

PEARSON, J.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF OHIO  
 EASTERN DIVISION

ANTHONY RUBERTO,	)	
	)	CASE NO. 4:11cv2178
Plaintiff,	)	
	)	
v.	)	JUDGE BENITA Y. PEARSON
	)	
EVEREST ASSET MANAGEMENT, LLC,	)	
	)	<b><u>MEMORANDUM OF OPINION AND</u></b>
Defendant.	)	<b><u>ORDER</u></b> [Regarding <a href="#">ECF No. 14</a> ]

This matter is before the Court upon the Motion for Default Judgment against Defendant Everest Management, LLC filed by Plaintiff Ruberto on November 16, 2012. [ECF No. 14](#). For the reasons expressed below, the Court grants Plaintiff’s Motion as to statutory damages sought in addition to an award of modified attorney fees.

**I. Background**

Plaintiff filed a Complaint on October 13, 2011, alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), [15 U.S.C. § 1692 et seq.](#) [ECF No. 1](#). On February 10, 2012, Plaintiff filed a Motion to Amend Complaint ([ECF No. 4](#)) and a Motion for Extension of Time to Serve Defendant ([ECF No. 5](#)).<sup>1</sup> The Court granted both these motions on February 13, 2012. On March 8, 2012, Plaintiff filed an Amended Complaint. [ECF No. 6](#). Service was executed on April 9, 2012. [ECF No. 11](#). Defendant did not answer or otherwise respond, and on May 16, 2012, Plaintiff filed an Application to Clerk for Entry of Default against Defendant. [ECF No. 12](#). The Clerk entered default on October 11, 2012, and a copy of the same was mailed

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<sup>1</sup> Plaintiff had an incorrect address for Defendant. [ECF No. 4 at 1](#).

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to Defendant. [ECF No. 13](#). In his Motion for Default Judgment, Plaintiff requests \$1,000 in statutory damages pursuant to the FDCPA, and his attorneys, part of the firm Kimmel & Silverman (“Kimmel”), request fees and costs in the amount of \$3,628.50. [ECF No. 14 at 4-5](#).

## II. Standard of Review

After a default has been entered pursuant to [Fed. R. Civ. Pro. 55\(a\)](#), the party seeking relief from a defaulting party may apply for default judgment pursuant to Rule 55(b). [HICA Educational Loan Corp. v. Jones, 2012 WL 3579690, at \\*1 \(N.D. Ohio 2012\)](#). A default upon well-pleaded allegations establishes defendant’s liability, but plaintiff bears the burden of establishing damages. [Id.](#) (citing [Flynn v. People’s Choice Home Loans, Inc., 440 Fed. App’x. 452, 457 \(6th Cir.2011\)](#)) ( citing [Antoine v. Atlas Turner, Inc., 66 F.3d 105, 110 \(6th Cir.1995\)](#)). In order to enter default judgment, the Court must determine the amount of damages. [HICA, 2012 WL 3579690, at \\*1](#). The Court may determine the amount of damages by affidavit and/or other documentary evidence. [Id.](#) An evidentiary hearing is not required by Rule 55(b) if the amount of damages can be determined by computation from the record before the Court. [Id.](#)

In a successful FDCPA case, plaintiff’s counsel may seek “the costs of the action, together with a reasonable attorney’s fee as determined by the court.” [15 U.S.C. § 1692k\(a\)\(3\)](#). The district court determines what is reasonable in light of the particular circumstances of each case. [Smillie v. Park Chemical Co., 710 F.2d 271, 275 \(6th Cir.1983\)](#) (citing [Ramey v. Cincinnati Enquirer, Inc., 508 F.2d 1188, 1196 \(6th Cir.1974\)](#)). A reasonable fee “is one that is adequate to attract competent counsel, but [does] not produce windfalls to attorneys.” [Hadix v. Johnson, 65 F.3d 532, 535 \(6th Cir. 1995\)](#) (quoting [Blum v. Stenson, 465 U.S. 886, 897 \(1984\)](#))

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(internal quotes and ellipses omitted)). Determining a reasonable rate requires that the court use prevailing market rates in the local community. [Missouri v. Jenkins, 491 U.S. 274, 285–86 \(1989\)](#).

### III. Discussion

#### A. Plaintiff’s Statutory Award

The FDCPA provides a cause of action to consumers who have been subjected to “the use of abusive, deceptive, and unfair debt collection practices . . . .” [15 U.S.C. § 1692\(a\)](#). Section 1692k provides for a plaintiff to recover for “any actual damage sustained” by a defendant’s failure to comply with a provision of the statute, and, where the plaintiff is an individual, “additional damages as the court may allow, but not exceeding \$1,000.” [15 U.S.C. § 1692k\(a\)\(1\)-\(2\)](#). Plaintiff has alleged Defendant violated numerous sections of the FDCPA and requests \$1,000 in statutory damages. [ECF No. 14 at 3-4](#). The Court grants this request.

#### B. Attorney Fees

In support of its request for attorney fees pursuant to the FDCPA, Kimmel filed affidavits and other documentary evidence sufficient to establish reasonable attorney fees. [ECF No. 14-1; 14-2; 14-3](#). Kimmel seeks the following billable hours, rates and total fees for its work on Plaintiff’s case:

<b>Attorney (A)/ Paralegal (P)</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Amy L. Bennecoff (A)	8.6	\$200.00	\$1,720
Jacob U. Ginsburg (A)	4.5	\$175.00	\$787.50

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Dawn Grob (P)	2.2	\$110.00	\$242.00
Pete Keltz (P)	6	\$60.00	\$360.00
Jason Ryan (P)	.4	\$110.00	\$44.00
<b>Costs</b>			\$475.00
<b>Total</b>	21.7		<b>\$3,628.50</b>

The Court awards the following billable hours, rates and total fees for work on Plaintiff's case:

<b>Attorney<sup>2</sup></b>	<b>Hours<sup>3</sup></b>	<b>Hourly Rate<sup>4</sup></b>	<b>Total</b>
Amy L. Bennecoff	6.9	\$200.00	\$1,380.00
Jacob U. Ginsburg	4.5	\$175.00	\$787.50
<b>Costs</b>			\$475.00
<b>Total</b>	11.4		<b>\$2,642.50</b>

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<sup>2</sup> The Court does not compensate work done by paralegals in the instant case. While it is fair to say that “[w]ork done by non-attorneys such as paralegals or law clerks, may be compensable . . . if the work is ‘sufficiently complex’ or work ‘traditionally performed by attorneys[,]’” the Court does not find the work done by paralegals in the instant case to be sufficiently complex to warrant an award of fees. [Snyder v. Comm’r of Soc. Sec., 2011 WL 66458, at \\*2 \(N.D. Ohio, Jan. 10, 2011\)](#). Further, the work traditionally performed by attorneys in the instant case does appear to have been performed by attorneys, for which they will be compensated. The Court notes that this was a case that resulted in default judgment, handled by a law firm that is well versed in FDCPA cases across the country.

<sup>3</sup> The Court does not compensate an attorney for checking emails from the Court *via* CM/ECF or from the process server. “[P]urely clerical or secretarial tasks should not be billed” under fee shifting statutes, “regardless of who performs them.” [Missouri v. Jenkins, 491 U.S. 274, 288 n.10 \(1989\)](#). Accordingly, Bennecoff’s hours have been reduced by the amount of time spent reviewing emails from CM/ECF and the process server.

<sup>4</sup> The Court finds that the hourly rate is reasonable. *See also Jablonski v. Portfolio Recovery Associates, LLC, 3:11-cv-2291, ECF No. 22 at 6 (N.D. Ohio, Apr. 30, 2012)* (same).

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**IV. Conclusion**

For the aforementioned reasons, the Court grants Plaintiff's Motion for Default Judgment ([ECF No. 14](#)) against Defendant Everest Asset Management, LLC in the amount of \$1,000 in statutory damages. The Court additionally awards attorney fees and costs to Kimmel in the amount of \$2, 642.50 from Defendant.

IT IS SO ORDERED.

November 28, 2012  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge