

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NICOLAS OTOMO, TIMOTHY McCRIGHT,
on behalf of themselves and all those similarly
situated,

Plaintiffs,

vs.

NEVADA ASSOCIATION SERVICES, INC.
and DAVID STONE,

Defendants.

Case No. 2:10-cv-02199-JCM-GWF
ORDER

This matter comes before the Court on Defendants’ award of attorney’s fees pursuant to Court Order (#92), entered on April 17, 2014.

BACKGROUND

Plaintiffs brought a proposed class action lawsuit against Defendants for claims under the Fair Debt Collection Practices Act (“FDCPA”) and the Nevada Deceptive Trade Practices Act, as well as for declaratory relief, injunctive relief, and negligence per se. See Doc. #6. Plaintiffs challenged Defendants’ ability as a collection agency to enforce rights on behalf of the HOA and to proceed with a foreclosure as part of its collection efforts. The parties entered into a Settlement Agreement, in which Plaintiff Otomo agreed to pay his remaining balance of \$3,307.72 to the homeowner association and a \$200.00 management company fee within thirty (30) days of its execution. See Doc. #87 at Exhibit A. The Settlement Agreement also set forth a provision entitling a prevailing party to reasonable attorney’s fees and reimbursement of costs if the party was forced to litigate to enforce the provisions of the Settlement Agreement. Id. Plaintiff Otomo executed the Settlement Agreement on June 10, 2013, thereby requiring him to pay his balance and

1 fees by July 10, 2013. *Id.* Plaintiff Otomo failed to pay his outstanding assessment in full as of
2 July 10, 2013. *See Doc. #87.*

3 Defendants then filed a Motion to Enforce Settlement Agreement (#87), therein requesting
4 their attorneys' fees in bringing the motion. *See Doc. #87* at pg. 6. A motion hearing was held
5 before the undersigned on March 19, 2014. In its Order (#92) entered April 17, 2014, the Court
6 granted Defendant's Motion to enforce the Settlement Agreement and granted Defendants'
7 reasonable attorney's fees incurred in obtaining the judgment. The Court ordered Plaintiff to file a
8 financial affidavit within thirty days after entry of Judgment, the purpose of which was to assess an
9 appropriate award of attorney's fees against Plaintiff. *See Doc. #92.* Plaintiff failed to comply
10 with the Court's order. The Court now reviews Defendants' Motion for and Declaration in support
11 of attorney's fees to determine a reasonable award.

12 DISCUSSION

13 Pursuant to the Settlement Agreement the parties entered into, "[i]f any party files any
14 litigation to enforce this Agreement, then the prevailing party to any enforcement action shall be
15 entitled to reasonable attorney's fees and reimbursement of costs." *See Doc. #87* at Exhibit 1, ¶ 10.
16 The Supreme Court has held that reasonable attorney fees must "be calculated according to the
17 prevailing market rates in the relevant community," considering the fees charged by "lawyers of
18 reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96
19 n. 11, 104 S.Ct. 1541 (1984). Courts typically use a two-step process when determining fee
20 awards. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the Court must
21 calculate the lodestar amount "by taking the number of hours reasonably expended on the litigation
22 and multiplying it by a reasonable hourly rate." *Id.* Furthermore, other factors should be taken into
23 consideration such as special skill, experience of counsel, and the results obtained. *Morales v. City*
24 *of San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996). "The party seeking an award of fees should
25 submit evidence supporting the hours worked and rates claimed . . . [w]here the documentation of
26 hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*,
27 461 U.S. 424, 433 (1983). Second, the Court "may adjust the lodestar, [only on rare and
28 exceptional occasions], upward or downward using a multiplier based on factors not subsumed in

1 the initial calculation of the lodestar.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041,
2 1045 (9th Cir. 2000).

3 Defendants request a total of \$2,175.00 in fees associated with its cost in bringing its
4 Motion (#87) to enforce settlement. Defendants indicate that the time required to bring the
5 aforementioned motion was 7 hours. Associate Attorney, Brian Anderson, provided 5 hours of
6 service in drafting the brief at an average rate of \$295.00 per hour, for a total of \$1,475.00. Partner,
7 Patrick Reilly, provided 2 hours of services at an average rate of \$350.00 per hour, for a total of
8 \$700.00. Mr. Reilly declared that the hourly rates charged are similar to those charged by
9 comparable law firms for similar legal issues. Additionally, Mr. Reilly establishes that he
10 employed appropriate means to responsibly control fees and expenses. For the motion in question,
11 for example, Mr. Anderson, an associate with a lower billing rate performed most of the research
12 and drafting while Mr. Reilly supervised the efforts, counseled on strategy, and communicated with
13 opposing counsel to avoid duplication of efforts. Furthermore, both counsel have extensive years
14 of experience in commercial litigation, which must be accounted for in the fee calculation. The
15 Declaration (#87-1) submitted in support of Defendants’ motion for attorney’s fees therefore
16 illustrates that the attorney’s fees requested are reasonable.

17 The Court therefore awards Defendants total fees in the amount of \$2,175.00. The relevant
18 factors are subsumed in this calculation of the reasonable attorney’s fees, and there are no other
19 exceptional circumstances which warrant enhancement or reduction of the fees. Accordingly,

20 **IT IS HEREBY ORDERED** that Plaintiff Nicolas Otomo is ordered to pay Defendants the
21 sum total of \$2,175.00. Plaintiff shall have until **June 30, 2014** to pay the full amount of the fees
22 owed.

23 DATED this 22nd day of May, 2014.

24
25 
26 GEORGE FOLEY, JR.
27 United States Magistrate Judge
28