

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL G. BURTON and
MOLLY BURTON,

Plaintiffs,

v.

Case No. 1:11-CV-261

RAB PERFORMANCE RECOVERIES L.L.C. and
MARY JANE M. ELLIOTT, P.C.

HON. GORDON J. QUIST

Defendants.

OPINION AND ORDER

On August 2, 2011, this case was resolved at a settlement conference conducted by Magistrate Judge Brenneman. The agreement reached by the parties provided that defendant Elliot would pay Plaintiffs' damages comprised of \$15,500, plus reasonable attorney fees and costs. If the parties were not able to agree on the amount of reasonable attorney fees and costs, determination of the award would be left to the Court. The parties have not been able to agree on a reasonable amount. The Court is left to determine a reasonable amount of attorney fees and costs for this matter.

Plaintiffs filed a motion for attorney fees and costs, (Dkt. #39,) and a memorandum in support of that motion. Plaintiffs had two attorneys representing them. For Michael O. Nelson's efforts, Plaintiffs ask for an award of \$5,550, comprised of 18.5 hours of work at \$300 per hour. For Curtis C. Warner's efforts, Plaintiffs ask for \$8,100, comprised of 27 hours of work at \$300 per hour. Plaintiffs also ask for \$609.46 in costs. In total, Plaintiffs request this Court to award

\$14,259.46 in reasonable attorneys fees and costs. Plaintiffs have included their ledgers which describes the work each attorney performed. (Dkt. #40 Ex. 1.)

Defendants refute many of the attorneys' billing entries as duplicative, "unreasonable, overstated and/or unnecessary." (Dkt. #49 at 4.) Defendants' argument includes specific objections to particular billing entries for each attorney. (*Id.* at 11-14.) Defendants do not argue, however, that \$300 per hour is an unreasonable hourly rate for representation in this matter.

To determine reasonable attorney's fees and costs, this Court will use the lodestar method. The lodestar method of fee calculation is the method by which federal courts should determine reasonable attorney's fees under federal statutes which provide for such fees. *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991); *see Perdue v. Kenny A.*, 130 S.Ct. 1662, 176 L. Ed. 2d 494 (2010) (upholding the lodestar approach). Here, the claims arose under the Fair Debt Fair Collections Practices Act ("FDCPA").

The "lodestar figure" is the product of the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *See Wayne v. Vill. of Sebring*, 36 F.3d 517, 531 (6th Cir. 1994) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939 (1983)). Hours that are duplicative, excessive, or otherwise unnecessary should be excluded from the initial fee calculation. *Hensley*, 461 U.S. at 434, 103 S. Ct. at 1939-40. After determining the lodestar figure, a court should determine whether the fee should be adjusted in light of the results obtained. *Id.* at 434, 103 S. Ct. at 1940. The party seeking an award of fees has the burden of proving that his request is reasonable. *See Perry v. Keulian*, No. Civ. A. 96-1374, 1997 WL 459971, at *1 (E.D. Pa. July 25, 1997) (citing *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990)).

The Court first considers the issue of a reasonable hourly rate. Defendants do not refute Plaintiffs' \$300 per hour request. Plaintiffs support this hourly rate with the State Bar of Michigan

2011 survey of the Economics of Law Practice in Michigan. (Dkt. #40 Ex. 4.) That survey lists the median hourly rate for consumer attorneys in Michigan as \$301. Also, Plaintiffs have provided each attorney's qualifications and prior experience, which is extensive in consumer protection litigation. Furthermore, they have provided fee awards that each attorney has obtained from prior similar cases. Based upon these facts and the Court's own experience and judgment, the Court finds that \$300 per hour is reasonable for these matters.

Turning to the hours expended on the case, the Court notes that Defendants lengthily and specifically object to Plaintiffs' allegations of hours expended. In making an award when multiple attorneys are involved, the proper inquiry should not be the number of lawyers, but whether the multiple attorneys' hours were excessive or duplicative, thereby justifying a reduction. *Hispanics United v. Vill. of Addison*, 157 F. Supp. 2d 962, 969 (N.D. Ill. 2001.) Often times, "[t]wo lawyers are the minimum in much of private litigation Consultation among lawyers insures that they do not overlook significant facts or inquiries." *Bohen v. City of E. Chi.*, 666 F. Supp. 154, 157 (N.D. Ind. 1987) (Easterbrook, J. sitting by designation). With that said, district courts should scrutinize fee petitions for duplicative billing when multiple lawyers seek fees to perform a single set of tasks. *See, e.g., Schlacher v. Law Offices of Phillip J. Rotche & Assocs., P.C.*, 574 F.3d 852, 858 (7th Cir. 2009). Thus, this Court has reviewed in detail the billing entries submitted by each attorney, and the objections made to those submissions.

In large part, this Court finds the hours spent by each attorney to be reasonable. As an initial matter, several of Defendants' objections are that Mr. Nelson's and Mr. Warner's efforts are "duplicative"; however, in the vast majority of these specific objections, only *one* of the attorneys has an entry for the corresponding task. Furthermore, it appears that the attorneys diligently used their time; when reading emails, reviewing documents, or making phone calls, the attorneys

typically used the minimum amount of time for their billing entry - “.1” (one tenth). Also, the attorneys cannot be faulted for working on the case together, nor can they be faulted for keeping each other and the client informed of developments throughout the representation. The Court finds it reasonable that one of the attorneys often drafted the writings, while the other reviewed those drafts. On top of that, in light of this Court’s experience, the amount of time each attorney spent drafting, editing, and researching is reasonable - these tasks inherently take longer than administrative tasks and require thoroughness. With that said, after taking all of the factors into consideration and scrutinizing the attorneys’ billing entries, this Court finds a few of the fees to be unreasonable.

The Court finds the following fees of Mr. Warner to be unreasonable:

1. May 17, 2011 - **.2 hours**. The Court agrees with Defendants that it appears Mr. Warner already performed this task on January 5, 2011, and therefore this was unnecessary.
2. July 6, 2011 - **.1 hours**; July 6, 2011 - **.2 hours**. The Court agrees with Defendants that it would be excessive to expect Defendants to pay for the administrative mistakes of Mr. Warner.
3. July 6, 2011 - **.5 hours**. The Court agrees with Defendants that this appears to be a duplicative effort of Mr. Warner’s work on July 5, 2011.

The Court finds the following fees of Mr. Nelson to be unreasonable:

1. July 5, 2011 - **.5 hours**. The Court agrees with Defendants that this appears to be a duplicative effort of Mr. Warner’s work on July 5, 2011.

Mr. Nelson has four process of service entries for costs, which are unexplained, and since there are only two defendants, this Court finds the last two service of process of costs to be

