly boilerplate, and no privilege log was produced in this case. *See* Kouvabina Decl. ¶ 6. The Court therefore reduces the 34.5 hours by 15.0 hours, for a total of 19.5 hours; the Court reduces the 34.1 hours by 10.0 hours, for a total of 24.1 hours.

Plaintiffs request 7.0 hours for time spent meeting with clients and supplementing responses to Defendants' discovery requests. However, had Plaintiffs provided these responses on time when they were due, no supplementation would have been necessary. Accordingly, the Court reduces the 7.0 hours to 0.0 hours.

Next, Plaintiffs request 19.7 hours to prepare for the deposition of the former OneWest employee. Over two and a half full work days spent preparing for a single deposition is simply not reasonable in this circumstance. Mr. Letona, a seasoned litigator, should have been able to prepare for this deposition in a fraction of that time. The Court reduces this request by 11.7 hours,

for a total of 8.0 hours.

d. Document Review and Initial Disclosures

Plaintiffs seek 19.8 hours related to reviewing and evaluating documents produced by Ocwen and OneWest, and 7.5 hours for time spent on preparing and drafting initial disclosures. Again, as discussed above, Mr. Letona is expected to prosecute his cases with discerning judgment and a level of efficiency higher than would an attorney otherwise unfamiliar with this subject matter. Nothing indicates that here, the dispute presented any novel consumer credit issue. An expert in consumer protection disputes, Mr. Letona should have been able to efficiently review the documents produced, and draft disclosures related to this litigation. The Court finds these hours to be excessive, and reduces the 19.8 hours by 4.0 hours, for a total of 15.8 hours, and reduces the 7.5 hours by 1.5 hours, for a total of 6.0 hours.

e. Clerical Tasks

Finally, Defendant argues that a further reduction in hours is warranted because "Plaintiffs' counsel's billing records are either clerical tasks . . . or are so vague and ambiguous that it is difficult to understand and evaluate their nature." Opp. at 6. As to the portions of Mr. Letona's hours spent doing tasks that are clerical, the Court agrees with Defendants, and finds that a reduction of 0.7 hours is warranted. Plaintiffs' counsel is expected to exercise billing judgment. Mr. Letona's effort spent on these routine administrative tasks—at the rate of $450 per hour—is not a judicious use of his time or of his clients' money. The Court therefore reduces the 0.7 hours sought for clerical tasks by 0.7 hours, for a total of 0.0 hours.

However, as to the hours that Defendants claim are "vague and ambiguous," the Court notes that "[t]he essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Fox v. Vice*, 563 U.S. 826, 838 (2011); *see also Trs. of Dirs. Guild of Am.-Producer Pension Benefits Plans v. Tise*, 234 F.3d 415, 427 (9th Cir. 2000) ("Plaintiff's counsel . . . is not required to record in great detail how each minute of his time was expended. But at least counsel should identify the general subject matter of his time expenditures." (citation omitted)). Here, Mr. Letona clearly meets this standard. He clarified the

hours he requested by concisely detailing the time spent on each of the sixteen discrete tasks he identified, and by supporting those hours with ample documented evidence. The Court finds these proofs sufficient for purposes of this fees motion.

f. Hours Attributable to Equifax

As a final matter, Defendants argue that Plaintiffs' requested hours should be reduced to reflect Mr. Letona's work attributable to Equifax, which had already settled with Plaintiffs in advance. However, Mr. Letona has already resubmitted modified records reflecting billing hours excluding work that had included Equifax. *See* (ECF No. 84), Exh. 5. As Mr. Letona attested in his declaration, those billing records have been reduced by one-third. *Id.* ¶¶ 4, 5. Mr. Letona supports these reductions with billing statements as evidence. *Id.* Exh. 5. The Court finds these reductions in hours reasonable.

In all, combining the above reductions results in an exclusion of 61.7 hours from Mr. Letona's request for 236.8 hours, for a total award of 175.1 hours. The Court finds these hours to be reasonable, and summarizes them in the following table, with modifications in bold:

Task	**Hours**
Pre-Suit Investigation	6.1
Drafting Initial Complaint	**7.0**
Motion to Dismiss by Ocwen and OneWest	2.3
Drafting Amended Complaints	3.4 – First Amended Complaint **3.0** – Second Amended Complaint
Discovery, Including Motions Related to Ocwen and OneWest	**91.9**
Case Management Conferences and Filings	5.4
ADR and Settlement Discussions and Briefs	7.0
Miscellaneous (describe)	
Review and Evaluation of Documents	**15.8**

Produced by Ocwen and OneWest	
Rule 26 Meet and Confer & Preparation	1.7
Initial Disclosures Draft and Preparation	**6.0**
Research – Legal and Other	13.5
Meet and Confer to File Second Amended Complaint	1.3
Motion to Strike Amended Answer filed by Ocwen and OneWest	8.6
Miscellaneous Client Communication	1.6
Other Miscellaneous Communication & Review	0.5
Total	**175.1**

Accordingly, in carefully reviewing all the papers submitted with this Motion, the Court finds that a reasonable amount of time spent prosecuting this case is 175.1 hours.

iii. Lodestar Calculation

Next, the Court must determine the lodestar figure by multiplying the hourly rate with the number of reasonable hours spent on this case. Based on the foregoing discussion, the total lodestar calculation is summarized in the following table.

Mr. Letona's Hourly Rate	Hours Requested	Hours Excluded	Hours Awarded	Total Tentatively Awarded
$450	236.8	61.7	175.1	$78,795

iv. Lodestar Multiplier

Plaintiffs have not requested a lodestar multiplier, and have therefore not rebutted the "strong presumption" that the lodestar figure represents a reasonable fee. *See D'Emanuele,* 904 F.2d at 1384 (9th Cir. 1990) ("Such upward or downward adjustments are the exception rather

than the rule since the lodestar amount is presumed to constitute a reasonable fee." (citing *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 406 (9th Cir. 1990); *Jordan v. Multnomah Cty.*, 815 F.2d 1258, 1262 9th Cir. 1987)); *see also Ketchum*, 24 Cal. 4th at 1138 ("[T]he party seeking a fee enhancement bears the burden of proof."). The Court therefore finds the lodestar figure to be reasonable, and not subject to enhancements or reductions.

In opposition to this Motion, Defendants argue that Plaintiffs' lodestar figure should be reduced because the request for fees is disproportionate to their eventual recovery. Opp. at 6–8. Specifically, Defendants argue that the lodestar should be reduced by a magnitude proportional to the $50,000 that the case ultimately settled for in the Rule 68 offer of judgment. *Id.* Citing to an out-of-district case, *Valentine v. Equifax Info. Servs. LLC*, 543 F. Supp. 2d 1232, 1236 (D. Or. 2008), Defendants argue that "the lack of evidence of any concrete harm suffered by Plaintiffs," and that "[n]o finding of liability was made by the Court in this case by means of a verdict, finding of fact, or other ruling," warrant a reduction in kind of the lodestar figure, even after reaching Mr. Letona's reasonable hourly rate and the reasonable number of hours expended here. *See* Opp. at 6–8.

Defendants' reliance on *Valentine* is misplaced and uninstructive in this case. In *Valentine*, the District of Oregon found that a twenty percent reduction of the lodestar amount was justified because of the plaintiff's only partial success in litigating that matter. *Id.* ("I find that because plaintiff emphasized her punitive damages claim but was unsuccessful in obtaining relief on that claim, an across-the-board reduction of the lodestar is appropriate."). The court therefore awarded the plaintiff a reduced fee, "in light of the jury verdict." *Id.* This case, however, presents no such circumstance. The Rule 68 offer of judgment is a total resolution of all claims in this case, and Plaintiffs' counsel is entitled to all reasonable fees in connection with prosecuting this matter. *Cf. Hensley*, 461 U.S. at 436 (stating that reductions may be appropriate where the plaintiff achieves only partial or limited success).

In any case, the Supreme Court has also held that fees may not be reduced on the basis of "proportionality" alone. *City of Riverside v. Rivera*, 477 U.S. 561 (1986). As it explained in *Rivera*, "[t]he amount of damages a plaintiff recovers is certainly relevant to the amount of

attorney's fees to be awarded," but only if it is "one of many factors that a court . . . consider[s] in calculating an award of attorney's fees." *Id.* at 574. *Rivera* expressly rejected the notion that attorney's fees "should necessarily be proportionate to the amount of damages . . . actually recover[ed]." *Id.*; *see also Fair Hous. of Marin v. Combs*, 285 F.3d 899, 908 (9th Cir. 2002). Here, in light of the $50,000 settlement and the broad injunctive relief in this case, the Court cannot say that the fees awarded are unjustified. *See, e.g.*, *Garcia v. Resurgent Capital Servs., L.P.*, No. C-11-1253 EMC, 2012 WL 3778852, at *10 (N.D. Cal. Aug. 30, 2012) (describing the plaintiff's $50,000 recovery in a Fair Debt Practices Collection Act dispute as an "excellent result," and rejecting the defendants' argument to reduce the $213,606.65 fee award based on "proportionality"). The Court therefore rejects Defendants' argument that Plaintiffs' lodestar figure should be reduced based on the amount for which this matter eventually settled.

Accordingly, for the reasons discussed above, the Court GRANTS AS MODIFIED Plaintiffs' Motion for attorney's fees in the amount of $78,795.

v. Mediation Statements

As a final matter, Defendants argue that they should be permitted to disclose statements made in the course of the parties' July 20, 2015, court-sponsored mediation to show the Court "that litigation of this case past mediation resulted in no added value to Plaintiffs." *Id.* at 8.

Alternative Dispute Resolution Local Rule 6–12 sets forth a general prohibition on disclosure of information from the court-sponsored mediation, subject to narrow exceptions permitting disclosure. The Commentary to the Rule explains that limited circumstances may nonetheless exist in which the general prohibition on disclosure may give way to a countervailing need to reveal the information. *See* ADR L.R. 6–12, Commentary (stating that "[t]he law may provide some limited circumstances in which the need for disclosure outweighs the importance of protecting the confidentiality of a mediation"). Such circumstances include threats of death or substantial bodily injury, use of mediation to commit a felony, right to effective cross examination in a quasi-criminal proceeding, duty to report lawyer misconduct, and the need to prevent manifest injustice. *See id.* A court presented with such a circumstance to disclose mediation statements may engage in a balancing test: "Accordingly, after application of legal tests which are

appropriately sensitive to the policies supporting the confidentiality of mediation proceedings, the court may consider whether the interest in mediation confidentiality outweighs the asserted need for disclosure." *See id.*

Defendants argue that here, they should be permitted to inform the Court of the amount Plaintiffs demanded during settlement negotiations because "disclosure is 'need[ed] to prevent manifest injustice' resulting from Defendants' inability to demonstrate to the Court that litigation of this case past mediation resulted in no added value to Plaintiffs (as opposed to their counsel)." Opp. at 8. As support, they rely on *Munoz v. J.C. Penney Corp.*, 2009 WL 975846, at *3–4 (C.D. Cal. Apr. 9, 2009), in which the district court permitted the disclosure of settlement communications. However, that case bears little resemblance to the circumstances here, as the disclosure permitted in *Munoz* served the narrow purpose of establishing removal jurisdiction. *Id.* at *3. *Munoz* permitted this exception to the mediation privilege in the context of Federal Rule of Evidence 408, which has been interpreted to permit the disclosure of mediation statements "simply to show that the amount in controversy is met," and not "used to prove liability." *Id.* at *3–4 (citing *Cohn v. Petsmart, Inc.*, 281 F.3d 837 (9th Cir. 2002); *Babasa v. Lenscrafters, Inc.*, 498 F.3d 972 (9th Cir. 2007)). Here, unlike in *Munoz*, the request for disclosure is premised on ADR Local Rule 6-12(b), and goes directly to the heart of the substance in this Motion. Defendants' reliance on *Munoz* as support for their argument that disclosure of mediation statements is necessary is inapposite.

Having considered Defendants' arguments, the Court summarily rejects Defendants' request to disclose Plaintiffs' mediation statements. The "need to prevent manifest injustice" exception to the mediation privilege is not a catch-all for parties to invoke whenever they feel the disclosure of mediation statements may serve their interests. Defendants have given no persuasive justification for why, in this case, manifest injustice would prevail in the absence of permission from the Court to disclose Plaintiffs' mediation statements. The desire to reduce Defendants' exposure in this fee motion is no justification at all for the exception, and it certainly falls far short of an interest that outweighs the purposes well-served by mediation confidentiality. Accordingly, the Court denies Defendants' request to disclose statements made in the course of the parties' July

20, 2015, mediation.

B. Costs

In addition, Plaintiffs request costs in the amount of $2,211.03 for prosecuting this case. Reply at 10. Defendants argue that Plaintiffs' request should be denied because Mr. Letona failed to file a bill of costs pursuant to Civil Local Rule 54-1. Opp. at 10. Plaintiffs respond to this oversight by explaining that "[c]ounsel believed that both the FCRA and the [CCRAA] allows for the recovery of expenses obviating the need for a cost memo," and that should the Court find the need for a bill of costs, Plaintiffs should be granted leave to file one. Reply at 10.

This District's Civil Local Rule 54-1(a) provides that "[n]o later than 14 days after entry of judgment or order under which costs may be claimed, a prevailing party claiming taxable costs must serve and file a bill of costs." In addition, subsection (c) addresses the waiver of costs: "Any party who fails to file a bill of costs within the time period provided by this rule will be deemed to have waived costs." Civ. L.R. 54-1(c). In an FCRA case, the Ninth Circuit has affirmed a district court's order denying a party's request for costs because of the failure to timely file a bill of costs, as was required under the fourteen-day timeline set forth in the district's civil local rules. *See Grove v. Wells Fargo Fin. California, Inc.*, 606 F.3d 577, 582 (9th Cir. 2010); *accord Lytle v. Carl*, 382 F.3d 978, 989 (9th Cir. 2004) (affirming district court's partial denial of costs due to untimely filing a bill of costs under the civil local rules). In *Lytle*, the Ninth Circuit explained that "[l]ack of diligence by [the plaintiff's] counsel led to the late filing, and [the plaintiff] cites no persuasive authority that the local rule should not have been enforced." *Id.* Courts in this district have held the same. *See, e.g.*, *Stein v. Pac. Bell*, No. C 00 2915 SI, 2007 WL 2221054, at *1 (N.D. Cal. Aug. 1, 2007) (explaining that the defendant's failure to timely file a bill of costs was deemed a waiver); *San Francisco Bay Area Rapid Transit Dist. v. Spencer*, No. C 04-04632 SI, 2007 WL 1450350, at *14 (N.D. Cal. May 14, 2007) (denying a party's request for $122,966.24 in costs because it failed to timely file a bill of costs).

Mr. Letona admits to a lack of diligence as his reason for failing to timely file a bill of costs. Reply at 10. But, that reason by itself is not sufficient to relax the fourteen-day requirement mandated by Civil Local Rule 54-2(a). Moreover, he relies on a Central District of California case

to argue that "out-of-pocket expenses normally charged to a client may be recoverable even if not taxable." *Id.* (citing *Wyatt Tech. Corp. v. Malvern Instruments, Inc.*, No. CV 07-8298 ABC (RZX), 2010 WL 11404472, at *2 (C.D. Cal. June 17, 2010)). But, *Wyatt* lends no support to Mr. Letona's argument because that case involved the award of statutorily-authorized costs for both taxable and non-taxable litigation expenses, an issue not present here. *Id.* at *1–2. In addition, *Wyatt* contemplated the applicability of fee-shifting provisions in three separate statutes—the Copyright Act, the Lanham Act, and the California Trade Secrets Act—all of which are, of course, not at issue here. *Id.* Because Plaintiffs fail to cite any persuasive authority why the local rules should not be enforced, the request for costs is DENIED.

IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiffs' Motion for Fees and Costs is GRANTED IN PART AS MODIFIED, and DENIED IN PART. Plaintiffs shall recover attorney's fees in the amount of $78,795; Plaintiffs' request for costs is DENIED.

Dated: June 7, 2016

BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California