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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GREGORIO LARDIZABAL,
Plaintiff,
v.
AMERICAN EXPRESS NATIONAL
BANK, et al.,
Defendants.

Case No.: 22-cv-345-MMA (BLM)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S
MOTION FOR ATTORNEYS’ FEES
AND COSTS**

[Doc. No. 143]

Pending before the Court is Plaintiff Gregorio Lardizabal’s (“Plaintiff”) Motion for Attorneys’ Fees and Costs against Defendant Arvest Central Mortgage Company (“Arvest”). Doc. No. 143. The Court found the matter suitable for determination on the papers and without oral argument pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7.1.d.1. *See* Doc. No. 157. For the reasons set forth below, the Court **GRANTS in part** and **DENIES in part** Plaintiff’s motion.

1 **I. RELEVANT BACKGROUND**

2 In April 2015, Plaintiff and his wife took out a mortgage from Arvest on their
3 investment property. Doc. Nos. 143-2 ¶ 5; 145-1 ¶ 6. Five years later, in April 2020,
4 Plaintiff contacted Arvest regarding possible hardship options available to him. Doc. No.
5 145-1 ¶ 7. Plaintiff then entered into a forbearance agreement with Arvest. Doc. Nos.
6 143-2 ¶ 7; 145-1 ¶ 8. Although Plaintiff timely made all payments on the property, Doc.
7 No. 143-2 ¶ 6, the crux of Plaintiff’s complaint against Arvest is that it inaccurately
8 reported to credit agencies that Plaintiff was thirty-days late on his October 2020
9 payment, Doc. No. 1 ¶ 47.

10 On March 14, 2022, Plaintiff initiated this action alleging violations of the Fair
11 Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, *et seq.*, California’s Consumer Credit
12 Reporting Agencies Act (“CCRAA”), Cal. Civ. Code § 1785.1, *et seq.*, and intentional
13 infliction of emotional distress, against Arvest and nine other defendants, including
14 American Express National Bank, Bank of America, N.A., Barclays Bank Delaware,
15 Citibank, N.A., Synchrony Bank, Equifax Information Services, LLC, Experian
16 Information Solutions, Inc., Innovis Data Solutions, Inc., and Trans Union, LLC. Doc.
17 No. 1. Between April 5, 2022 and June 6, 2022, all defendants filed an answer to
18 Plaintiff’s complaint, with Bank of America, N.A., filing a motion to dismiss. Doc. Nos.
19 16, 28, 31, 34, 36, 43, 52, 60–61.

20 On May 16, 2022, Plaintiff and all defendants attended a court-ordered Early
21 Neutral Evaluation (“ENE”) conference before U.S. Magistrate Judge Barbara L. Major,
22 which did not resolve the case. Doc. No. 49. Following the ENE and with leave of
23 Court, Plaintiff later filed a First Amended Complaint (“FAC”) alleging only violations
24 of the FCRA and CCRAA against seven of the defendants, including Arvest, American
25 Express National Bank, Bank of America, N.A., Equifax Information Services, LLC,
26 Experian Information Solutions, Inc., Innovis Data Solutions, Inc., and Trans Union,
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1 LLC. Doc. Nos. 70; 72.¹ All remaining defendants, including Arvest, filed answers to
2 Plaintiff's FAC between August 5, 2022 and August 19, 2022. Doc. Nos. 76–80, 82, 84.

3 On August 12, 2022, Plaintiff and the seven remaining defendants attended a
4 second ENE before Judge Major. Doc. No. 81. Because the case again did not resolve,
5 the case proceeded through discovery. *Id.*; Doc. No. 85. On October 10, 2022 and
6 October 13, 2022, Plaintiff filed notices of settlement for all of the remaining defendants,
7 except Arvest.² Doc. Nos. 90–93, 95–96.

8 From October 2022 to February 2023, Plaintiff and Arvest duked it out in
9 discovery, which included Plaintiff filing two separate motions to resolve various
10 discovery disputes. Doc. Nos. 101; 127. Judge Major granted in part Plaintiff's first
11 motion, which sought for Arvest to supplement some of its responses to two of Plaintiff's
12 Requests for Production, and granted Plaintiff's second motion in full, requiring Arvest to
13 produce two of its employees for depositions. Doc. Nos. 108; 138.

14 On March 9, 2023, Plaintiff and Arvest attended a Mandatory Settlement
15 Conference ("MSC") before Judge Major. Doc. No. 139. The case did not settle. *Id.*
16 However, soon after, on March 13, 2023, Plaintiff filed a notice of acceptance of a
17 Federal Rule of Civil Procedure 68 offer of judgment from Arvest that provided \$40,000
18 in damages, "inclusive of any and all actual, statutory and punitive damages, including
19 any applicable interest," and injunctive relief, where Arvest agreed to "request that the
20 consumer reporting agencies suppress the reporting on Plaintiff's October 2020 payment
21 from Plaintiff's credit reports." Doc. Nos. 140; 140-1 at 3. On March 14, 2023, exactly
22 one year from the date Plaintiff filed his initial complaint, the Court entered judgment
23 and closed the case. Doc. No. 141.

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26 ¹ On May 16, 2022 and May 25, 2022, the Court granted Joint Motions to Dismiss Defendants Citibank,
27 N.A., and Barclays Bank Delaware. Doc. Nos. 50; 58. In addition, the Court granted a Joint Motion to
Dismiss Defendant Synchrony Bank shortly after the filing of the FAC. Doc. No. 75.

28 ² The other six defendants were later dismissed after the Court granted the parties' Joint Motions to
Dismiss. Doc. Nos. 103; 110; 112; 115; 123; 133.

1 1115, 1119 (9th Cir. 2000). First, the Court calculates the presumptive fee award, also
2 known as the “lodestar figure,” by taking the number of hours reasonably expended on
3 the litigation and multiplying it by a reasonable hourly rate. *Id.* (citing *Hensley v.*
4 *Eckerhart*, 461 U.S. 424, 433 (1983)). The Court “must carefully review attorney
5 documentation of hours expended; ‘padding’ in the form of inefficient or duplicative
6 efforts is not subject to compensation.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132
7 (2001) (citation omitted). “The reasonable hourly rate is that prevailing in the
8 community for similar work.” *PLCM Grp. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000).

9 Second, in “appropriate cases” the court may enhance or reduce the lodestar figure
10 based on an evaluation of the factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526
11 F.2d 67, 69–70 (9th Cir. 1975),⁴ that were not taken into account in the initial lodestar
12 calculation. *Intel Corp. v. Terabyte Intern., Inc.*, 6 F.3d 614, 622 (9th Cir. 1993) (citation
13 omitted). The *Kerr* factors include, but are not limited to, the time and labor required, the
14 novelty and difficulty of the questions involved, the skill required to perform the legal
15 services properly, the preclusion of other employment by the attorney due to acceptance
16 of the case, whether the fee is fixed or contingent, and the experience, reputation, and
17 ability of the attorneys. *Kerr*, 526 F.2d at 70. The Ninth Circuit has cautioned that there
18 is a “strong presumption” that the lodestar figure represents a reasonable fee and that
19 adjustment upward or downward is “the exception rather than the rule.” *D’Emanuele v.*
20 *Montgomery Ward & Co., Inc.*, 904 F.2d 1379, 1384 (9th Cir. 1990).

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28 ⁴ Abrogated on other grounds by *City of Burlington v. Dague*, 505 U.S. 557 (1992).

1 **III. DISCUSSION**

2 Plaintiff requests a total of \$121,574.50 in attorneys’ fees and \$12,191.13 in
3 litigation costs.⁵ Doc. No. 152 at 14. Arvest presents two main arguments in its
4 opposition. First, Arvest argues that Plaintiff is not entitled to fees or costs because its
5 “intent . . . was for the [Rule 68] Offer of Judgment to settle the entire case, attorneys’
6 fees and costs included.” Doc. No. 161-1 at 16. Second, Arvest argues that even if
7 Plaintiff is entitled to fees, the amount Plaintiff requests is unreasonable. Doc. No. 161-1
8 at 17–32. The Court will first address Arvest’s argument regarding the availability of
9 attorneys’ fees and costs before analyzing the requests themselves.

10 **A. Whether Attorneys’ Fees and Costs are Recoverable**

11 As stated above, the Court first considers whether, having accepted Arvest’s Rule⁶
12 68 Offer, Plaintiff may now seek attorneys’ fees and costs in addition to the \$40,000
13 judgment award.

14 *1. Rule 68 Standard*

15 Federal Rule of Civil Procedure 68 provides:

16 At least 14 days before the date set for trial, a party defending against a claim
17 may serve on an opposing party an offer to allow judgment on specified terms,
18 with the costs then accrued. If, within 14 days after being served, the opposing
19 party serves written notice accepting the offer, either party may then file the
20 offer and notice of acceptance, plus proof of service. The clerk must then enter
judgment.

21 Fed. R. Civ. P. 68(a). The rule also contains a fee-shifting provision: “If the judgment
22 that the offeree finally obtains is not more favorable than the unaccepted offer, the
23 offeree must pay the costs incurred after the offer was made.” Fed. R. Civ. P. 68(d).

24 Thus, plaintiffs must choose carefully when deciding whether to accept or reject a Rule
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27 ⁵ Plaintiff initially requested \$114,072.50 in attorneys’ fees in his motion, Doc. No. 143-1 at 29, but later
28 revised this number to include additional fees incurred to fully brief this fee petition and to correct
several errors in Plaintiff’s attorneys’ initial time sheet they submitted.

⁶ Unless otherwise noted, all “Rule” references are to the Federal Rules of Civil Procedure.

1 68 offer. *See Marek v. Chesny*, 473 U.S. 1, 10–11 (1985) (noting that a Rule 68 offer
2 “will require plaintiffs to ‘think very hard’ about whether continued litigation is
3 worthwhile”). Indeed, “the plain purpose of Rule 68 is to encourage settlement and avoid
4 litigation.” *Id.* at 5.

5 2. *Analysis*

6 Plaintiff argues that he is entitled to attorneys’ fees and costs because he is the
7 prevailing party under the FCRA and CCRAA, and because Arvest’s Rule 68 offer was
8 silent regarding attorneys’ fees and costs. Doc. Nos. 143-1 at 15; 152 at 7, 9. Arvest
9 responds that “it [wa]s reasonable for Arvest to presume that Plaintiff accepted the
10 \$40,000 offer, attorneys’ fees and costs included,” based on confidential settlement
11 communications⁷ between the parties that took place prior to Arvest’s offer. Doc. No.
12 145 at 16. Arvest further argues that “for Plaintiff to now claim that he did not know the
13 offer included fees and costs is just another bad faith tactic in pursuing a windfall
14 payout.” *Id.* at 15.

15 The Ninth Circuit has stated that a Rule 68 offer of judgment “must be clear and
16 unambiguous” in waiving or limiting attorneys’ fees and costs. *Nusom v. Comh*
17 *Woodburn, Inc.*, 122 F.3d 830, 833 (9th Cir. 1997); *Erdman v. Cochise County, Ariz.*, 926
18 F.2d 877, 880 (9th Cir. 1991); *see also Marek*, 473 U.S. at 6 (1985). More specifically,
19 “where the underlying statute does not make attorney fees part of costs, [like in the
20 situation here], it is incumbent on the defendant making a Rule 68 offer to *state clearly*
21 that attorney fees are included as part of the total sum for which judgment may be entered
22 if the defendant wishes to avoid exposure to attorney fees in addition to the sum offered
23 plus costs.” *Id.* at 834 (emphasis added); *see F. v. Blue Shield of California*, No. 09-CV-
24 2037-PJH, 2016 WL 1059459, at *14 (N.D. Cal. Mar. 17, 2016) (clarifying that,

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27 ⁷ As stated in the Court’s April 28, 2023 Order, the Court will not rely on any of these confidential
28 settlement communications in its decision. Doc. No. 160 at 2. And, as explained further in the instant
Order, even if the Court were to consider this extrinsic evidence, Arvest was ultimately the maker of its
own offer.

1 according to *Nusom*, “a Rule 68 offer may include the amount for attorney’s fees (if this
2 inclusion is expressly stated) or may contemplate that the court will entertain requests for
3 attorney’s fees after acceptance.”). Therefore, “a Rule 68 offer for judgment in a specific
4 sum together with costs, which is silent as to attorney fees, does not preclude the plaintiff
5 from seeking fees when the underlying statute does not make attorney fees a part of
6 costs.” *Nusom*, 122 F.3d at 835. Moreover, “ambiguities in a Rule 68 offer are typically
7 construed against the offeror,” with defendants bearing the brunt of uncertainty.
8 *Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1223 (9th Cir. 2016)
9 (citing *Nusom*, 122 F.3d at 834).

10 Here, of importance, Arvest’s Rule 68 offer of judgment to Plaintiff reads:

11 Judgment shall be entered against Arvest on all claims and in favor of Plaintiff
12 in the amount of \$40,000 (forty thousand dollars and no cents), inclusive of
13 any and all actual, statutory and punitive damages, including any applicable
14 interest, as may be awardable under the governing law. In addition, [Arvest]
15 will request that the consumer reporting agencies suppress the reporting on
16 Plaintiff’s October 2020 payment from Plaintiff’s credit reports.

17 Doc. No. 140-1 at 3. Thus, on its face, Arvest’s offer of judgment is silent as to
18 whether attorneys’ fees or costs are included in its offer. Accordingly, Arvest’s
19 argument that its “Offer of Judgment included [f]ees and [c]osts,” Doc. No. 145 at
20 13, is unpersuasive. See *Gutierrez v. Good Savior, LLC*, No. CV 14-4595 (AJW),
21 2016 WL 5661869, at *4 (C.D. Cal. Sept. 28, 2016). In addition, Arvest does not
22 dispute that Plaintiff is the prevailing party or that the FCRA and CCRAA allow for
23 recovery of attorneys’ fees upon a successful action to enforce liability under these
24 statutes.

25 Moreover, Arvest’s reliance on *Radecki v. Amoco Oil Co.*, 858 F.2d 397 (8th
26 Cir. 1988), an old out-of-circuit case, is unpersuasive, as a cursory review of the
27 more current case law in this circuit (and elsewhere) reveals the approach the Ninth
28 Circuit takes on this issue. See *Gutierrez*, 2016 WL 5661869, at *6 (finding that
“[T]he Eighth Circuit’s application [in *Radecki*] of Rule 68 is markedly more lenient

1 toward defendants than are Ninth Circuit precedents.”); *Barbour v. City of White*
2 *Plains*, 700 F.3d 631, 633–34 (2d Cir. 2012) (affirming district court’s grant of
3 attorneys’ fees and costs where defendants’ offer of judgment “for the settlement of
4 all claims pending against the defendants in this action” was clearly silent as to
5 attorneys’ fees and costs); *Lima v. Newark Police Dep’t*, 658 F.3d 324, 331–32 (3d
6 Cir. 2011) (rejecting argument that reference to “all of Plaintiff’s claims for relief”
7 in a Rule 68 offer explicitly covered attorneys’ fees and costs); *Bosley v. Mineral*
8 *Cty. Comm’n*, 650 F.3d 408, 411–13 (4th Cir. 2011) (rejecting argument that
9 defendants’ offer of judgment for “full and complete satisfaction of [plaintiff’s]
10 claim against . . . Defendants” included attorneys’ fees and costs).

11 However, the Ninth Circuit has indicated that extrinsic evidence may
12 sometimes be considered in resolving Rule 68 contract disputes. *See Nusom*, 122
13 F.3d at 834–35. But, even assuming the Court should or could look at extrinsic
14 evidence here—*i.e.*, the parties’ confidential settlement communications offered by
15 Arvest—the evidence presented would not change the fact that Arvest is the master
16 of its own offer and did not explicitly state, in its written offer, that attorneys’ fees
17 or costs were included. Arvest apparently asserts that Plaintiff should have known
18 that its offer included attorneys’ fees and costs based on their communications in
19 earlier settlement discussions that took place shortly before Arvest made the offer.
20 Doc. No. 145 at 15–16. However, as the *Gutierrez* court points out, Plaintiff should
21 be able to rely on the actual offer given to him, which here, does not explicitly state
22 that attorneys’ fees or costs were included in the offer. 2016 WL 5661869, at *5–7.
23 Indeed, the Ninth Circuit has suggested that defense counsel must take care to draft
24 their offers to explicitly address fees and costs to “avoid exposure to attorney fees in
25 addition to the sum offered plus costs.” *Nusom*, 122 F.3d at 834.

26 The Court also notes that the case law it found while researching this issue
27 was available to Arvest at the time it was drafting its Rule 68 offer of judgment.
28 Thus, the Court is unpersuaded that Arvest should not be held to the actual offer it

1 presented to Plaintiff. To the extent that Arvest moves for a relief from judgment
2 pursuant to Rule 60(b) based on its argument that the “[j]udgment should be vacated
3 and the case should be litigated on its merits” due to no “meeting of the minds,” the
4 Court **DENIES** any such motion. “[T]he proper procedural device for relief from a
5 Rule 68 judgment is the same as for any other judgment: Rule 60.” *Webb v. James*,
6 147 F.3d 617, 620 (7th Cir. 1998). Rule 60 permits the court “to relieve a party or
7 its legal representative from a final judgment” for a variety of reasons, including
8 “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. 60(b)(1).
9 Here, although Arvest attempts to label its contention as a mistake of fact, it appears
10 to the Court that Arvest’s entire argument is premised on a mistake of law regarding
11 the availability of attorneys’ fees, which is not a basis for granting relief under Rule
12 60(b). *See Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103–04 (9th
13 Cir. 2006) (holding that counsel’s alleged gross negligence does not provide grounds
14 to vacate a Rule 68 judgment under Rule 60 and noting that “the very purpose of
15 Rule 68 is to encourage termination of litigation”).

16 Accordingly, the Court finds that Arvest’s Rule 68 offer of judgment did not
17 state that attorneys’ fees or costs were included and that, therefore, Plaintiff is
18 entitled to an award of attorneys’ fees as the prevailing party pursuant to the FCRA
19 and CCRAA, and to costs pursuant to Federal Rule of Civil Procedure 68. *See*
20 *Marek*, 473 U.S. at 6; *Nusom*, 122 F.3d at 833–34.

21 **B. Calculation of Reasonable Attorneys’ Fees and Costs**

22 As stated above, Plaintiff is seeking a total of \$121,574.50 in attorneys’ fees and
23 \$12,191.13 in costs. Doc. No. 152 at 14. Having determined that Plaintiff may seek fees
24 and costs, the Court now turns to the question of whether the requested amount in this
25 case is reasonable.

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1 1. *Fees*

2 a. Reasonableness of Rates

3 In determining whether the amount of fees requested in this case is reasonable, the
4 Court must first determine whether Plaintiff’s attorneys’ rates are reasonable. To do so,
5 the Court must weigh the “experience, skill, and reputation of the attorney[s] requesting
6 fees,” and compare the requested rates to prevailing market rates. *Chalmers v. City of*
7 *Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *opinion amended on denial of reh’g*,
8 808 F.2d 1373 (9th Cir. 1987); *see also Blum v. Stenson*, 465 U.S. 886, 886 (1984). The
9 relevant community for analyzing reasonable hourly rates “is the forum in which the
10 district court sits,” here the Southern District of California. *Camacho v. Bridgeport Fin.,*
11 *Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).

12 In this action, Plaintiff’s counsel requested hourly rates ranging from \$295 to \$795.
13 Doc. No. 143-1 at 20. Plaintiff argues these fee rates are reasonable given the
14 contentious nature of the litigation and the extensive experience of Plaintiff’s counsel
15 with FCRA and CCRAA claims. *Id.* at 21. In support of these rates, Plaintiff submits
16 numerous declarations from other attorneys and also contends that the requested rates are
17 in line with the prevailing rates in the Southern District of California, relying on
18 *Orthopaedic Hosp. v. Encore Med., L.P.*, No. 19-cv-00970-JLS-AHG, 2021 U.S. Dist.
19 LEXIS 225014 (S.D. Cal. Nov. 19, 2021). Arvest argues that Plaintiff’s reliance on the
20 *Orthopaedic* case is “disingenuous” and that the requested rates are unreasonably high
21 based on the most recent U.S. Consumer Law Attorney Fee Survey Report from 2017 to
22 2018, which indicates median rates of \$400 for attorneys practicing in credit rights cases.
23 Doc. Nos. 145 at 24; 145-15 at 9.

24 First, the Court agrees with Arvest that the *Orthopaedic* case is inapposite here.
25 That case dealt with a “complex, high-stakes patent litigation” which the Court held
26 justified “the approval of higher billing rates.” 2021 U.S. Dist. LEXIS 225015, at *43.
27 Based on a review of the case law in this area, the Court finds another November 2021
28 case from this District much more instructive than *Orthopaedic*. In *Buchannon v.*

1 *Associated Credit Services, Inc.*, No. 20-cv-02245-BEN-LL, 2021 WL 5360971 (S.D.
2 Cal. Nov. 17, 2021), U.S. District Judge Roger T. Benitez found an hourly rate of \$575
3 was reasonable for attorney Michael Cardoza, owner of the Cardoza Law Corporation,
4 who submitted a declaration in support of the instant motion. 2021 WL 5360971, at *15.
5 Like Plaintiff’s counsel here, Mr. Cardoza is a consumer law attorney who frequently
6 litigates FCRA cases and cases involving other consumer protection statutes. *Id.*; *see*
7 *also* Doc. No. 143-46 at 2–4. Mr. Cardoza also has a commensurate practice and
8 litigation experience compared to the three more experienced attorneys in this case.

9 Second, the Court agrees with Arvest that the twenty attorney declarations
10 submitted by Plaintiff are not persuasive. The declarations are conclusory and do not
11 include sufficient detail—*e.g.*, what the attorneys’ own rates currently are, whether they
12 have been awarded \$795 as an hourly rate in this District, or whether they practice in this
13 District, specifically—to assist the Court in determining whether counsel’s requested
14 rates in the instant case are reasonable.

15 Moreover, although the Fee Survey Report is quite often relied on by other judges
16 in this District,⁸ the Court finds Arvest’s suggested rate of \$400 based on the report
17 unreasonably low, particularly in light of inflation. *See Bell v. Clackamas Cty.*, 341 F.3d
18 858, 869 (9th Cir. 2003) (“We hold, however that it was an abuse of discretion in this
19 case to apply the market rates in effect [more] than two years *before* the work was
20 performed.” (emphasis in original)). Thus, based on the above reasoning, the Court will
21 calculate counsel’s hourly fee in this case using the \$575 hourly rate that Judge Benitez
22 found reasonable in the *Buchannon* case. Adjusting for inflation rates of 6.5% and 3.2%⁹

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25 ⁸ For example, this report was cited to recently in October 2023 by U.S. Magistrate Judge Allison H.
26 Goddard when calculating reasonable attorneys’ fees. *See Roland S. v. Kijakazi*, No. 20-cv-01068-
27 AHG, 2023 WL 6966153, at *3 (S.D. Cal. Oct. 20, 2023).

28 ⁹ The Court takes judicial notice of these rates, *see* Fed. R. Evid. 201(c)(1), which are public records
published by the United States Bureau of Labor Statistics, and are calculated as the total Consumer Price
Index (“CPI”) for each year. *See* https://www.bls.gov/news.release/archives/cpi_01122023.htm
(showing unadjusted CPI percentage change of 6.5% for 2022);

1 in 2022 and 2023, respectively, the Court finds that \$650 is a reasonable hourly rate for
2 Mr. Loker, Mr. Swigart, and Mr. Shay.¹⁰ As to the associate in this case, Mr. Pfeiff, the
3 Court finds that his requested fee of \$295 is reasonable based on the Fee Survey Report
4 submitted by Arvest and the above-mentioned inflation rates.¹¹

5 Having determined the reasonable hourly rates, the Court will now determine the
6 reasonableness of the hours expended by counsel to litigate this case.

7 b. Reasonableness of Hours Expended

8 Here, as modified in their supplemental joint time sheet, Plaintiff's attorneys seek
9 compensation for the following hours billed: (1) 89.2 hours for Mr. Loker; (2) 40.2 hours
10 for Mr. Swigart; (3) 12.8 hours for Mr. Shay; and (4) 28.9 hours for Mr. Pfeiff. Doc. No.
11 152-2 at 14. To determine the appropriate lodestar amount, the Court must now assess
12 the "number of hours reasonably expended on the litigation[.]" *Credit Managers Ass's of*
13 *S. Cal. v. Kennesaw Life and Accident Ins. Co.*, 25 F.3d 743, 750 (9th Cir. 1994). "In
14 determining the appropriate lodestar amount, the district court may exclude from the fee
15 request any hours that are excessive, redundant, or otherwise unnecessary." *Welch v.*
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19 https://www.bls.gov/news.release/archives/cpi_11142023.htm (showing the unadjusted annual
20 percentage change of the CPI of 3.2% for October 2023); *see also*
<https://www.usinflationcalculator.com/inflation/current-inflation-rates/>.

21 ¹⁰ This rate was calculated by dividing the inflation rates by 100, multiplying that number by the
22 relevant hourly rate, and then adding the annual increase based on inflation to the hourly rate. Although
23 the actual calculation for the new hourly rate came to approximately \$631.89, the Court in its discretion
finds \$650 reasonable based on Plaintiff's counsel's experience and expertise in FCRA and CCRAA
cases.

24 ¹¹ In its opposition, Arvest disputes Mr. Pfeiff's hourly rate and notes that in Plaintiff's original joint
25 time sheet submitted with his motion for fees, Mr. Pfeiff was billing on this case at the same rate before
26 he was admitted to the California State Bar. Doc. No. 145 at 24. In reply, Plaintiff acknowledges the
27 error and notes that "the intent was to seek compensation for [Mr. Pfeiff's] time at a lower rate for when
28 he was a law clerk." Doc. Nos. 152 at 13 n.4; 152-1 ¶ 10. In light of this error, Plaintiff submitted an
updated time sheet that does not seek recovery for any of Mr. Pfeiff's time spent working on this case
before he was barred. Doc. No. 152-1 ¶ 11. Accordingly, the Court will only apply Mr. Pfeiff's
reasonable hourly rate of \$295 to *reasonable* hours billed while he was a practicing attorney, with his
reasonable hours being determined below.

1 *Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007) (internal quotation marks
2 omitted).

3 In opposition, Arvest disputes Plaintiff’s attorneys’ claimed hours for various
4 reasons, including excessive hours spent litigating a case Arvest believes was a “frivolous
5 and bad faith action,”¹² “fail[ing] to properly identify and segregate its billing as to
6 Arvest only,” duplicative billing, block billing, the wrong attorney billing for a deposition
7 where he was not present, and improperly seeking fees for non-recoverable clerical work.
8 Doc. No. 145 at 18–21. In reply, Plaintiff notes that his supplemental joint time sheet
9 corrects some of the errors that Arvest identified, such as Mr. Pfeiff conducting the
10 deposition of David Roth and not Mr. Swigart. Doc. Nos. 152 at 13 n.4; 152-2 at 10.
11 Plaintiff also notes that his supplemental joint time sheet accounts for time spent
12 defending his fee motion. Doc. No. 152 at 13 n.4.

13 As an initial matter, the Court will not second guess the litigation tactics used by
14 Plaintiff, because as noted above, he is to be considered the prevailing party for purposes
15 of this motion. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008);
16 Doc. No. 141. Accordingly, the Court will treat all motion practice conducted by both
17 parties in this matter as reasonably necessary.

18 As to Arvest’s complaints of duplicative billing and block billing, the Court is
19 unpersuaded. First, although Plaintiff’s attorneys’ time sheet includes entries for the
20 same task by different counsel, they specifically billed the time to just one attorney. *See*,
21 *e.g.*, Doc. No. 152-2 at 11. To the extent Plaintiff argues that it was unnecessary for the
22 more senior attorneys to review the younger associate’s work, the Court finds that Arvest
23 has failed to show how Plaintiff’s attorneys’ decision to staff multiple attorneys on
24 certain tasks resulted in *unnecessary* duplicative billing. *See Kim v. Fujikawa*, 871 F.2d
25 1427, 1435 n. 9 (9th Cir. 1989) (“[T]he participation of more than one attorney does not
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28 ¹² Arvest also argues at multiple times in its opposition that Plaintiff “manufactured” discovery disputes.
Doc. No. 145 at 12, 27, 29.

1 necessarily constitute an unnecessary duplication of effort.”); *Mitchell v. Metro. Life Ins.*
2 *Co.*, 2008 WL 1749473, at *3 (C.D. Cal. Apr. 7, 2008) (“It is not unusual for one
3 attorney to draft a brief, for another attorney to review and revise the brief, and then for
4 the drafting attorney to make final edits and changes.”); *Charlebois v. Angels Baseball,*
5 *LP*, 993 F. Supp. 2d 1109, 1125 (C.D. Cal. May 30, 2012) (declining to strike billing
6 entries “simply because Class Counsel kept each other informed about the case and
7 double-checked each other’s work . . . indeed, many motions this Court denie[d] would
8 have benefitted from a second read and more strategizing by the attorneys involved.”).
9 Therefore, the Court does not find duplicative billing as a basis to disallow certain billing
10 entries from a fee award. Second, in regard to block billing, the Court finds that Arvest’s
11 objections to specific entries in Plaintiff’s time sheet are without merit. Doc. No. 145-7
12 ¶ 46. Block billing is not prima facie objectionable. *Garcia v. Ford Motor Co.*, No. 22-
13 CV-1474-GPC, 2023 WL 3961090, at *3 (S.D. Cal. June 12, 2023). Instead, block
14 billing is first and foremost objectionable when billing records block bill multiple tasks in
15 which only some are entitled to fee recovery. *See Bell v. Vista Unified School Dist.*, 82
16 Cal. App. 4th 672, 689 (Cal. App. 2000) (objecting to block billing because the court
17 could not break down the hours to determine which were related to Brown Act violations
18 and therefore recoverable and other legal claims that were not recoverable). Here, all of
19 the tasks relate to Plaintiff’s FCRA and CCRAA claims, and fees are recoverable under
20 these statutory schemes. Further, none of the entries complained about by Arvest
21 exceeded even three hours of billable time—this is not an egregious use of block billing.
22 Thus, the Court finds that block billing is not objectionable in this context.

23 On the other hand, the Court is persuaded by Arvest’s arguments regarding
24 Plaintiff’s failure to properly identify and segregate its billing as to Arvest only, and as to
25 Plaintiff improperly seeking fees for clerical tasks. Although the Court agrees with
26 Plaintiff that Arvest is solely responsible for any reasonable time billed after notices of
27 settlement were filed as to the other nine defendants, the Court finds it necessary to
28 discount or disallow Plaintiff’s attorneys’ time for tasks prior to October 2022, such as

1 preparing for and attending two ENEs, where multiple other defendants were involved.
2 *See Clark v. Cap. Credit & Collection Servs., Inc.*, 561 F. Supp. 2d 1213, 1223 (D. Or.
3 2008) (apportioning attorneys’ fees between multiple defendants where the parties were
4 not jointly and severally liable for plaintiff’s attorneys’ fees). In addition, the Court finds
5 that numerous entries in Plaintiff’s joint time sheet—for example, “[r]eceiving [a]
6 message from Chambers re[garding] scheduling, Doc. No. 152-2 at 9—must be
7 disallowed due to improperly seeking fees for non-professional, clerical tasks. *Missouri*
8 *v. Jenkins*, 491 U.S. 274, 288 n.10 (1989) (“[P]urely clerical or secretarial tasks should
9 not be billed at a paralegal’s [or lawyer’s] rate, regardless of who performs them . . .
10 [The] dollar value [of such non-legal work] is not enhanced just because a lawyer does
11 it.”) (internal citations omitted); *see also Young v. Geico Indem. Co.*, No. 08–00171
12 JMS/KSC, 2009 WL 3049640, at *8 (D. Haw. Sept. 23, 2009) (communications with the
13 court are clerical and not compensable at attorney rates); *Compass Bank v. Morris*
14 *Cerullo World Evangelism*, No. 13:CV-0654-BAS (WVG), 2015 WL 3442030, at *8
15 (S.D. Cal. May 28, 2015) (reducing billing entries due to a finding that “certain tasks
16 were ministerial and did not require an attorney to perform[,]” including drafting a
17 revised subpoena, preparing instructions for service, and phone calls and emails to
18 reschedule deposition); *Miller v. Schmitz*, No. 112CV00137LJOSAB, 2017 WL 633892,
19 at *7 (E.D. Cal. Feb. 15, 2017) (excluding numerous email communications as purely
20 clerical and noting that “[a]lthough Plaintiff’s counsel is a solo practitioner and may not
21 have secretarial support for these types of tasks, there is nothing in the record to establish
22 clerical tasks are not generally subsumed within an attorney’s hourly rate”).

23 Moreover, as seen in the chart below, the Court also finds some entries in the
24 billing sheet are vague or include excessive hours. *See Santiago v. Equable Ascent Fin.*,
25 No. C 11-3158 CRB, 2013 WL 3498079, at *5 (N.D. Cal. July 12, 2013) (explaining that
26 “[w]ork entries are inadequately vague when the district court is unable to discern how
27 the time spent is attributable to the case at hand” and deducting billed hours with vague
28 entries); *see also Welch*, 480 F.3d at 946.

1 Finally, as to Plaintiff’s additional time sought to defend the instant motion, the
 2 Court finds that Plaintiff may also seek the additional fees and costs he incurred in
 3 litigating his fees and costs. *See Orange Blossom Ltd. P’ship v. S. Cal. Sunbelt*
 4 *Developers, Inc. (In re S. Cal. Sunbelt Developers, Inc.)*, 608 F.3d 456, 463 (9th Cir.
 5 2010).

6 Based on the above reasoning and its line-by-line review of Plaintiff’s
 7 supplemental joint time sheet, Doc. No. 152-2, the Court finds that the following
 8 reductions are warranted for the reason(s) shown:

Billing Date	Task	Time Claimed	Court Adjusted Time	Reason(s) for Adjustment
3/12/2022	Finalized Complaint.	0.4	0.2	Excessive hours for task
3/14/2022	Received approval for Complaint.	0.1	0	Clerical
3/14/2022	Filed Complaint.	0.1	0	Clerical
4/1/2022	Received executed JPA and added my signature.	0.1	0	Clerical
4/1/2022	Prepared NOA.	0.2	0.1	Excessive hours for task
4/1/2022	Filed NOA.	0.1	0	Clerical
4/1/2022	Provided Zoho link to Spencer so Swigart Law Group could upload the remainder of their documents to my system.	0.1	0	Clerical
5/6/2022	Sent research notes to co counsel. Asked Spencer to discuss with Lardizabal.	0.1	0	Excessive hours for task; clerical

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5/6/2022	Drafted ENE brief.	3.2	0.3	Hours reduced to account for multiple defendants
5/11/2022	Provided Zoom link to Lardizabal.	0.1	0	Clerical
5/13/2022	Received message from Magdalena seeking dismissal inclusive of docs.	0.1	0	Clerical
5/16/2022	Attended ENE. Need more info to facilitate substantive discussions.	1.0	0.1	Hours reduced to account for multiple defendants
5/16/2022	Received email from Magdalena re Rule 11.	0.1	0	Clerical
7/3/2022	Worked on ENE Brief #2.	0.8	0.1	Hours reduced to account for multiple defendants
7/20/2022	Drafted FAC.	1.2	0.2	Hours reduced to account for multiple defendants
7/28/2022	Finalized ENE Brief #2.	1.3	0.2	Hours reduced to account for multiple defendants
8/5/2022	Received counter from Arvest along with documents/recordings.	0.1	0	Clerical
8/12/2022	Attended second ENE.	3.0	0.4	Hours reduced to account for multiple defendants

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9/9/2022	Received Arvest's discovery requests.	0.1	0	Clerical
10/10/2022	Received message from Magdalena re resolution.	0.1	0	Clerical
11/2/2022	Finalized and filed disco dispute Motion.	2.6	2.0	Excessive hours for task; clerical
11/22/2022	Received Order re Disco Dispute.	0.1	0	Clerical
12/19/2022	Received unilateral "cancellation" of depos by Magdalena.	0.1	0	Clerical
12/21/2022	Organized Exhibits for Johnson and Bisbee no show.	0.6	0.3	Excessive hours for task; clerical
12/21/2022	Submitted No Show Exhibits to Steno.	0.1	0	Clerical
12/28/2022	Received expert designations from Arvest.	0.1	0	Clerical
1/9/2023	Provided final costs re No Show Depos to Magdalena.	0.1	0	Clerical
1/11/2023	Received message from Magdalena that Arvest will reimburse costs but will not produce either Bisbee or Johnson for a depo.	0.1	0	Clerical
1/13/2023	Received message from Chambers re scheduling disco dispute conference call.	0.1	0	Clerical
1/13/2023	Confirmed disco dispute call for 1.18.	0.1	0	Clerical

1	1/20/2023	Finalized and filed Disco Dispute #2.	2.8	1.4	Vague; excessive hours for task; partially clerical
2					
3	2/24/2023	Received Order re MTC #2.	0.7	0	Vague; excessive hours for task; clerical
4					
5	2/27/2023	Drafted and submitted MSC Brief.	2.8	2.0	Excessive hours for task
6					
7	3/9/2023	Received Rule 68 Offer of Judgment.	0.1	0	Clerical
8					
9	3/13/2023	Prepared and filed notice of acceptance of OOJ.	0.3	0.1	Excessive hours for task; partially clerical
10					
11	3/14/2023	Judgement entered.	0.4	0	Vague; excessive hours for task; clerical
12					

13 Taking into account the reduction of hours detailed above, the Court will allow the
14 recovery of 82.4 hours worked by Mr. Loker, 34.6 hours worked by Mr. Swigart, and
15 12.8 hours worked by Mr. Shay at the hourly rate of \$650, and 25.3 hours worked by Mr.
16 Pfeiff at the hourly rate of \$295. The Court finds that these hourly rates provide adequate
17 and reasonable compensation, and a review of the *Kerr* factors does not support a
18 lodestar multiplier or reduction.

19 However, “the district court can impose a small reduction, no greater than 10
20 percent—a ‘haircut’—based on its exercise of discretion and without a more specific
21 explanation.” *Moreno*, 534 F.3d at 1112. “This reduction is in addition to the line-item
22 reductions explained above.” *Salmeron v. Ford Motor Co.*, No. 218CV07266SVWPLA,
23 2020 WL 9217979, at *8 (C.D. Cal. July 14, 2020). Having closely examined the record,
24 and in consideration of the Court’s experience with similar cases, the Court finds that
25 several inefficiencies are not accounted for in the above reductions. Accordingly, the
26 Court imposes an additional 10 percent “haircut” to its modified lodestar figure.

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1 In sum, the Court will award Plaintiff \$82,650.15 in attorneys' fees. That figure
2 was arrived at under the following calculations:

3 Attorney	Reasonable Rate	Reasonable Hours	Fee
4 Matthew Loker	\$650	$89.2 - 6.8 = 82.4$	\$53,560
5 Joshua Swigart	\$650	$40.2 - 5.6 = 34.6$	\$22,490
6 Daniel Shay	\$650	$12.8 - 0 = 12.8$	\$8,320
7 Spencer Pfeiff	\$295	$28.9 - 3.6 = 25.3$	\$7,463.50
Subtotal	---	---	\$91,833.50
"Haircut Reduction"	---	---	\$9,183.35
Total	---	---	\$82,650.15

8 2. *Costs*

9 Plaintiff also requests a total of \$12,191.13 in costs and expenses. Doc. No. 143-1
10 at 29. Arvest does not dispute that Plaintiff's counsel is owed costs and expenses, but
11 argues that the \$402 filing fee sought in the Bill of Costs should not be solely apportioned
12 to Arvest due to there being nine other defendants at the start of this case. Doc. No. 145
13 at 31–32. Plaintiff does not address this argument in his reply. On this point, the Court
14 agrees with Arvest. Therefore, the Court will only apportion one-tenth of the filing fee to
15 Arvest, which is \$40.20. Arvest also challenges \$7,246.90 in litigation costs sought by
16 the Swigart Law Group. *Id.* at 32. However, the Court finds there is no material dispute
17 regarding these expenses sought by Plaintiff. The Court entered judgment in favor of
18 Plaintiff, *see* Doc. Nos. 140–141, and additionally, the FCRA and CCRAA entitle a
19 successful party to recover costs. *See* 15 U.S.C. §§ 1681n, 1681o; Cal. Civ. Code
20 § 1785.31(d). The Court has reviewed the challenged expenses and Plaintiff's receipts—
21 which include service fees, depositions fees, transcript fees, and video fees related solely
22 to Arvest—and finds these costs recoverable. *See* 28 U.S.C. § 1920; *see also* CivLR
23 54.1. Accordingly, the Court awards \$11,829.33 in costs to Plaintiff.


24 ///

1 **IV. CONCLUSION**

2 For the reasons above, the Court **GRANTS in part** and **DENIES in part**
3 Plaintiff's Motion for Attorneys' Fees and Costs. Doc. No. 143. Accordingly, the Court
4 finds Plaintiff's attorneys are entitled to \$82,650.15 in attorneys' fees and \$11,829.33 in
5 costs.

6 **IT IS SO ORDERED.**

7 Dated: November 29, 2023

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9 HON. MICHAEL M. ANELLO
10 United States District Judge
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