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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CATHARINE J. TOMOVICH a/k/a)	Case No. 08cv1428-JM (BLM)
CATHIE J. TOMOVICH,)	
Plaintiff,)	ORDER DENYING EX PARTE MOTION
v.)	FOR RECONSIDERATION OF FEES
WOLPOFF & ABRAMSON, L.L.P.,)	AWARD AND TERMINATING CASE
Defendant.)	[Doc. No. 35]

The underlying action concerns Defendant's alleged violations of the federal Fair Debt Collection Practices Act (FDCPA), and California's Rosenthal Fair Debt Collection Practices Act. Doc. No. 1. The case settled in April 2009 (Doc. No. 24) and, on August 7, 2009, this Court granted in part and denied in part Plaintiff's motion for attorney's fees. Doc. No. 34 (Order). On August 14, 2009, Plaintiff filed the instant *ex parte* motion for reconsideration of one aspect of the Court's fees order: the reasonable hourly rate awarded to one of her attorneys, Elizabeth Arleo.¹ Doc. No. 35 (Pl. Mot.). Defendant opposed Plaintiff's

¹Two attorneys, Elizabeth Arleo and Shaun Khojayan, represented Plaintiff in the above matter, and the fees order established hourly rates for both. Order at 4-7. However, the motion for reconsideration contests only the Court's finding with regards to Ms. Arleo's billing rate, and the Court therefore addresses only this issue. Nonetheless, the Court notes that in many respects, the reasoning provided in this

1 motion. Doc. No. 36 (Opp'n). After reviewing the motion for
2 reconsideration and opposition, as well as all previously-submitted
3 evidence and briefing concerning Plaintiff's attorneys' fees, and for
4 the reasons given below, the Court **DENIES** Plaintiff's motion for
5 reconsideration.

6 **LEGAL STANDARD**

7 In FDCPA actions, the prevailing party may be awarded "reasonable
8 attorney's fees as determined by the court." 15 U.S.C. § 1692k(a)(3).
9 Attorney's fees are calculated by the lodestar method, whereby a court
10 multiplies the number of hours an attorney reasonably spent on the case
11 by the attorney's reasonable hourly rate. McGrath v. County of Nevada,
12 67 F.3d 248, 252 (9th Cir. 1995) (citing Blum v. Stenson, 465 U.S. 886,
13 895 (1984)). An attorney's reasonable hourly rate is determined by
14 comparing the requested rate with that "prevailing in the community for
15 similar services of lawyers with reasonably comparable skill, experience
16 and reputation." Camacho v. Bridgeport Financial, Inc., 523 F.3d 973,
17 979 (9th Cir. 2008) (citation omitted); Blum, 465 U.S. at 895 n.11. In
18 determining the reasonableness of fee requests, the Court also may
19 consider: (1) the time and labor required; (2) the novelty and
20 difficulty of the issues; (3) the skill requisite to perform the legal
21 service properly; (4) the preclusion of employment by the attorney due
22 to acceptance of the case; (5) the customary fee; (6) time limitations
23 imposed by the client or the circumstances; (7) the amount involved and
24 the results obtained; (8) the undesirability of the case; (9) the nature
25 and length of the professional relationship with the client; and (10)
26 awards in similar cases. Christensen v. Stevedoring Services of

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28 order with regards to Ms. Arleo applies equally to Mr. Khojayan.

1 America, 557 F.3d 1049, 1053 (9th Cir. 2009) (citing Van Gerwen v.
2 Guarantee Mu. Life Co., 214 F.3d 1041, 1045 n.2 (9th Cir. 2000).

3 "To inform and assist the court in the exercise of its discretion,
4 the burden is on the fee applicant to produce satisfactory evidence- in
5 addition to the attorney's own affidavits- that the requested rates [are
6 reasonable]." Id. at 980 (citing Blum, 465 U.S. at 896 n.11). However,
7 "[d]eclarations from the fee applicant do not conclusively establish the
8 prevailing market rate." Id. "The party opposing the fee application
9 has a burden of rebuttal that requires submission of evidence to the
10 district court challenging the accuracy and reasonableness of the ...
11 facts asserted by the prevailing party ..." Id. at 980 (citing Gates v.
12 Deukmejian, 987 F.2d 1392, 1397-98 (9th Cir. 1992)).

13 The district court has a "great deal of discretion" to determine
14 the appropriate hourly rate. Gates, 987 F.2d at 1398. Nonetheless, a
15 court must provide a "concise but clear explanation of its reasons for
16 the fee award." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983).

17 DISCUSSION

18 In her motion for reconsideration, Plaintiff contends that the
19 Court improperly relied on the simplicity of the underlying case when
20 calculating both the number of hours awarded to Ms. Arleo and Ms.
21 Arleo's hourly rate. Pl. Mot. at 1-3. Plaintiff therefore requests
22 that the Court increase Ms. Arleo's reasonable hourly rate for work on
23 this case from the previously-assessed \$300/hour to \$350/hour. Id. at
24 1. In support of the increased rate, Plaintiff again cites findings
25 made by two courts (which already were distinguished in this Court's
26 previous order), but offers no new facts justifying her request. Id.;
27 Order at 6-7 (discussing other cases). Defendant argues that the fees
28 order was properly decided, and distinguishes the authority upon which

1 Plaintiff relies.² Opp'n at 3-5.

2 When determining fee awards, courts may not use the "novelty and
3 complexity" of the issues to determine both the reasonable hourly rate
4 and the reasonable number of hours expended on litigation. Van Skike v.
5 Dir., Office of Workers' Comp. Programs, 557 F.3d 1041, 1048 (9th Cir.
6 2009) (citing Blum, 465 U.S. at 898-99). Additionally, "the reasonable
7 hourly rate is generally determined based upon the prevailing hourly
8 rate in the community, rather than upon the complexity of the issues,
9 which should be reflected in the reasonable number of hours." Id.

10 Here, the Court found the underlying FDCPA litigation to be non-
11 complex, and considered this, among several other factors, when reducing
12 the total hours used in the lodestar calculation. Order at 8-10. The
13 Court also considered the simplicity of the case, among other factors,
14 in calculating Ms. Arleo's hourly rate. Id. at 5-7. Insofar as the
15 case's simplicity was used to determine both the number of hours and the
16 hourly rate, the Court revisits its previous Order. However, after
17 reviewing the evidence and arguments pertaining to Ms. Arleo's hourly
18 rate, the Court still finds \$300/hour to be reasonable.

19 1. Expert Declarations Regarding Ms. Arleo's Hourly Rate.

20 Both parties submitted expert declarations regarding Ms. Arleo's
21 hourly rate. In support of her originally-requested rate of \$380/hour,
22 Plaintiff submitted the Hensley Declaration, drafted by a fees expert
23 for Ms. Arleo's work in Gonzales v. Arrow Financial Services, LLC,
24 05cv171-JAH (RBB) (S.D. Cal. January 28, 2005), a class action pending

26 ²Defendant also argues that the rule of civil procedure under which Plaintiff
27 brings the instant motion, Fed. R. Civ. P. 60, does not apply here, and that Plaintiff
28 therefore is barred from moving for reconsideration. Opp'n at 2. However, it is
within the Court's discretion to revisit its own judgments, and the Court elects to do
so here. See Fidelity Federal Bank, FSB v. Durga Ma Corp., 387 F.3d 1021, 1024 (9th
Cir. 2004); Kingvision Pay-Per-View Ltd. v. Lake Alice Bar, 168 F.3d 347, 350 (9th Cir.
1999).

1 in this District. Doc. No. 29-3 Ex. 3 (Hensley Decl.). However, for
2 the reasons stated in this Court's previous fees order, the Hensley
3 Declaration does not pertain to the instant case:

4 First, Gonzales is a significantly more complicated case;
5 a years-long class action that proceeded to trial, and
6 involved a class certification challenge, multiple dispositive
7 motions, and motions in limine. This case, on the other hand,
8 is a simple one. It concerns a single plaintiff and a single
9 defendant, and the action's factual basis is almost entirely
10 comprised of five allegedly improper debt-collection letters
11 and a number of phone calls to Plaintiff. Complaint.
12 Discovery was straightforward, and Plaintiff took only one
13 deposition. Arleo Decl. [Doc. No. 29-3] at 4-5. Similarly,
14 Plaintiff's claims are not complex, and several of them could
15 be resolved by answering simple factual questions, i.e., did
16 Defendant cease certain debt-collection communications after
17 Plaintiff requested that it do so. Complaint.

18 Second, Mr. Hensley's declaration compares Plaintiff's
19 attorneys with those of the nation's largest law firms,
20 concluding that the attorneys' hourly rates "would be gauged
21 by the rates applicable to complex litigation in the top
22 civil/commercial firms in the San Diego County community."
23 Hensley Decl at 5. Most notably, Mr. Hensley justifies
24 Plaintiff's attorneys' hourly rates by comparing them to those
25 charged in the 2001-08 Enron securities class-action
26 litigation, prosecuted by Coughlin Stoia Geller Rudman &
27 Robbins LLP. Hensley Decl. at 13-14. Fees charged in that
28 case, a historic and notoriously complex action, in no way
inform the reasonable hourly rate in this case. Nor does this
case compare to the "complex litigation" undertaken by the
nation's largest firms. Hensley Decl. at 5. Although the
rates of local attorneys practicing at large firms may help
determine reasonable fees, Plaintiff fails to sufficiently
compare the rates those attorneys would charge in similar
cases, i.e., simple FDCPA litigation. Hensley Decl.

Order at 4-6.

Although this reasoning includes statements regarding the instant
case's simplicity, it does not constitute impermissible "double-
counting" of the factor. Van Skike, 557 F.3d at 1048 (holding that
courts may not use same factor to adjust both hours claimed and hourly
rate). Rather, the statements demonstrate that (1) the cases with which
Plaintiff attempts to establish Ms. Arleo's hourly rate do not involve
"similar services," (i.e., class-actions, trial and/or dispositive

1 motion work, and the exhaustive discovery required of complex litigation
2 versus singly plaintiff with limited discovery and motion work),
3 Camacho, 523 F.3d at 979, and (2) there is insufficient evidence that
4 the lawyers with whom Mr. Hensley compares Ms. Arleo are of similar
5 "skill, experience or reputation," (id.). That is, the Court cited the
6 simplicity of the work required in the instant case not as an
7 independent basis for establishing Ms. Arleo's hourly rate, but to
8 distinguish this case from the unusual and complex cases, which require
9 significant legal work and attorneys with more expertise and specialized
10 knowledge, relied upon in the Hensley Declaration. The type of legal
11 work cited and relied upon by Mr. Hensley in determining an appropriate
12 hourly rate is not similar to the legal work provided by Ms. Arleo in
13 this case so Mr. Hensley's recommendation has minimal value in this
14 case.

15 Additionally, the Hensley Declaration largely arrives at so-called
16 comparable rates by reference to the hourly fees charged "firmwide"
17 (that is, nationally and/or globally, depending on the firm) of
18 thousands of attorneys of all levels of experience and in all practice
19 areas of several "large Los Angeles and San Diego law firms." Hensley
20 Decl. at 5-7. Ms. Arleo does not work at a large law firm, and the
21 instant case involves a specific practice area, FDCPA litigation, in a
22 specific locale, the Southern District of California. See Camacho, 523
23 F.3d at 979 (for the purpose of establishing hourly rates, the relevant
24 community generally is the forum in which the district court sits).
25 Although courts deciding FDCPA fees may look to non-FDCPA litigation for
26 comparison, id. at 981, the Hensley Declaration does little to compare
27 the attorneys and duties cited with Ms. Arleo and her work in the
28 instant case. Again, the Hensley Declaration fails to demonstrate a

1 similarity between Ms. Arleo's education and experience and those of the
2 comparison attorneys so the recommendation has minimal value in this
3 case. Plaintiff therefore fails to meet her burden to "produce
4 satisfactory evidence" that the requested rate is reasonable.
5 Christensen, 557 F.3d at 980.

6 A declaration submitted by Defendant's expert, June Coleman, on the
7 other hand, more specifically addresses rates charged by FDCPA attorneys
8 in this district. Doc. No. 31-1 (Coleman Decl.). Of particular
9 relevance is Ms. Coleman's description of her own experience and hourly
10 rate. Ms. Coleman has been an attorney since 1999, and during that time
11 has practiced "regularly and extensively" in the areas of FDCPA and Fair
12 Credit Reporting Act defense. Coleman Decl. at 2. She also regularly
13 has lectured and published articles in the area of collection law, and
14 works for the national trade organization for debt collectors. Id.
15 During the time the instant case was prosecuted, Ms. Coleman's hourly
16 rate for private clients in the Southern District was \$195-\$250. Id. at
17 6. Based on her experience, Ms. Coleman opined that Ms. Arleo's
18 reasonable hourly rate "would be no more than \$300 per hour, and is more
19 likely \$250 per hour."³ Id. at 7.

20 Ms. Arleo also has been an attorney since 1999. Arleo Decl. Ex. 3
21 at 1. From 1999 to 2005, she worked at Milberg Weiss Bershad Hynes &
22 Lerach, where she represented plaintiffs in securities, labor, and
23 consumer cases. Id. at 1-2. Since 2005, she has continued to represent
24 plaintiffs in class actions (id.), and also has prosecuted a number of
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26 ³Defendant also submits a Declaration from Greg Olson, stating that Ms. Arleo's
27 reasonable rate is \$300-\$350/hour. Doc. No. 31 Ex. 5 at 7. However, this figure is
28 based on little more than Mr. Olson's statements that the case was narrow in scope and
brought by a single plaintiff. Id. As with the Hensley Declaration, this lack of
specificity diminishes the weight the Court gives to the recommendation.

1 FDCPA cases in this district. See, e.g., Gonzales, 05cv171-JAH (RBB);
2 Langley v. Check Game Solutions, 05cv2265-W (AJB) (S.D. Cal. December
3 13, 2005); Mial v. Elite Recovery Services, 06cv1851-DMS (RBB) (S.D.
4 Cal. September 13, 2006); Bracken et al. v. Eskanos & Adler, P.C. et
5 al., 06cv2288-H (BLM) (S.D. Cal. October 11, 2006); Doc. No. 29 at 8
6 (Plaintiff's motion for fees, stating Ms. Arleo "has extensive
7 experience prosecuting consumer, FDCPA and other class actions"). There
8 is no evidence that Ms. Arleo had any FDCPA experience prior to 2005.

9 In light of Ms. Coleman's experience in FDCPA litigation, and the
10 fact that she has been practicing law for the same number of years as
11 Ms. Arleo, Ms. Coleman is the best example provided by either party of
12 an attorney of "similar skill, experience and reputation" to Ms. Arleo
13 who performs "similar services" to those performed by Ms. Arleo in the
14 instant case. Camacho, 523 F.3d at 979. As such, her hourly rate is
15 directly applicable to this case. However, Ms. Coleman, who has
16 significantly more years of FDCPA experience (nine as compared to five)
17 and is a lecturer and author in the field, charges \$195-\$250/hour in the
18 Southern District. Coleman Decl. at 6. This fact, combined with Ms.
19 Coleman's opinion that Ms. Arleo's reasonable rate is \$250-\$300/hour,
20 recommends a much lower rate than the \$350/hour requested by Plaintiff.
21 On the other hand, Ms. Arleo's previous experience at a well-known
22 plaintiff's law firm, and the fact that she took the instant case on a
23 contingency fee basis and prevailed, recommend a slight increase in her
24 hourly rate. See Blum, 465 U.S. at 903 (concurrence, Brennan, J.)
25 (contingency fees may support a higher hourly rate). Therefore, after
26 weighing these factors, considering the parties' declarations, and
27 giving particular weight to Ms. Coleman's statements, the Court finds
28 \$300/hour to be a reasonable rate for Ms. Arleo in the instant case.

1 2. Fees Awarded to Ms. Arleo in Other FDCPA Cases.

2 In support of her motion for reconsideration, Plaintiff cites two
3 orders awarding Ms. Arleo \$350/hour: Hess v. Ramona Unified School
4 District, 2008 WL 5281243 (S.D. Cal. Dec. 19, 2008) and Langley, 2007 WL
5 2701345 (S.D. Cal. Sept. 13, 2007). Pl. Mot. at 1. Although courts may
6 look to other fee awards as evidence of an attorney's market rate, the
7 Ninth Circuit recently admonished judges to exercise caution when doing
8 so. Christensen, 557 F.3d at 1054 (warning courts not to engage in the
9 "tautological, self-referential exercise" of "recast[ing] fee awards
10 made by previous courts into 'market' rates") (quoting Student Pub.
11 Interest Research Group of N.J. v. AT & T Bell Laboratories, 842 F.2d
12 1436, 1446 (3d Cir. 1988)). Thus, although the Court finds these cases
13 useful, and looks to them to establish a general range for the value of
14 Ms. Arleo's services, its holding in the instant case is not controlled
15 by the previous awards.

16 Furthermore, the Court already has distinguished the nature of work
17 performed in Hess and Langley from that performed in the instant case.
18 Order at 6-7. In addition to the reasons already stated, the Court
19 notes that Ms. Arleo's hourly rate was not contested in Langley, and
20 that the Hess court based its decision in part on the Defendants'
21 failure to "support their contention that [Ms. Arleo's] rates are
22 unreasonably high with any evidence, such as competing declarations."
23 Hess, 2008 WL 5281243 at *3; Langley, 2007 WL 2701345 at *4. Here,
24 Defendant offered substantial evidence contesting Ms. Arleo's requested
25 hourly rate, including two expert declarations, thereby further
26 differentiating the instant case from Hess and Langley. Doc. No. 31;
27 Mendenhall v. Nat'l Transp. Safety Bd., 213 F.3d 464, 472 (9th Cir 2000)
28 (fee applicant's initial burden is not high when request is not

1 challenged); Camacho, 523 F.3d at 980 (a "wide spectrum of reasonable
2 hourly rates" may exist "even for work performed by the same attorney").

3 3. Other Factors.

4 Other factors also argue in favor of a reduced hourly rate for Ms.
5 Arleo. See Christensen, 557 F.3d at 1053 (listing factors a court may
6 consider when awarding fees). First, Plaintiff does not allege an
7 ongoing professional relationship with Ms. Arleo such that a higher
8 hourly rate would be merited. Id. Second, Ms. Arleo had ample time to
9 prosecute the case, and there is no evidence, such as requests to
10 continue deadlines, that she struggled under time pressure. Id. Third,
11 after reviewing Ms. Arleo's time sheets, the Court does not find that
12 Ms. Arleo's work on Plaintiff's case was so demanding of time that it
13 precluded her from accepting other employment. Id.; Arleo Decl. Ex. 1
14 & Doc. No. 33 Ex. 10 (time sheets). Finally, the amount involved was
15 minimal and the case settled for a small sum. Christensen, 557 F.3d at
16 1053; Doc. No. 30 (settlement agreement, filed under seal).

17 For the reasons provided above, the Court finds a rate of \$300/hour
18 reasonable for Ms. Arleo's work on the instant case. Plaintiff's motion
19 for reconsideration therefore is **DENIED**.

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1 **CONCLUSION**

2 Pursuant to this Court's original order, Defendant paid Plaintiff
3 \$42,725.95 in attorney's fees and confirmed payment on September 1,
4 2009. Doc. No. 37. The instant order resolves the only outstanding
5 issue, and this case is terminated. The Clerk of Court shall close the
6 file.

7 **IT IS SO ORDERED.**

8 DATED: October 22, 2009

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10 BARBARA L. MAJOR
11 United States Magistrate Judge
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