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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SEAN FEELY,)	
)	
Plaintiff,)	Case No. 2:13-cv-00634-CWH
)	
vs.)	<u>ORDER</u>
)	
CARRINGTON MORTGAGE)	
SERVICES, LLC, <i>et al.</i> ,)	
)	
Defendants.)	

INTRODUCTION

This matter is before the Court on Plaintiff Sean Feely’s (“plaintiff”) motion for attorneys’ fees and costs. See Doc. # 27. After a careful consideration of the pleadings and relevant exhibits submitted by the parties, and for the reasons set forth below, this Court **grants in part and denies in part** plaintiff’s motion.

BACKGROUND

In 2011, plaintiff defaulted on his loan for real property located at 8160 White Mill Court, Las Vegas, NV 89131 (“property”), which resulted in a notice of trustee’s sale against the subject property. Following foreclosure proceedings, Defendants Carrington Mortgage Services, LLC and Compass Resolution Services, LLC (“defendants”) attempted to collect on a balance purportedly due from plaintiff. In or around January 2013, plaintiff retained counsel to file a complaint against defendants, alleging that defendants’ communications with plaintiff violated the Fair Debt Collection Practices Act (“FDCPA”).

1 Plaintiff's complaint was filed on April 15, 2013. See Doc. # 1. Defendants filed their answer
2 on June 6, 2013. See Doc. # 6. Then, on March 5, 2014, the parties entered into a settlement
3 agreement that awarded plaintiff statutory damages in the amount of one thousand dollars (\$ 1,000).
4 The parties, however, were unable to agree on the question of attorneys' fees.

5 On July 9, 2014, plaintiff filed the instant motion for attorneys' fees and costs under the fee-
6 shifting provision of the FDCPA. See Doc. # 27. Defendants filed an opposition on July 16, 2014 and
7 plaintiff filed a reply on July 21, 2014. See Doc. # 29; Doc. # 30. This Court subsequently ordered
8 plaintiff to file a supplemental brief to his motion. See Doc. # 31. Plaintiff filed his supplemental brief
9 on September 23, 2014, to which defendants filed a response on September 30, 2014. See Doc. # 32;
10 Doc. # 34. Thereafter, plaintiff filed a notice, attaching the exhibits cited in his motion and reply. See
11 Doc. # 35; Doc. # 36.

12 DISCUSSION

13 **1. Legal Standard**

14 A successful plaintiff is entitled to reasonable attorney's fees and costs in an FDCPA action.
15 See 15 U.S.C. § 1692k(a)(3). Reasonable attorney's fees are calculated using the lodestar method,
16 which involves multiplying the number of hours "reasonably expended" on the litigation by a
17 "reasonable hourly rate." See Hensley v. Eckerhardt, 461 U.S. 424, 433 (1983); Camacho v.
18 Bridgeport Fin., Inc., 523 F.3d 973, 982 (9th Cir. 2008). The lodestar is "presumptively reasonable"
19 but may be adjusted upward or downward. See City of Burlington v. Dague, 505 U.S. 557, 562
20 (1992); Camacho, 523 F.3d at 982.

21 In determining whether to adjust the lodestar, a court may consider the following twelve
22 factors: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3)
23 the skill required to perform the legal service properly; (4) the preclusion of other employment by the
24 attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
25 (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results
26 obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case;
27 (11) the nature and length of the professional relationship with the client; and (12) awards in similar
28 cases. See Kerr v. Screen Guild Extras, Inc., 526 F.2d 67, 70 (9th Cir. 1975). These factors ultimately

1 help a court determine whether to “exclude from the lodestar amount hours that are not reasonably
2 expended because they are excessive, redundant, or otherwise unnecessary.” Van Gerwen v.
3 Guarantee Mutual Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000).

4 **2. Analysis**

5 The issue before this Court is whether plaintiff’s fees proposal constitutes reasonable attorneys’
6 fees. Plaintiff requests attorneys’ fees in the amount of \$ 11,740.50. The amount reflects 47.5 hours
7 of work at a billing rate of: (1) \$ 305 per hour for attorneys Jamie S. Cogburn (“Cogburn”) and Jason
8 C. Barron (“Barron”); (2) \$ 295 per hour for attorney Larson A. Welsh (“Welsh”); (3) \$ 275 per hour
9 for attorney Paul Cullen (“Cullen”); and (4) \$ 135 per hour for non-attorney Kristin Little (“Little”).

10 **a. Proportionate Fees**

11 Plaintiff contends that an award of attorneys’ fees is appropriate in this case and mandated by
12 the FDCPA. Plaintiff also contends that courts have recognized the amount of attorneys’ fees
13 requested need not be proportionate to the final award of damages in order “to encourage able counsel
14 to undertake FDCPA cases.” Doc. # 27 at 5. Defendants, in opposition, question the propriety of
15 counsel “billing over \$ 10,000 more than the damages settled upon.” Doc. # 34 at 3.

16 To “encourage able counsel to undertake FDCPA cases, as congress intended, it is necessary
17 that counsel be awarded fees commensurate with those which they could obtain by taking other types
18 of cases.” Camacho, 523 F.3d at 981. In furthering this goal, therefore, “attorney[s]’ fees must not
19 hinge on a percentage of actual damages awarded.” St. Bernard v. State Collection Serv., Inc., 782
20 F. Supp. 2d 823, 826 (D. Ariz. 2010). Given such, plaintiff’s fees request is not per se unreasonable
21 simply because it is over ten times greater than the damages awarded to plaintiff in the instant case.

22 **b. Hourly Rates**

23 Plaintiff contends that courts, including courts in this district, have found hourly rates of \$ 300
24 or greater to be reasonable in FDCPA cases. See Doc. # 27 at 7 (citing, among others, Fitzimmons v.
25 Rickenbacker Fin., Inc., No. 2: 11-CV-1315 JCM PAL, 2012 WL 3994477, at *4 (D. Nev. Sep. 11,
26 2012)). Moreover, Cogburn, in his affidavit, declares that the Cogburn Law Office specializes in
27 consumer protection cases and has represented over a thousand consumers in such cases to a successful
28 resolution, including FDCPA cases, thereby establishing a track record of success that supports the

1 requested hourly rates. Plaintiff then points out that counsels' average hourly rates are less than the
2 average rate, \$ 362, charged by Nevada attorneys practicing consumer protection law. See Doc. # 27
3 at 7 (citing U.S. Consumer Law Attorney Fee Survey Report 2010-2011, at 1). Plaintiff further points
4 out that counsels' hourly rates are in line with the Laffey Matrix, which tracks hourly rates for
5 attorneys, paralegals, and law clerks of varying experience levels in cases involving fee shifting
6 provisions.

7 Defendants, in opposition, argue that plaintiff errs in citing to Fitzimmons because Fitzimmons,
8 unlike the instant case, involves "a default with a total of less than 7 hours of total attorney time."
9 Doc. # 29 at 3. Defendants also assert that plaintiff's counsel fails to "extensively argu[e]" the twelve
10 factors courts consider in determining lodestar adjustments. Doc. # 34 at 2-3 (citing Tolentino v.
11 Friedman, 46 F.3d 645, 651 (7th Cir. 1995).

12 The "established standard when determining a reasonable hourly rate is the rate prevailing in
13 the community for similar work performed by attorneys of comparable skill, experience and
14 reputation." Camacho, 523 F.3d at 971. The "community," or forum district, is the relevant market
15 for determining reasonable attorneys' fees. Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992).
16 "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community
17 and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are
18 satisfactory evidence of the prevailing market rate." United Steelworkers of Am. v. Phelps Dodge
19 Corp., 896 F.3d 403, 407 (9th Cir. 1990).

20 Here, plaintiff requests attorney rates of \$ 305 per hour for Cogburn and Barron, \$ 295 per hour
21 for Welsh, and \$ 275 per hour for Cullen. The Court finds that these rates are reasonable and well
22 within the prevailing rate in the District of Nevada, and in other federal districts, for similar work. See
23 e.g., Fitzimmons, 2012 WL 3994477, at *4; Laffey Matrix – 2003-2014, Dep't of Justice,
24 <http://www.justice.gov/usao/dc/divisions/civil.html>; U.S. Consumer Law Attorney Fee Survey Report
25 2010-2011. The Court also finds that defendants fail to show these rates are unreasonable within the
26 meaning of § 1692k(a)(3). Indeed, defendants' attempt to distinguish Fitzimmons is superficial and
27 unavailing. Defendants' assertion regarding plaintiff's counsels' purported failure to "extensively
28 argu[e]" the twelve factors courts consider is equally unavailing, especially since defendants fail to

1 cite any authority from this circuit requiring such.

2 Meanwhile, plaintiff requests a rate of \$ 135 per hour for non-attorney Little. The Court has
3 reviewed Little's time records and finds that the tasks Little performed are secretarial in nature. See
4 Doc. # 33 at 7-30 (Little's tasks include reviewing the case, drafting and finalizing court documents
5 and correspondence, saving and retrieving information, filing documents, setting calendar, preparing
6 service and other packets, entering and updating information, and contacting attorneys and the Court).
7 For secretarial work to be included in an award of attorneys' fees, plaintiff must show that billing
8 secretarial expenses separately, at a profit, is the prevailing practice in this forum. See Trustees of
9 Const. Indus. & Laborers Health & Welfare Trust v. Redland Ins. Co., 460 F.3d 1253, 1257 (9th Cir.
10 2006) ([F]ees for work performed by non-attorneys such as paralegals may be billed separately, at
11 market rates, if this is 'the prevailing practice in a given community.'). Because plaintiff fails to
12 provide this Court with any information of local billing practices relating to secretarial work, or
13 information demonstrating that \$ 135 is a reasonable hourly rate for a legal secretary or paralegal in
14 this district, the Court excludes Little's billings from the lodestar amount.

15 **c. Hours Expended**

16 Plaintiff argues that the fees requested are supported by the time records as follows: (1) 0.7
17 hours by Cogburn; (2) 6.9 hours by Barron; (3) 14.2 hours by Welsh; and (4) 12.6 hours by Cullen.
18 Plaintiff then points to counsels' declarations, which purportedly allege that the time spent litigating
19 plaintiff's claims is reasonable, necessary, and compensable, especially since nearly a year passed
20 before the parties reached settlement and considerable time was spent on discovery, notwithstanding
21 the time spent on pleadings and pre-litigation matters. Plaintiff further points out that although counsel
22 spent 35.5 hours litigating his claims, counsel seeks only 30.2 hours worth of litigation time.

23 Defendants, in opposition, argue that plaintiff's counsel spent an "inordinate" amount of time
24 on this matter, especially in light of counsels' claimed expertise in the FDCPA. Defendants add that
25 "continual litigation" over attorneys' fees, along with "repeated turnover" in this matter, "needlessly
26 complicate[d] and extend[ed]" this matter, and should not be borne by defendants. Doc. # 29 at 5.
27 Based on the time records provided, moreover, defendants suggest that plaintiff's counsel "double-

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1 billed” work. See Doc. # 34 at 2 (citing Doc. # 33 at 7, 3/15/2013 entry of KL and LAW).¹
2 Defendants further suggest that several of the time record entries are for “purely clerical work” and
3 “interoffice communication,” while others appear to involve “turnover in matter handling,” which
4 defendants should not be expected to pay. Id. at 3. Given such, defendants submit that plaintiff be
5 awarded no more than \$ 999.00 in attorneys’ fees.

6 A fees applicant bears the burden of establishing the hours reasonably expended in litigating
7 a case, and must submit detailed time records supporting the number of hours expended. Hensley v.
8 Eckerhart, 461 U.S. 424, 433, 437 (1983); Welch v. Met. Life Ins. Co., 480 F.3d 942, 945-46 (9th Cir.
9 2007). “Reasonably expended” time refers to time that “could reasonably have been billed to a private
10 client.” Moreno v. City of Sacramento, 534 F.3d 1106, 1111 (9th Cir. 2008). To this end, a fees
11 applicant must exercise “sound billing judgment” regarding the number of hours worked, and a court
12 may exclude hours not reasonably expended, such as hours incurred from overstaffing, or hours that
13 are excessive, redundant, or unnecessary. Hensley, 431 U.S. at 433; Van Gerwen, 214 F.3d at 1045.

14 As a preliminary matter, this Court notes that while plaintiff points to counsels’ declarations,
15 which purportedly support the necessity, reasonableness, and compensability of the hours expended
16 in this case, the Court could find no declarations apart from Cogburn’s lone affidavit.² Nevertheless,
17 after a review of counsels’ time records, this Court finds that evidence exists supporting plaintiff’s
18 contention, while undermining defendants’ assertions. Thus, the Court concludes that plaintiff’s
19 counsel reasonably expended 34.4 hours in the instant case.³

20 **d. Litigation Costs**

21 Plaintiff incurred costs in the amount of \$ 499.80, which the parties do not dispute. Upon
22 review of these costs, the Court finds that the total amount requested is reasonable.

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25 ¹ Because plaintiff is not entitled to non-attorney fees, this Court finds that defendants’ assertion regarding double-
26 billing with respect to Kittle and Welsh is moot.


27 ² Cogburn, in his affidavit, alleges that Welsh and Cullen are no longer with the Cogburn Law Office and, thus, their
28 affidavits are not included with the instant motion. However, Cogburn fails to account for the absence of Barron’s affidavit.

³ The Court subtracts Little’s 13.1 hours from the 47.5 total hours reported by plaintiff.

1 **CONCLUSION AND ORDER**

2 Based on the foregoing, **IT IS HEREBY ORDERED** that plaintiff's motion for attorneys' fees
3 and costs (doc. # 27) is **granted in part and denied in part**. The Court awards plaintiff attorneys'
4 fees in the amount of \$ 9,972.00 and costs in the amount of \$ 499.80.

5 DATED: November 14, 2014

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9 **C.W. Hoffman, Jr.**
10 **United States Magistrate Judge**