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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DINA GARCIA,

Plaintiff,

v.

STELLAR RECOVERY INC.,

Defendant.

Case No. 16-cv-00521-BLF

**ORDER RE MOTION TO ENFORCE
SETTLEMENT**

[Re: ECF 32]

Plaintiff Dina Garcia (“Garcia”) filed this putative class action against Defendant Stellar Recovery Inc. (“Stellar”), asserting violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*; violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*; and violations of California’s Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code 1788 *et seq.* Compl., ECF 1. Garcia and Stellar thereafter reached settlement with respect to Garcia’s individual claims. Settlement Agreement, Exh. A to Smith Decl., ECF 32-1. No motion for class certification was filed, and no class was certified in this case.

Under the Settlement Agreement, Stellar was to make three payments to Garcia, the first on April 10, 2017, the second on May 10, 2017, and the third on June 10, 2017. Smith Decl. ¶ 4 and Exh. A., ECF 32-1. On April 28, 2017, Garcia filed the present motion to enforce the Settlement Agreement, asserting that Stellar had not made the first payment. Motion, ECF 32. Garcia sought an order enforcing the Settlement Agreement and awarding attorneys’ fees and costs that Garcia incurred in bringing the motion to enforce. *Id.*

By the date of the hearing on July 6, 2017, all three payments had been made. The first payment, which was due on April 10, 2017, was paid on May 1, 2017. Pratt Decl. ¶ 4, ECF 42-1. The second payment, which was due on May 10, 2017, was timely made on that date. *Id.* ¶ 5. The

1 third payment, which was due on June 10, 2017, was made on June 28, 2017. *Id.* ¶ 6.
2 Accordingly, the only issue left for the Court to resolve is Garcia’s request for attorneys’ fees and
3 costs.

4 “An agreement to settle a legal dispute is a contract and its enforceability is governed by
5 familiar principles of contract law.” *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). “The
6 construction and enforcement of settlement agreements are governed by principles of local law
7 which apply to interpretation of contracts generally.” *Id.* “Under California Civil Code § 1717,
8 the prevailing party in a dispute over a contract that specifically provides for fee awards shall be
9 entitled to reasonable attorney’s fees as determined by the court.” *Eksouzian v. Albanese*, No. CV
10 13-728 PSG (AJWX), 2015 WL 12765585, at *1 (C.D. Cal. Oct. 23, 2015).

11 The Settlement Agreement provides in relevant part as follows:

12 If any installment payment is not timely received, Plaintiff’s attorneys shall provide
13 written notice of the delinquency to Defendant’s attorney via e-mail. In the event
14 Defendant’s delinquency is not cured within 5 business days following its
attorney’s receipt of notice, then Plaintiff shall be entitled to attorney’s fees and
costs relating to any effort to enforce the Agreement.

15 Settlement Agreement ¶ 1, Exh. A to Smith Decl., ECF 32-1. Garcia presents evidence that her
16 attorney provided email notification of delinquency to Stellar’s attorney on April 12, 2017.
17 Emails, Exh. B to Smith Decl., ECF 32-1. Counsel corresponded by email regarding the
18 delinquent payment through April 25, 2017, when Garcia’s counsel stated that he was preparing a
19 motion to enforce settlement. *Id.* Garcia thereafter filed the present motion to enforce the
20 Settlement Agreement. Accordingly, under the clear language of the contract and California law,
21 Garcia is entitled to recover attorneys’ fees and costs incurred in litigating her motion to enforce.


22 Stellar does not dispute that the email correspondence between the parties’ counsel
23 satisfied the notice requirement set forth in the Settlement Agreement, or that the Settlement
24 Agreement provides for recovery of attorneys’ fees and costs. Stellar instead appears to argue that
25 because Garcia’s counsel was informed that Stellar had “cash flow challenges” and was trying to
26 gather the monies owed Garcia, Garcia should have refrained from enforcing her rights to the full
27 extent permitted under the Settlement Agreement and applicable law. Sur-Reply at 1, ECF 42. To
28 the extent that Stellar seeks to be relieved from its contractual obligations under the Settlement

1 Agreement on equitable grounds, it has cited no legal authority which would permit the Court to
2 grant such relief even if it were so inclined.

3 Accordingly, IT IS HEREBY ORDERED:

- 4 (1) Garcia’s motion to enforce the Settlement Agreement is GRANTED. While Stellar
5 has transmitted all payments due, Garcia is entitled to recover attorneys’ fees and
6 costs incurred in litigating her motion to enforce.
- 7 (2) The parties SHALL meet and confer regarding the amount of attorneys’ fees and
8 costs that should be awarded;
- 9 (3) If the parties are unable to resolve the issue of attorneys’ fees and costs within
10 twenty-one days after the date of this order, Garcia may file a motion for attorneys’
11 fees and costs, not to exceed five pages plus supporting documentation. Stellar
12 may file a response, not to exceed five pages plus supporting documentation,
13 within fourteen days after the filing of such motion. The matter thereafter will be
14 submitted for disposition without further briefing or argument.

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16 Dated: July 27, 2017

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18 BETH LABSON FREEMAN
19 United States District Judge
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