IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KIANA D. ONISHI, Plaintiff, vs. REDLINE RECOVERY SERVICES, LLC, Defendant.	CIVIL NO. 10-00259 DAE-KSC REPORT OF SPECIAL MASTER RECOMMENDING THAT PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS FEES BE GRANTED IN PART AND DENIED IN PART

REPORT OF SPECIAL MASTER RECOMMENDING THAT PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS FEES BE GRANTED IN PART AND DENIED IN PART

Before the Court is Plaintiff Kiana Onishi's ("Plaintiff") Motion for Award of Attorneys Fees ("Motion"), filed October 1, 2010. On October 13, 2010, Plaintiff filed a Statement of Consultation ("SOC"). Defendant Redline Recovery Services, LLC ("Defendant") filed its Opposition on October 26, 2010. Plaintiff filed a Reply on November 2, 2010.

The Court finds this matter suitable for disposition without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawaii ("Local Rules"). After reviewing the Motion, the supporting

and opposing memoranda, and the relevant case law, the Court FINDS and RECOMMENDS that the Motion be GRANTED IN PART and DENIED IN PART and that the district court award Plaintiff **$6,797.25** in attorneys' fees and **$319.47** in tax, for a total of **$7,116.72.**

BACKGROUND

Plaintiff commenced the instant action on May 3, 2010, alleging violations of the Fair Debt Collection Practices Act ("FDCPA") and Hawaii Revised Statutes Chapters 443B and 480.

In September 2010, Defendant made an offer of judgment in the amount of $2,250.00 plus costs and reasonable attorneys' fees. Plaintiff accepted the offer on September 20, 2010. The parties could not reach an agreement with respect to the amount of fees reasonably incurred in litigating this action.

On September 30, 2010, the Court entered judgment in Plaintiff's favor. The instant Motion followed.

DISCUSSION

I. Entitlement to Attorneys' Fees

Plaintiff submits that she is entitled to attorneys' fees under 15 U.S.C. § 1692k(a)(3). She seeks $10,770.00, plus general excise tax of $506.19, for a total of $11,276.19. Defendant does not dispute Plaintiff's entitlement to fees pursuant to § 1692k(a)(3), but challenges the reasonableness of the fees sought. Defendant requests that the Court reduce the award to $3,248.70 in fees and $152.69 in excise tax.

> Section 1692k(a)(3) provides:
>
> > any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of . . .
> >
> > . . . .
> >
> > in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to

the work expended and costs.

15 U.S.C. § 1692k(a)(3). Insofar as the foregoing statute provides for the recovery of attorneys' fees, and Defendant does not contest Plaintiff's general entitlement to fees thereunder, the Court's inquiry is limited to the reasonableness of Plaintiff's fee request.

II. Calculation of Attorneys' Fees

Having determined that § 1692k authorizes a fee award, the Court now assesses the amount of fees to which Plaintiff is entitled. Under federal law, reasonable attorneys' fees are generally based on the traditional "lodestar" calculation set forth in Hensley v. Eckerhart, 461 U.S. 424 (1983). See Fischer v. SJB-P.D., Inc., 214 F.3d 1115, 1119 (9th Cir. 2000). The court must determine a reasonable fee by multiplying "the number of hours reasonably expended on the litigation" by "a reasonable hourly rate." Hensley, 461 U.S. at 433. Second, the court must decide whether to adjust the lodestar amount based on an evaluation of the factors articulated in Kerr v. Screen Extras Guild,

Inc., 526 F.2d 67, 70 (9th Cir. 1975), which have not already been subsumed in the lodestar calculation. See Fischer, 214 F.3d at 1119 (citation omitted).

The factors the Ninth Circuit articulated in Kerr are:

> (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

Kerr, 526 F.2d at 70. Factors one through five have been subsumed in the lodestar calculation. See Morales v. City of San Rafael, 96 F.3d 359, 364 n.9 (9th Cir. 1996). Further, the Ninth Circuit, extending City of Burlington v. Dague, 505 U.S. 557, 567 (1992), held that the sixth factor, whether the fee is fixed or contingent, may not be considered in the lodestar

calculation. See Davis v. City & County of San Francisco, 976 F.2d 1536, 1549 (9th Cir. 1992), vacated in part on other grounds, 984 F.2d 345 (9th Cir. 1993). Once calculated, the "lodestar" is presumptively reasonable. See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711, 728 (1987); see also Fischer, 214 F.3d at 1119 n.4 (stating that the lodestar figure should only be adjusted in rare and exceptional cases).

Plaintiff requests the following attorneys' fees for work performed by her attorney John Harris Paer:

ATTORNEY	**HOURS**	**RATE**	**TOTAL**
John Paer	35.9	$300.00	$10,770.00
TAX (4.7%)			$506.19
TOTAL	35.9		$11,276.19

The Court is now tasked with determining the reasonableness of the requested hourly rates and time expended.

A. Reasonable Hourly Rate

In determining the reasonableness of an hourly rate, the experience, skill, and reputation of the attorney requesting fees are taken into account. See Webb v. Ada County, 285 F.3d 829, 840 & n.6 (9th Cir. 2002). The reasonable hourly rate should reflect the prevailing market rates in the community. See id.; Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992), as amended on denial of reh'g, (1993) (noting that the rate awarded should reflect "the rates of attorneys practicing in the forum district"). It is the burden of the fee applicant to produce satisfactory evidence, in addition to an affidavit from the fee applicant, demonstrating that the requested hourly rate reflects prevailing community rates for similar services. See Jordan v. Multnomah County, 815 F.2d 1258, 1263 (9th Cir. 1987).

Mr. Paer graduated from the University of Chicago School of Law in 1969 and has specialized in consumer protection law since 1971. Decl. of John

Harris Paer ("Paer Decl.") at ¶ 3. This Court is well aware of the prevailing rates in the community for similar services performed by attorneys and paralegals of comparable experience, skill and reputation. Based on this Court's knowledge of the community's prevailing rates, and the hourly rates generally granted by the Court, this Court finds that Mr. Paer's $300 hourly rate exceeds this community's prevailing rates.[1] Accordingly, the Court hereby reduces Mr. Paer's hourly rate to $285.

B. Hours Reasonably Expended

Beyond establishing a reasonable hourly rate, a prevailing party seeking attorneys' fees bears the burden of proving that the fees and costs taxed are associated with the relief requested and are reasonably necessary to achieve the results obtained. See Tirona v. State Farm Mut. Auto. Ins. Co., 821 F. Supp. 632, 636 (D. Haw. 1993) (citations omitted). The court must

[1] It must be noted that there is a distinction between the prevailing rates in the community, i.e, what one might charge and collect from a client, and the prevailing rates awarded by the Court.

guard against awarding fees and costs which are excessive, and must determine which fees and costs were self-imposed and avoidable. See id. at 637 (citing INVST Fin. Group v. Chem-Nuclear Sys., 815 F.2d 391, 404 (6th Cir. 1987), cert. denied, 484 U.S. 927 (1987)). This Court has "discretion to 'trim fat' from, or otherwise reduce, the number of hours claimed to have been spent on the case." Soler v. G & U, Inc., 801 F. Supp. 1056, 1060 (S.D.N.Y. 1992) (citation omitted). Time expended on work deemed "excessive, redundant, or otherwise unnecessary" shall not be compensated. See Gates, 987 F.2d at 1399 (quoting Hensley, 461 U.S. at 433-34).

Plaintiff submits that Mr. Paer expended 35.9 hours litigating this case. Defendant counters that Mr. Paer reasonably expended 13.65 hours in this case. After carefully reviewing Plaintiff's counsel's time submissions, the Court finds that some reductions are necessary.

For example, it appears that Mr. Paer spent excessive amounts of time on certain tasks. The Court finds that some of the time expended on case development and investigation was excessive. Although the Court recognizes the necessity of engaging in case development and investigation prior to the commencement of a lawsuit, the Court will deduct 1 hour for the case development work billed between April 23, 2010, and April 30, 2010. The Court also deducts 0.5 hours billed for Mr. Paer's work on the retainer agreement, as such work is not compensable and should be subsumed in a firm's overhead. Black v. City, County of Honolulu, Civil No. 07-00299 DAE-LEK, 2010 WL 653026, at *11 (D. Haw. Feb. 22, 2010) (finding that work on client agreements are not compensable, even though such work is necessary to the attorney and client's professional relationship, because it did not contribute to the litigation of the plaintiff's claims).

Defendant requests that the Court exclude the time spent leaving phone messages. The Court agrees that the six instances where Mr. Paer billed 0.10 hours for leaving messages were excessive. Thus, the Court deducts 0.60 hours for the time spent telephoning defense counsel and Plaintiffs, where Mr. Paer merely left messages.

Upon reviewing the timesheets, the Court finds that Mr. Paer billed excessively for drafting documents (i.e., Complaint, Declarations, Motion for Attorneys' Fees, etc.). Given Mr. Paer's extensive knowledge of this area of law and his nearly 40 years of experience, he should have been able to draft documents such as the Complaint in a fraction of the time billed. As a result, the Court finds it appropriate to reduce his time by 6.45 hours.

Based on the foregoing reasoning, it is additionally necessary to reduce the hours expended on research, as Mr. Paer should be familiar with the applicable law. Consequently, the Court deducts 2.75

hours of research conducted by Mr. Paer.

Finally, Defendant takes issue with the excessiveness and duplication of several of Mr. Paer's time entries concerning the communications (both by phone and email) with defense counsel. In particular, Defendant asserts that while the time entries are each greater than 0.15 hours, the types of emails drafted by Mr. Paer should not take more than 5 minutes to draft and send. Defendant attached examples of emails for which Mr. Paer billed 0.25 hours. Opp'n, Ex. B. The Court agrees that these emails should have taken no more than 5 minutes to draft and send. Consequently, the Court reduces the related time entries (as well as others involving emails between Mr. Paer and defense counsel) by 0.75 hours.

Defendant asks the Court to further reduce Mr. Paer's hours for his use of quarter-hour billing practices. Plaintiff responds that Mr. Paer only billed for the time spent on a task; that if a task took a quarter hour, it was billed as such, and if it

took more or less time, it was billed accordingly. Although the Court ordinarily deducts a percentage of the time spent when attorneys bill in quarter-hour increments, the Court declines to do so here. The Court cannot conclude with certainty that Mr. Paer billed in quarter-hour increments, based on Plaintiff's representation about Mr. Paer's billing practices.

In sum, the Court deducts a total of 12.05 hours for excessive/duplicate work.

C. Total Fee Award

The Court is satisfied that Plaintiff has established the appropriateness of the following attorneys' fees incurred in the present action, and the Court declines to adjust this amount based on the Kerr factors:

ATTORNEY	**HOURS**	**RATE**	**TOTAL**
John Paer	23.85	$285.00	$6,797.25
TAX (4.7%)			$319.47
TOTAL	23.85		$7,116.72

CONCLUSION

Based on the foregoing, the Court HEREBY FINDS AND RECOMMENDS that the district court GRANT IN PART AND DENY IN PART Plaintiff's Motion for Award of Attorneys Fees, filed October 1, 2010, and award Plaintiff **$6,797.25** in attorneys' fees and **$319.47** in tax, for a total of **$7,116.72.**

The parties are advised that any objection to this Report is due twenty-four (24) calendar days after being served with a copy of this Report. See Fed. R. Civ. P. 5(b)(2) & 6(d); Local Rule 53.2. A copy of the objection shall be served on all parties.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, November 12, 2010.

Kevin S.C. Chang
United States Magistrate Judge