

1 follow, the Court will **GRANT IN PART** Plaintiff's motion and award Plaintiff
2 \$5,079.00 in reasonable attorney fees.

3 **BACKGROUND**

4 On July 3, 2012, Plaintiff filed a complaint, alleging various claims related to the
5 collection of an alleged student loan debt. (ECF No. 1.) On August 17, 2012, Plaintiff
6 filed her currently operative First Amended Complaint ("FAC"), asserting claims for
7 (1) violations of the Fair Debt Collection Practices Act ("FDCPA"), (2) violations of
8 California's Rosenthal Fair Debt Collections Practices Act ("Rosenthal Act"), (3)
9 violations of the Fair Credit Reporting Act ("FCRA"), (4) violations of California's
10 Consumer Credit Reporting Agencies Act ("CCRAA"), (5) violations of the Telephone
11 Consumer Protection Act ("TCPA"), and (6) negligence per se. (ECF No. 4.) Plaintiff
12 asserted all six causes of action against MRS.

13 On October 12, 2012, MRS filed an answer to Plaintiff's FAC. (ECF No. 23.)
14 On December 3, 2012, MRS served an offer of judgment on Plaintiff, which Plaintiff
15 did not accept within the time allotted by Rule 68. Thereafter, on or about January 5,
16 2013, MRS served its discovery requests on Plaintiff. In response, Plaintiff accepted
17 the offer of judgment. After MRS either reissued the offer or waived any objection to
18 Plaintiff's untimely acceptance, Plaintiff accepted the offer of judgment.

19 MRS offered Plaintiff "statutory and actual damages in the total amount of
20 \$1,001.00 (one thousand and one dollars) in connection with all claims asserted in
21 Plaintiff's operative Complaint." (ECF No. 47 at 4.)

22 With regard to attorney fees, the offer provides:

23 The Judgment entered shall also include an amount for reasonable costs
24 and attorney's fees **accrued through December 3, 2012**, the date of
25 Defendant's Initial Offer of Judgment. Reasonable costs and attorney fees
26 are to be agreed upon by the parties, or, if the parties are unable to agree,
to be determined by the Court on application by Plaintiff subject to the
limitation that costs and attorney fees are cut off as of the date of
Defendant's initial Offer of Judgment, December 3, 2012.

27 (*Id.* (emphasis in original).)

28 After Plaintiff filed her notice of acceptance of MRS's Rule 68 offer, Magistrate

1 Judge Major noted the parties still needed to agree on “reasonable costs and attorney
2 fees,” and thus instructed the parties “to file a notice stating that the parties have agreed
3 on reasonable costs and attorney’s fees or a motion requesting such costs and fees on
4 or before **February 1, 2013.**” (ECF No. 48 at 1 (emphasis in original).) The parties
5 were ultimately unable to agree on reasonable attorney fees, and thus Plaintiff untimely
6 filed the instant motion on February 4, 2013.

7 Plaintiff seeks a total of \$18,257 for seventy hours of work done by three
8 attorneys: Michael L. Crowley, Andre L. Verdun, and Eric A. LaGuardia. The \$18,257
9 figure represents a 40% discount on the total fees incurred by Verdun and LaGuardia.
10 Thus, broken down, Plaintiff seeks the following fees:

	Hours	Fee/Hour	Discount	Total Request
Crowley	2	\$550	0%	\$1,100
Verdun	33	\$350	40%	\$7,437
LaGuardia	35	\$300	40%	\$9,720
				\$18,257

16 DISCUSSION

17 **I. Legal Standard**

18 “[A]ny debt collector who fails to comply with” the FDCPA is, “in the case of
19 any successful action,” liable for “the costs of the action, together with a reasonable
20 attorney’s fee as determined by the court.” 15 U.S.C. § 1692k(a)(3). The appropriate
21 fee is determined by multiplying the number of hours reasonably worked on the
22 litigation by a reasonably hourly rate, arriving at a “lodestar.” *McGrath v. County of*
23 *Nevada*, 67 F.3d 248, 252 (9th Cir. 1995).

24 After determining the lodestar figure, courts should determine whether the figure
25 should be adjusted according to the *Kerr* factors. *McGrath*, 67 F.3d at 252. The *Kerr*
26 factors include: (1) the time and labor required; (2) the novelty and difficulty of the
27 questions involved; (3) the skill requisite to perform the legal service properly; (4) the
28 preclusion of other employment by the attorney due to acceptance of the case; (5) the

1 customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed
2 by the client or the circumstances; (8) the amount involved and the results obtained;
3 (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the
4 case; (11) the nature and length of the professional relationship with the client; and
5 (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th
6 Cir. 1975).

7 **II. Analysis**

8 **A. Reasonable Hours**

9 Plaintiff's attorneys assert they "used sound discretion in eliminating duplicative
10 and unproductive time and costs." They assert their billing records "show a good use
11 of discretion in billing appropriate amounts back to these Defendants [*sic*] for their
12 work necessary for establishing Defendants' [*sic*] FDCPA/TILA liability to the
13 Plaintiff." They assert that Verdun's and LaGuardia's discounting of their invoices by
14 40% further supports the conclusion that the number of hours they worked was
15 reasonable. They further estimate that they did not bill another four hours of time for
16 "all the meetings between counsel that took place to stay current with the status of the
17 case, discuss strategy, seek advice or opinion, and analyze facts and other discussions
18 between counsels [*sic*] on a weekly basis to ensure proper representation."

19 In response, MRS asserts this case "was a simple one, especially as to MRS."
20 MRS asserts "[t]he case was resolved, as to MRS, before any discovery had taken
21 place, and no initial scheduling conference was held." MRS thus argues the seventy
22 hours of time that Plaintiff's counsel say they spent on this case as it relates to MRS
23 is "an extraordinary amount of work for a matter that was resolved without motion
24 practice, court conferences, or discovery."

25 More specifically, MRS argues Plaintiff's counsel should not charge for pre-
26 complaint factual investigation of Plaintiff's claims given that Plaintiff's claims against
27 MRS were "very straightforward."

28 MRS further argues that, according to the terms of the offer of judgment,

1 Plaintiff is precluded from seeking attorney fees following the December 3, 2012 fee
2 cutoff date, which includes attorney fees for bringing the instant fee motion.

3 MRS also argues that tasks relating to all Defendants in this action should be
4 split so that MRS does not have to unfairly bear the burden of fees that Defendants
5 would otherwise be required to split if found liable. MRS asserts the following tasks
6 relate to all Defendants and should therefore be split: (1) drafting Rule 26(f) Report;
7 (2) discussing case status with client; (3) researching agents for service of process for
8 all Defendants; (4) drafting Complaint and FAC; (5) initial consultation with Plaintiff.

9 MRS also asserts Plaintiff's counsel have billed for duplicative tasks, including:
10 (1) initial consultation with client and (2) reviewing and filing a stipulation on behalf
11 of MRS that was never filed.

12 MRS further contends Plaintiff's counsel should not receive fees for
13 administrative work because clerical tasks are typically considered overhead expenses
14 reflected in an attorney's hourly billing rate. MRS notes Verdun billed time for (1)
15 obtaining, scanning, Bates-stamping, and copying documents and (2) scheduling a
16 conference with his client. MRS notes LaGuardia billed time for (1) scheduling a
17 conference with his client; (2) locating Defendants' agents for service of process; and
18 (3) e-filing the Civil Cover Sheet; and (4) printing, scanning, and mailing Plaintiff's
19 initial disclosures.

20 The Court first addresses the question of whether the accepted offer of judgment
21 precludes Plaintiff from seeking fees incurred in bringing the instant motion. The
22 Court finds the plain language of the offer of judgment to be conclusive. The Court
23 will not, therefore, look to the intent of the parties as Plaintiff would have the Court do.
24 The offer expressly states that if the parties are unable to agree on a reasonable amount
25 of attorney fees, the amount is "to be determined by the Court on application by
26 Plaintiff ***subject to the limitation*** that costs and attorney fees are cut off as of the date
27 of Defendant's initial Offer of Judgment, December 3, 2012." (Emphasis added.) The
28 Court reads this language as precluding recovery of any attorney fees incurred after

1 December 3, 2012. Plaintiff offers no authority that would require a different result.
2 The Court will thus exclude 12.7 hours from Verdun's total hours worked after
3 December 3, 2012. (*See* ECF No. 53-8 at 2-3.)

4 The Court agrees with Plaintiff that pre-complaint factual and legal research was
5 reasonably undertaken in preparation of Plaintiff's case. Thus, the Court will not
6 reduce the number of hours spent on pre-complaint research.

7 The Court agrees with MRS that various tasks relating to all Defendants should
8 be split so MRS is not required to unfairly bear the burden of fees that otherwise would
9 have been shared by multiple defendants. Having reviewed the invoices submitted by
10 Plaintiff's counsel, the Court finds several tasks should be split to reflect a reasonable
11 number of hours worked on Plaintiff's case against MRS.

12 The Court finds 9.1 of Verdun's total hours should be divided among all seven
13 defendants, resulting in an allotment of 1.3 hours for work done as to MRS, and thus
14 resulting in a further reduction of 7.8 hours from Verdun's total hours worked. The
15 Court finds 3.9 of Verdun's total hours should be divided among the four debt collector
16 defendants, resulting in an allotment of 1.0 hour for work done as to MRS, and thus
17 resulting in a further reduction of 2.9 hours from Verdun's total hours worked.

18 The Court also finds 32.8 of LaGuardia's total hours should be divided among
19 all seven defendants, resulting in an allotment of 4.7 hours for work done as to MRS,
20 and thus resulting in a reduction of 28.1 hours from LaGuardia's total hours worked.

21 The Court similarly finds Crowley's 2.0 hours should be divided among all
22 seven defendants, resulting in an allotment of 0.3 hours for work done as to MRS, and
23 thus resulting in a reduction of 1.7 hours from Crowley's total hours worked.

24 The Court disagrees with MRS that administrative and clerical tasks should be
25 excluded from Plaintiff's request for attorney fees; though, the Court finds such tasks
26 should be billed at reduced rates. Still, the Court find such tasks to be so minimal here
27 as to not require a further reduction of hours worked.

28 In sum, the Court finds the following number of hours were reasonably occurred

1 in connection with Plaintiff's case against MRS:

	Billed Hours	Reasonable Hours as to MRS
2 Crowley	2.0	0.3
3 Verdun	33.0	9.6
4 LaGuardia	35.0	6.9

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6 **B. Reasonable Rates**

7 Crowley seeks an hourly rate of \$550 based on his approximately twenty-five
8 years of practice experience, his role as a legal educator, and his familiarity with the
9 federal bar in this district.

10 Verdun seeks an hourly rate of \$335 based on his approximately three-and-a-half
11 years of practice experience, his attendance of a twenty-five-hour FDCPA seminar, and
12 his having litigated three dozen FDCPA cases to completion.

13 LaGuardia seeks an hourly rate of \$300 based on his approximately two-and-a-
14 half years of practice experience, his interning at an FDCPA firm in law school, his
15 experience as co-counsel in numerous FDCPA matters, and his attendance of a twenty-
16 five hour FDCPA seminar.

17 Plaintiff's counsel provide a fee survey report conducted by a leading consumer
18 law attorney, Ronald L. Burdge, entitled "United States Consumer Law Attorney Fee
19 Survey Report" (2010-11). The survey indicates the average hourly rates for California
20 consumer law attorneys with 1-3 years of experience is \$237; 3-5 years of experience,
21 \$347; 26-30 years of experience, \$525. Plaintiff's counsel assert they are entitled to
22 a higher rate than those listed in the survey report because of their expertise in FDCPA
23 matters. Plaintiff's counsel also provide the declarations of local attorneys Michael
24 Marrinan and J. Michael Vallee who agree the requested rates are reasonable.
25 Plaintiff's counsel further provide a September 24, 2012 order by District Judge
26 Benitez in which Crowley's hourly rate of \$450 and Verdun's hourly rate of \$300 were
27 approved as reasonable.

28 Citing cases from the Central District of California, MRS argues the requested

1 rates are excessive and should be adjusted downward.

2 As an initial matter, the Court finds the Central District of California cases cited
3 by MRS do not necessarily reflect reasonable rates of consumer law attorneys in the
4 Southern District of California. Though, considering the experience of Plaintiff's
5 counsel, the declarations of attorneys Marrinan and Vallee, the fee survey report
6 provided by Plaintiff, and Judge Benitez's September 24, 2012 order, the Court finds
7 the requested rates should be adjusted downward, though not to the extent suggested
8 by MRS. The Court finds a reasonable hourly rate for Crowley's work is \$525.¹ The
9 Court finds a reasonable hourly rate for Verdun's work is \$315. The Court finds a
10 reasonable hourly rate for LaGuardia's work is \$275.

11 **C. Lodestar**

12 Based on the foregoing, the Court calculates the lodestar figure as follows:

13

	Reasonable Hours	Reasonable Rate	Lodestar
14 Crowley	0.3	\$525	\$157.50
15 Verdun	9.6	\$315	\$3,024.00
16 LaGuardia	6.9	\$275	\$1,897.50

17 Having considered the *Kerr* factors, the Court finds a further reduction of these
18 amounts unnecessary. The Court thus finds the total amount of reasonable attorney
19 fees that Plaintiff incurred in connection with her case against MRS to be \$5,079.00.

20 **CONCLUSION**

21 After a careful review of the parties' submissions and applicable law, and for the
22 foregoing reasons, **IT IS HEREBY ORDERED** that:

- 23 1. Plaintiff's motion for attorney fees is **GRANTED IN PART**;
- 24 2. Plaintiff is awarded reasonable attorney fees in the amount of \$5,079.00;
- 25 and

26 ///

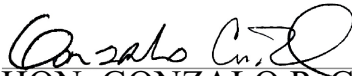
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28 ¹ The Court notes its decision to reduce Crowley's requested rate is due in part to his failure to explain why the submitted invoices show his time billed at \$525 per hour. (See ECF No. 53-8 at 2.)

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3. The hearing on Plaintiff's motion for attorney fees, currently set for June 14, 2013, is **VACATED**.

DATED: June 11, 2013


HON. GONZALO P. CURIEL
United States District Judge