UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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FOR ONLINE PUBLICATION ONLY

GINA TITO, on behalf of herself and all others similarly situated,

Plaintiff,

-against-

RUBIN & ROTHMAN, LLC and KEITH ROTHMAN, ESQ.,

Defendants
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MEMORANDUM AND ORDER
12–CV–3464 (JMA)

A P P E A R A N C E S:

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AZRACK, United States Magistrate Judge:

On July 13, 2012, plaintiff Gina Tito ("Tito") filed suit on behalf of herself and all others similarly situated (together with Tito, "plaintiffs") against Rubin & Rothman, LLC ("R&R") and Keith Rothman ("Rothman" and collectively "defendants") alleging violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.* and the New York Judiciary Law ("Judiciary Law") § 487. Specifically, plaintiffs allege that defendants violated the FDCPA and the Judiciary Law § 487 by making deceptive statements in consumer collection actions in New York state courts. (Compl. ¶¶ 26–29, ECF No. 1.) These actions were allegedly deceptive

because: (1) the state court complaints falsely represented that TD Auto Finance was "not required to be licensed by the NYC Department of Consumer Affairs because it is a passive debt buyer," (Id.); and/or (2) the same complaints stated they were meaningfully reviewed by an attorney when in fact they were not. (Id. ¶¶ 56–57.)

On May 21, 2013, the parties entered into a Class Action Settlement Agreement, which resolved the substance of the parties' dispute, but specifically referred the resolution of attorneys' fees to the Court. (Mem. in Supp. of Joint Mot. for Prelim. Approval of Class Action Settlement ("Settlement Agreement"), Ex. 1, ECF No. 21.) Plaintiffs' Counsel seeks $43,773.50 in fees. Defendants argue for a substantial reduction in the amount requested. (See generally Defs.' Mem. in Opp'n to Pls.' Mot. for Att'y Fees & Costs ("Defs.' Reply Mem."), ECF No. 32.) On July 12, 2013, the parties consented to me to conduct all proceedings in this case. (ECF No. 34.) On September 20, 2013, I preliminarily approved the Class Action Settlement Agreement. (ECF No. 43.)

For the reasons that follow, I award plaintiff $22,110.10 in reasonable attorneys' fees and $492.58 in costs to be paid by defendants.

I. DISCUSSION

Plaintiffs' counsel seeks $42,773.50 in legal fees for approximately 122 hours of work. (Pls.' Mem. in Supp. of Att'y Fees & Costs ("Mem. in Supp.") at 4, ECF No. 23.) Defendants oppose this amount, arguing that: (1) the hours claimed were unreasonable; (2) some of the work was duplicative; and (3) plaintiff was only marginally successful. (Reply Mem. at 3–11, 11–16, 16–25.) The FDCPA mandates awarding "the costs of the action, together with reasonable attorney's fees as determined by the court" to successful litigants. 15 U.S.C.§ 1692(k)(a)(3); see

also Cabala v. Crowley, 736 F.3d 226, 228 (2d Cir. 2013) (per curium) (holding that a prevailing party under the FDCPA is presumptively entitled to an award of reasonable attorney's fees).

A. Attorneys' Fees Standard

"[T]he lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case—create a 'presumptively reasonable fee.'" See Millea v. Metro-North R. Co., 658 F.3d 154, 166 (2d Cir. 2011) (quoting Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany, 522 F.3d 182, 183 (2d Cir. 2008)). The presumptively reasonable fee is determined by multiplying a reasonable hourly rate by the reasonable number of hours worked. Arbor Hill, 522 F.3d at 186, 189–90.

A reasonable hourly rate is the rate that a reasonable client would pay in the community in which the court resides. Arbor Hill, 522 F.3d at 190–91; Cruz v. Local Union No. 3 of Int'l Bros. of Elec. Works, 34 F.3d 1148, 1160 (2d Cir. 1994) (holding that the "prevailing community" the district court should consider is the "district court in which the court sits."); see also McPhatter v. M. Callahan & Associates, LLC, No. 11–CV–5321, 2013 WL 5209926, *5 (E.D.N.Y. Sept. 13, 2013). This inquiry is case-specific and requires the reviewing court to look to the "prevailing market rates for counsel of similar experience and skill . . . ." Farbotko v. Clinton Cnty. of New York, 433 F.3d 204, 209 (2d Cir. 2005). When submitting their fee request, the moving party is required to submit contemporaneous time records, affidavits, and other materials to support their fee request. See New York State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1147–48 (2d Cir. 1983); see also Abrahmov v. Fidelity Information Corp., No. 12–CV–3453, 2013 WL 5352473, at *5 (E.D.N.Y. Sept. 23, 2013) (citing Carey, 711 F.2d at 1147–48).

B. Reasonableness of the Hourly Rate

Plaintiffs' counsel is seeking fees for hours worked by attorney Daniel A. Schlanger ("Schlanger"), attorney Elizabeth Shollenberger ("Shollenberger"), attorney Peter Lane ("Lane"), attorney James B. Fishman ("Fishman"), law student Jourdain Poupore ("Poupore"), and paralegal Howard Hemsley ("Hemsley").

According to his declaration, Schlanger is a 2004 graduate of Harvard Law School, *cum laude*, and was admitted to practice law in the State of New York in 2006. (Declaration of Daniel Schlanger ("Schlanger Decl."), ECF No. 25.) Prior to his bar admission, Schlanger served as a law clerk for the Honorable R. Lanier Anderson, III of the Eleventh Circuit Court of Appeals. (Id.) His firm specializes in consumer issues, particularly consumer protection. Schlanger is seeking compensation at a rate of $340 and $350 per hour.

Shollenberger graduated from Yale Law School in 1981 and was admitted to practice in the State of New York in 1982. (Declaration of Elizabeth Shollenberger ("Shollenberger Decl."), ECF No. 26.) She joined Schlanger & Schlanger ("the firm"), LLP in 2012, and since then, has represented several clients in numerous consumer protection class actions. (Id.) Prior to joining the firm, Shollenberger practiced with a private law firm, served as a full-time faculty member of New York University School of Law, and worked as a legal services attorney for Bronx Legal Services and Queens Legal Services. (Id.) Schollenberger is seeking compensation at a rate of $400 per hour.

Lane is a 2008 graduate of Brooklyn Law School. (Declaration of Peter T. Lane ("Lane Decl."), ECF No. 27.) After law school, Lane was a Fellow with the New York State Office of Attorney General and was an associate with two law firms in New York City. (Id.) Lane is seeking compensation at a rate of $300 per hour.

Fishman is a 1979 graduate of New York Law School and has an extensive history of representing clients in FDCPA actions. (Declaration of James B. Fishman ("Fishman Decl."), ECF No. 24.) He has also lectured and conducted trainings on FDCPA litigation in addition to practicing law for over 32 years. (Id.) Fishman is seeking compensation at a rate of $550 per hour.

Poupore is currently a law student at Brooklyn Law. (Schlanger Decl., Ex. 3.) Plantiffs' counsel is seeking compensation for Poupore at a rate of $100 per hour.

Hemsley served as a paralegal shift supervisor for two major law firms in New York City and has an extensive background in editing, word processing, and proofreading. (Id.) Plaintiffs' counsel is seeking compensation for Hemsley at a rate of $100 per hour.

Defendants have not attacked the reasonableness of the rates charged by plaintiffs' counsel. (See generally Defs.' Reply Mem.; cf Pls.' Reply Mem. in Supp. of Mot. for Atty's Fees & Costs ("Pls.' Reply Mem.") at 7 n. 6, ECF No. 36.) However, plaintiffs have not shown that their requested rates are in accord with the prevailing rates of the Eastern District. Courts may use their own experience in determining whether the hourly rates charged are reasonable. McDonald *ex rel.* Prendergast v. Pension Plan of the NYSA-ILA Pension Trust Fund, 450 F.3d 91, 96–97 (2d Cir. 2006). To guide this discretion, courts look to the hourly rates charged within their districts. Arbor Hill, 522 F.3d at 190–91. Recent decisions issued by courts within the Eastern District have found the following rates to be reasonable: (1) $300–$400 for partners, (2) $200–$300 for senior associates; (3) $100–$200 for junior associates; and (4) $70–$100 for legal assistants. Chudomel v. Dynamic Recovery Servs., Inc., No. 12–CV–5365, 2013 WL 5970613, at *10–11 (E.D.N.Y. Nov. 8, 2013) (Garaufis, J., adopting report and recommendation of Mann, M.J.); Abrahmov v. Fidelity Information Corp., No. 12–CV–3453, 2013 WL 5352473, *5

(E.D.N.Y. Sept. 23, 2013) (Garaufis, J., adopting report and recommendation of Gold, M.J.); Katz v. Sharinn & Lipshie, P.C., No. 12–CV–2440, 2013 WL 4883474, *5 (E.D.N.Y. Sept. 11, 2013) (citing Pall Corp. v. 3M Purification Inc., No. 97–CV–7599, 2012 WL 1979297, at *4 (E.D.N.Y. Jun. 1 2011)).

Relying upon my own knowledge and experience adjudicating attorneys' fees motions in this district and applying the standard in Arbor Hill, I find that some of the rates charged are unreasonable. Although Fishman has an extensive background in litigation, his rate of $550 per hour is higher than the $300–$400 per hour rate normally granted in this district for partners of firms. Therefore, I will reduce his hourly rate to $400 an hour. In addition, Lane's rate is higher than his experience warrants. Therefore, I will reduce his hourly rate to $200. Finally, the rate provided by Schlanger for the work performed by Poupore and Hemsley of $100 per hour is well above the $70–$80 per hour rate normally granted in this district for legal assistants and interns. Therefore, I will reduce the hourly rate for work performed by Poupore and Hemsley to $80 per hour. The rates charged by Schlanger and Shollenberger are within the rates normally granted for partners in this district.

C. Reasonableness of the Hours Expended

In submitting a fee request, counsel is required to submit contemporaneous billing records for each attorney, which documents the date, hours expended, and nature of the work. Scott v. City of New York, 643 F.3d 56, 57 (2d Cir. 2011). Where the hours are excessive, duplicative, unnecessary, or poorly documented, the court may reduce the award accordingly. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983); Duke v. Cnty. of Nassau, 97–CV–1495, 2003 WL 23315463, at *1 (E.D.N.Y. Apr. 14, 2003). Where a reduction is warranted, courts are allowed to reduce the fee by a percentage or eliminate any duplicative hours. See Kirsch v. Fleet

Street, Ltd, 148 F.3d 149, 173 (2d Cir. 1988). The critical inquiry is, "whether, at the time the work was performed, a reasonable attorney would have engaged in similar expenditures." De La Paz v. Rubin & Rothman, No. 11–CV–9625, 2013 WL 6184425, at *13 (S.D.N.Y. Nov. 25, 2013) (Ramos, J., adopting report and recommendation of Yanthis, M.J.).

According to the time records submitted by the plaintiffs' counsel, Schlanger billed a total of 61.2 hours, Shollenberger billed a total of 10.70 hours, Lane billed a total of 6.70 hours, the support staff billed a total of 4.40 hours, and Schlanger billed an additional 28 hours of prospective work in connection with the instant action for a grand total of 111 hours.

Having reviewed the time records submitted by plaintiffs' counsel, there are several vague entries that justify a percentage reduction in the total hours. For example, Schlanger's time records include billing for emails between co-counsel, performing research, reviewing files, and emailing his client. (Schlanger Decl., Ex. 1 (time entries 6/22/2012, 6/25/2012, 9/11/2012, 3/12/2013, 4/23/2013, 4/28/2013, and 4/29/2013).) These time entries, however, contain no information as to the purpose of the emails, the issues discussed between co-counsel, or the issues researched and their relation to the current matter.

In addition, the time entries for Lane are equally vague, stating he performed research and drafting, but failing to state the issues researched and the purpose of the document drafted. (Id. (time entries 9/11/2012 and 9/12/2012).) Likewise, Shollenberger billed for entries as vague as "conf re [legal and factual issues in case]" and "researching and drafting" without providing specifics as to the issues researched or the documents drafted. (Id. (time entries 6/22/2012 and 6/5/2013).) The time records also include vague entries for the support staff, with one entry simply stating "calendar deadline," (id. (time entry 11/27/2012)), in addition to other vague entries such as creating and saving documents in the computer system without any information

describing what the documents created and saved were or pertained to. (Id. (time entries 5/14/2012 and 6/3/2013).)

Finally, Fishman's separate time records are also replete with vague time entries such as "complaint," "conference call," and "on settlement." (Fishman Decl., Ex. 1 (time entries 2/15/2013, 3/21/2013, and 5/2/2013).) Based on the vagueness of the records, a percentage reduction of the hours claimed is warranted.

A percentage reduction in the hours claimed is also warranted because the time spent on the instant matter appears excessive, given the collective experience of counsel. Cf. Dickey v. Allied Interstate, Inc., No. 12-CV-9359, 2013 WL 4399212, at *2 (S.D.N.Y. Aug. 1, 2013) (cutting fee award due to exaggerated and excessive time records). For example, the time records are replete with references to reading and writing emails, many of which took more time than would seem necessary. (Schlanger Decl., Ex. 1 (time entries 6/22/2012, 6/25/2012, 7/5/2012, 7/19/2012, 7/20/2012, and 4/23/2013).)

Based on the foregoing, I am reducing counsels' fee request by thirty percent (30%).

D. Plaintiffs' Overall Success

Defendants argue that the fee should be reduced because plaintiff was only marginally successful in her claim. In assessing whether the fee should be reduced due to "partial or limited success" of the plaintiff, see Kassim v. City of Schenectady, 41 F.3d 246, 256 (2d Cir. 2005), district courts are instructed to look to "'the degree of success obtained by the plaintiff'" as the critical factor. See Barfield v. New York City Health & Hospitals Corp., 537 F.3d 132, 152 (2d Cir. 2008) (citing Farrar v. Hobby, 506 U.S. 103, 114 (1992)). When evaluating the degree of success, district courts look to the "'quantity and quality of the relief obtained' as compared to

what the plaintiff sought to achieve." Barfield, 537 F.3d at 152 (citing Carroll v. Blinken, 105 F.3d 79, 81 (2d Cir. 1997)).

According to the complaint, plaintiffs sought an injunction against defendants to bar them from engaging in debt collection practices in violation of the FDCPA and New York's Judiciary Law § 487. (Compl. ¶ 12.) In addition, plaintiffs sought statutory and actual damages pursuant to the FDCPA. (Id.) Under the Proposed Settlement Agreement, Tito will receive $1000 in statutory damages and $1500 as compensation for acting as the Class Representative. (Settlement Agreement at 8, Ex. 1.) A Settlement Fund will also be established totaling $23,333.33. (Id.) In the Proposed Settlement Agreement, the parties state that the Settlement Fund may actually be worth more than what could have been obtained under the FDCPA at trial. Therefore, it appears that plaintiffs achieved a high degree of success. The Court therefore declines to reduce counsels' fee award predicated on the recovery achieved.

E. Defendants' Remaining Arguments

Defendants spend an inordinate amount of time in their brief arguing that plaintiffs' counsel abused the FDCPA to "churn attorneys [sic] fees." (Defs.' Reply Mem. 3.) Defendants assert that the instant action should never have been filed because Tito's claims should have been included in another class action that plaintiffs' counsel filed in the Southern District of New York. (Defs.' Reply Mem. 3); see also De La Paz v. Rubin & Rothman et al., No. 11–CV–9625, 2013 WL 6184425 (S.D.N.Y. Nov. 25, 2013). Defendants' argument, however, is unpersuasive. First, defendants concede that plaintiffs were under no obligation to name the broadest class possible. (Defs.' Reply Mem. 4); see also D'Alauro v. GC Servs. Ltd. Parnership, 168 F.R.D. 451, 455–56 (E.D.N.Y. 1996) ("[T]he plain meaning of the FDCPA does not require that the largest potential class be certified.") (citing Avila v. Van Ru Credit Corp., No. 94–CV–3234,

1995 WL 41425, *3 (N.D. Ill. Jan. 31, 1995)). Second, the cases defendants cite in support of their contention that the Tito and De La Paz classes should have been consolidated into one class are inapposite. In each of the cases cited, the issue presented was whether to certify the class. See Guevarra v. Progressive Financial Servs. Inc., 497 F.Supp.2d 1090 (N.D. Ca. 2007) (refusing to recommend sanctions against an attorney who divided FDCPA class by creditor to increase attorneys' fees); Wenig v. Messerli & Kramer, P.A., No. 11–CV–3547, 2013 WL 1176062l (D. Minn. 2013) (refusing class certification because plaintiff was attempting to certify multiple sub-classes to maximize overall award). The class in the instant action, however, has already been certified for settlement—certification of which was supported by defendants. (See Settlement Agreement at 18, Ex. 1.) Defendants have presented the Court with two diametrically opposite positions. Defendants cannot advocate for class certification for purposes of settlement, (Settlement Agreement at 2, 18, Ex. 1), and then proceed to argue against class certification when the settlement is executed. (Defs.' Reply Mem. at 4–5.)

Finally, I note that the thirty percent (30%) reduction of plaintiffs' counsels' hours is sufficient to adequately resolve any overlap between the instant action and the De La Paz action. See generally De La Paz, 2013 WL 6184425.

I have reviewed defendants' remaining arguments and find them to be equally without merit.

F. Fees Calculation

Based on the foregoing, I have calculated the appropriate compensation as follows[1]:

a) Daniel Schlanger–Work Performed Prior to 2013

[1] For purposes of the fee award, I have excluded the 28 hours of prospective work included in the original fee petition because plaintiffs' counsel did not submit any contemporaneous records or time sheets to support that work. See New York State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1147–48 (2d Cir. 1983); see also Abrahmov v. Fidelity Information Corp., No. 12-CV-3453, 2013 WL 5352473, at *5 (E.D.N.Y. Sept. 23, 2013) (citing Carey, 711 F.2d at 1147–48).

a. 14.40 hours – (14.40 x 0.3) = 10.08

b. 10.08 hours x $340 per hour = $3,427.7

b) Daniel Schlanger–Work Performed in 2013

a. 46.80 hours – (46.80 x 0.3) = 32.76

b. 32.76 hours x $350 per hour = $11,466

c) Elizabeth Shollenberger

a. 10.70 hours – (10.70 x 0.3) = 7.49

b. 7.49 hours x $400 per hour = $2996

d) Peter Lane

a. 6.70 hours – (6.70 x 0.3) = 4.69

b. 4.69 hours x $200 per hour = $938

e) James B. Fishman

a. 10.85 hours – (10.85 x 0.3) = 7.59

b. 10.85 hours x $400 per hour = $3036

f) Support Staff

a. 4.40 hours – (4.40 x 0.3) = 3.08

b. 3.08 hours x $80 per hour = $246.40

TOTAL ATTORNEYS' FEES = $22,110.10

G. Costs

Section 1692(k)(a)(3) of the FDCPA provides that "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" shall be awarded. 15 U.S.C. § 1692(k)(a)(3) (2010). Plaintiffs' counsel

seeks $492.58 in costs: $350 to file the action, 45¢ for postage, $140.33 for LexisNexis research services, and $1.80 for PACER court records. (Schlanger Cert., Ex. 2.) Defendants have not specifically opposed these costs, and courts in the Eastern District have regularly found similar costs associated with litigation to be reimbursable and reasonable. See Friedman v. Sharinn & Lipshie, P.C., No. 12-CV-3452, 2013 WL 1873302, at *12 (E.D.N.Y. Mar. 28, 2013) (citing Finkle v. Triple A Grp. Inc., 708 F. Supp. 2d 277, 290–91 (E.D.N.Y. 2010)). Plaintiffs may recover $492.58 in costs.

II. CONCLUSION

For the foregoing reasons, plaintiffs' motion for attorney's fees is granted. Plaintiffs' counsel is entitled to $22,110.10 in legal fees and $492.58 in costs, to be paid by defendants.

SO ORDERED.

Dated: Brooklyn, New York
March 18, 2014

/s/
JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE