IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TAYLOR PETERSON,	§	
	§	
Plaintiff,	§	**CIVIL ACTION NO. 6:20-CV-00588-JDK**
	§	
v.	§	
	§	
TENANT TRACKER, INC.,	§	
	§	
Defendant.	§	

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

Before the court is Plaintiff Taylor Peterson's motion for reasonable costs and attorney's fees. (Doc. No. 31.) Defendant Tenant Tracker, Inc. ("TTI") has filed a response in opposition (Doc. No. 32), to which Plaintiff has filed a reply (Doc. No. 34), and TTI has filed a sur-reply (Doc. No. 35). For the reasons set forth herein, the court **RECOMMENDS** that Plaintiff's motion (Doc. No. 31) be **GRANTED-IN-PART** and **DENIED-IN-PART** as set forth herein.

BACKGROUND

Plaintiff filed this case on November 4, 2020, alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), as well as violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA") against TTI and Defendant Equifax Information Services, LLC ("Equifax"). (Doc. No. 1.) Pursuant to a stipulation, Equifax was dismissed from this action on May 18, 2021. (Doc. No. 24.) Therefore, the claims against TTI were the only remaining claims in this action. TTI filed a motion to dismiss on December 29, 2020. (Doc. No. 10.) On May 17, 2021, District Judge Jeremy Kernodle issued an order granting-in-part

and denying-in-part TTI's motion to dismiss. (Doc. No. 19.) Specifically, Judge Kernodle granted TTI's motion as to Plaintiff's claims brought pursuant to 15 U.S.C. §1692d and § 1692f, but denied TTI's motion as to Plaintiff's FDCPA claim brought pursuant to 15 U.S.C. § 1692e(8), finding that Plaintiff had stated a plausible basis for said claim. As a result, counts II and III of Plaintiff's complaint were dismissed with prejudice, and Plaintiff's § 1692e(8) claim remained for trial.

Thereafter the court set this matter for trial, but on June 28, 2021, Plaintiff filed a notice of acceptance of offer of judgment. (Doc. No. 29.) Accordingly, on June 30, 2021, pursuant to Federal Rule of Civil Procedure 68(a), Judge Kernodle entered judgment in favor of Plaintiff and against TTI in the amount of $1,001.00 and all reasonable costs and attorney's fees. (Doc. No. 30.) The final judgment instructed that "[r]easonable costs and attorney's fees are to be determined either by agreement of the parties or by the Court upon a motion filed by July 28, 2021." *Id.* On July 14, 2021, Plaintiff filed its disputed motion for reasonable costs and attorney's fees. (Doc. No. 31.) The matter has now been fully briefed (Doc. Nos. 31, 32, 34, 35), and the motion was referred to the undersigned for proposed findings of fact and recommendation of disposition (Doc. No. 36).

LEGAL STANDARD

Under the FDCPA, a successful party is awarded "the costs of the action, together with reasonable attorney's fee determined by the court." 15 U.S.C. § 1692k(a)(3). "It is well-established that the FDCPA is a fee-shifting statute and makes the debt collector liable for reasonable attorney's fees upon successful prosecution of a plaintiff's case." *Young v. Asset Acceptance, LLC*, No. 3:09-cv-2477, 2011 WL 618274, at *2 (N.D. Tex. Feb. 10, 2011) (citing 15 U.S.C. § 1692k(a)(3)). The Fifth Circuit uses the lodestar method to calculate the appropriate attorney's fee award. *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 799 (5th Cir. 2006). Using this method, the number of hours an attorney reasonably spent on the case is multiplied by the market rate in

the community for such work. *See Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 490 (5th Cir. 2012). A reasonable hourly rate should be similar to rates "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895–96 n.11 (1984). "The fee applicant bears the burden to prove by competent evidence that the requested rate is reasonable." *Powell v. Comm'r*, 891 F.2d 1167, 1173 (5th Cir. 1993) (citing *Blum*, 465 U.S. at 895 n.11). Further, the trial court itself is considered an expert as to the reasonableness of attorney's fees, and therefore may exercise its own expertise and judgment in making an independent valuation of appropriate attorney fees. *See Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004) (citing *In re TMT Trailer Ferry, Inc.*, 577 F.2d 1296, 1304 (5th Cir. 1978)).

After calculating the lodestar, the court may decrease or enhance the lodestar figure based upon the relative weights of the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). The *Johnson* factors include: (1) the time and labor required to represent the client or clients; (2) the novelty and difficulty of the issues in the case; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee charged for those services in the relevant community; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id.* at 800 n.18. However, "[t]he lodestar may not be adjusted due to a *Johnson* factor that was already taken into account during the initial calculation of the lodestar." *Heidtman v. Cnty. Of El Paso*, 171 F.3d 1038, 1043 (5th Cir. 1999) (citing *Shipes v. Trinity Indus.*, 978 F.2d 311, 319–20 (5th Cir. 1993)). Further, "[t]he

court should exclude all time that is excessive, duplicative, or inadequately documented." *Jimenez v. Wood Cnty., Tex.*, 621 F.3d 372, 379–80 (5th Cir. 2010).

DISCUSSION

Plaintiff's motion requests a reasonable award of $15,830.00 in attorney's fees and $475.00 in costs, totaling a requested award of $16,305.00. (Doc. No. 31-1.) TTI does not dispute that Plaintiff is entitled to reasonable attorney's fees and costs, but disagrees that Plaintiff's request for fees is a reasonable amount. (Doc. No. 32.) TTI contends that upon a proper lodestar calculation with reasonable adjustments made after, the total amount of fees in this case should be $2,415.77. (Doc. No. 32, at 15.) TTI does not dispute costs in the amount of $475.00. *Id.*

A. Attorney's Fees

a. Hourly Rate

The parties first dispute the appropriate hourly rate for the work involved with this case. To support a proposed hourly rate, Plaintiff cites to the United States Consumer Law Attorney Fee Survey Report ("Survey Report"), which provides an average hourly fee of $395.17 for six cities across Texas for the years 2017–2018. (Doc. No. 32-1, at 3.) Plaintiff contends that when calculating inflation from 2017 to present, the adjusted rate would be $442.13. *Id.* Plaintiff notes that the media rate, adjusted for inflation, would be $890.40. *Id.* Plaintiff contends that consumer protection is an uncommon area of the law and points out that Plaintiff's counsel's firm's hourly rate is $525.00. Therefore, Plaintiff argues an appropriate rate for its associate counsel is $475.00 per hour and that $525.00 per hour would be a reasonable rate for its partners. (Doc. No. 31-1, at 4.)

TTI argues that Plaintiff's counsel's proposed rates do not comport with the relevant community because the Survey Report does not provide any data on Tyler, Texas and contains

only self-reporting of members of the consumer plaintiff's bar. (Doc. No. 32, at 4.) TTI argues that the significant volume of Plaintiff's counsel's caseload downplays the complexity of the area of law. *Id.* at 5. TTI also notes that Plaintiff's lawyers have only been admitted to the bar since September 17, 2014, and September 18, 2019, rendering them less experienced attorneys. *Id*. at 7. TTI argues that the court should use the State Bar of Texas Hourly Fact Sheet ("Fact Sheet") to determine a reasonable hourly rate. *Id.* at 5. TTI acknowledges that there is no median rate for consumer law in East Texas contained in the Fact Sheet, but cites to the median rate for consumer law in the DFW area at $225 per hour. *Id.* at 6. TTI contends it would be reasonable to decrease the rate by 10% to adjust for the difference in market size. *Id.* Adjusting for inflation, TTI contends a reasonable hourly rate for Plaintiff's counsel's partners would be $230.66 per hour, and $216.33 for Plaintiff's counsel's associate. *Id.* at 7.

In accord with other Texas courts and this court's own previous determination, the court finds it appropriate to look to the State Bar of Texas Hourly Fact Sheet[1] publication for guidance on prevailing rates in the community for similar services. *See, e.g.*, *Stanton v. Jarvis Christian Coll.*, No. 6:18-CV-479-JDK-JDL, 2020 WL 5269439, at *6 (E.D. Tex. Aug. 27, 2020) (applying the Fact Sheet for guidance of prevailing rates); *Alvarez v. McCarthy*, No. 6:16-cv-175, 2020 WL 1677715, at *6–7 (W.D. Tex. Apr. 6, 2020) (relying on the Fact Sheet to gauge the reasonableness of rates); *Geophysical Serv., Inc. v. TGS-NOPEC Geophysical Co.*, No. H-14-1368, 2020 WL 821879, at *9 (S.D. Tex. Feb. 19, 2020) (taking judicial notice of the Fact Sheet); *Virtual Chart Sols. I, Inc. v. Meredith*, No. 4:17-cv-546, 2020 WL 1902530, at *19 (E.D. Tex. Jan. 13, 2020) (accepting rates supported by Fact Sheet); *Leal v. All-City Trailer Repair, L.P.*,

[1] STATE BAR OF TEX., 2015 HOURLY RATE FACT SHEET (Aug. 2016), *available at* https://www.texasbar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=34182.

No. 3:16-cv-03274, 2018 WL 4913786, at *2 (N.D. Tex. Oct. 10, 2018) (comparing rate to Fact Sheet).

While the Fact Sheet does not provide an hourly rate for consumer law in East Texas, it does provide an hourly rate for creditor-debtor law in East Texas at $250.00 per hour for the year 2015. Given that the claims asserted in this case arose from an alleged debt owed by Plaintiff and that was placed for collection with TTI (Doc. No. 1), the court finds the application of the creditor-debtor area of law to be appropriate. Moreover, as discussed above, at the time this case was litigated, Plaintiff's counsel's associate had less than two years' experience. (Doc. No. 31-2.) The Fact Sheet reports a median hourly rate of $200.00 for an attorney with less than two years' experience in 2015. Plaintiff's counsel's partners each had approximately 6–7 years' experience while this case was being litigated. (Doc. No. 31-2.) The median rate for an attorney with that range of experience was $250.00 in 2015, as reported in the Fact Sheet. Using these median rates, the court finds that $250.00 is a reasonable rate for Plaintiff's counsel's partners in 2015, and that $225.00 is reasonable rate for Plaintiff's counsel's associate in 2015. The majority of Plaintiff's counsel's work in this case occurred in 2021. (Doc. No. 31-3.) Adjusting the 2015 rates of $225.00 and $250.00 for inflation, renders a reasonable hourly rate of $286.59 for Plaintiff's counsel's partners and $257.93 for Plaintiff's counsel's associate.[2]

b. Hours Expended

Plaintiff has submitted a billing record in support of hours worked, including the date the work was rendered, the attorney or assistant who did the work, a description of the work, and the hours worked. (Doc. No. 31-3.) According to Plaintiff's counsel's billing records, the total amount of hours expended by each member of its firm are:

[2] *See Prices for Legal Services, 2015–2021*, OFFICIAL DATA FOUND., https://www.officialdata.org/Legal-services/price-inflation/2015-to-2021.

1. Associate Orlowski: 25.2 hours
2. Partner Halvorsen: 4.5 hours
3. Partner Klote: 1.9 hours
4. Paralegal Miller: 1.3 hours
5. Paralegal McIntyre: 2.7 hours

Id.

TTI contends that Plaintiff's counsel has not used proper billing judgment to appropriately reduce hours. (Doc. No. 32, at 7.) Specifically, TTI argues that its offer of judgment expired on June 25, 2021 under Federal Rule of Civil Procedure 68, and that by Plaintiff accepting the offer, he agreed not to request any attorney's fees arising after June 25, 2021. *Id.* at 7–8. TTI also argues that Plaintiff's counsel cannot recover for 4.9 hours of clerical work, and that all of the paralegal time should be stricken because it has not been substantiated in Plaintiff's submissions. *Id*. at 8–9. TTI also contends that Plaintiff's counsel's hours should be reduced for duplicative work, block billing, and vague time entries. *Id*. at 9–10.

i. Offer of Judgment

As to the offer of judgment, the noticed and filed offer as submitted by Plaintiff in this matter unambiguously indicated that "[j]udgment shall be entered against Defendant in the amount of One Thousand and One Dollars ($1,001.00), plus reasonable attorney's fees and taxable costs incurred in this action *prior to the expiration of this offer*…" (Doc. No. 29-1) (emphasis added). Plaintiff accepted this offer on June 16, 2021. (Doc. No. 29.) Plaintiff does not contest that he accepted this offer. Plaintiff simply argues that defense counsel has previously received fees for work on fee petitions in a case that did not involve an accepted offer a judgement. (Doc. No. 34, at 2.) Given the express agreement and acceptance of the offer of judgment, the court finds that

fees that accrued after the expiration of the offer and corresponding entry of final judgment in this action, would not be appropriately included in the hours expended in this case. *See Lilly v. City of New York*, 934 F.3d 222 (2d Cir. 2019) (holding that an offer of judgment accepted by plaintiff precluded district court from awarding plaintiff fees for work his attorney performed on his fee application following acceptance of the offer of judgment); *Young v. Diversified Consultants, Inc.*, 554 F. Supp. 2d 954, 957 (D. Minn. 2008) (finding that plaintiff could not seek reimbursement for fees incurred outside the terms of the offer of judgment). While the court acknowledges that the terms of the offer of judgment do not offer Plaintiff complete relief, the fact remains that Plaintiff agreed to, and the court correspondingly entered the judgment, as presented as the court. As the court has no discretion to modify the terms of the parties' agreement in their Rule 68 offer of judgment, the court finds it would be inappropriate to now render fees that are inconsistent with that agreement. *See Robinson v. Linder*, No. 9:08-CV-1, 2009 WL 10708496, at *1 (E.D. Tex. Feb. 2, 2009) (noting that "Rule 68 is mandatory, not permissive: if the offer has been timely accepted and the filing requirements complied with, judgment must be entered" according to the parties' agreement).

Here, Associate Orlowski has submitted 3.4 hours for drafting the motion for attorney's fees and costs on July 9, 2021, as well as .5 hours for drafting affidavits and declarations for the motion on July 13, 2021. (Doc. No. 31-3, at 5.) Because this work occurred outside of the timeframe for agreed collection of reasonable costs and fees set forth in the offer of judgment, the court finds these hours should be removed for lodestar calculation purposes. To be clear, it is not the court's finding that these hours cannot be included because they are hours spent on Plaintiff's fee's motion, but simply because they are outside of the range of agreed collection of fees as set

forth in the accepted offer of judgment pursuant to Federal Rule of Civil Procedure 68. Therefore, the court finds that Associate Orlowski's time should be reduced by 3.9 hours.

ii. Paralegal Hours

TTI argues that the paralegal hours submitted by Plaintiff should be stricken as Plaintiff's motion fails to substantiate the time or fees of the paralegals and Plaintiff provides no reasonableness or necessity of these hours. (Doc. No. 32, at 9.) Plaintiff does not directly respond to this argument.

Generally, paralegal expenses are separately recoverable only as part of a prevailing party's award for attorney's fees "only to the extent that the paralegal performs work traditionally done by an attorney." *Allen v. U.S. Steel Corp.*, 665 F.2d 689, 697 (5th Cir. 1982). Here, even to the extent the hours expended by the paralegals in Plaintiff's billing record account for work that would traditionally be done by an attorney, the larger problem is that Plaintiff has provided the court with no assessment of what would be a reasonable hourly rate for these paralegals based upon their work and experience. As noted, the fee applicant bears the burden to prove by competent evidence that a requested rate is reasonable. *Blum*, 465 U.S. at 895 n.11. Plaintiff has failed to provide the court with any information that would inform the court as to the paralegals' various experience, the type of work they do, if they are specialized, or any data to support an hourly rate for their work. For example, although Plaintiff's brief contends that Plaintiff's counsel's paralegals bill at $150.00 per hour, nothing in the attached affidavits supports this contention. *See* Doc. No. 31-1; Doc. No. 31-2. For these reasons, the court finds that Plaintiff has failed to carry its burden to show that the paralegals' requested rates are reasonable and therefore the court finds it appropriate to remove the requested paralegal hours, which total 4 hours in this case.

iii. Clerical Activities

TTI contends that Plaintiff's counsel's hours should be reduced by 4.9 hours for clerical activities such as receiving and reviewing email correspondence, notating changes in case status, and scheduling conferences. (Doc. No. 32, at 8.) In support, TTI submits Exhibit D to its response that TTI contends shows clerical work entries, some of which TTI claims have been updated from the original schedule to include words such as "reviewed." *Id.* at 8–9; Doc. No. 32-4. Plaintiff responds that generally it worked to minimize costs by utilizing its associate attorney who bills at a lower rate. (Doc. No. 34, at 2.)

"Clerical work is not recoverable in an award of attorneys' fees," even where such clerical work is performed by an attorney. *See Black v. SettlePou, P.C.*, No. 3:10-CV-1418-K, 2014 WL 3534991, at *6 (N.D. Tex. July 17, 2014). "There is no precise test for determining whether a task is legal or clerical." *Malick v. NCO Fin. Servs., Inc.*, No. CIV.A. H-14-1545, 2015 WL 4078037, at *5 n.4 (S.D. Tex. July 6, 2015). Rather, a court must use its judgment in making such a determination. *Id.*

As an initial matter, some of the entries submitted by TTI include work done by a paralegal. Because the court has already found it appropriate to strike those hours from the fees award, the court will not consider them in its analysis of clerical activities. As to the clerical work identified by TTI with respect to Associate Orlowski, a good number of the entries include reviewing emails from opposing counsel, review of the docket, filings, and scheduling. (Doc. No. 32-4.) Courts have deemed tasks such as these to be non-compensable, including reviewing and calendaring deadlines; printing, copying, and filing documents; drafting cover letters; ordering transcripts; organizing and updating materials and binders; loading and organizing computer databases; redacting and assembling exhibits; and transmitting documents. *See, e.g., Black*, 2014 WL 3534991, at *6; *Action Oilfield Servs., Inc. v. Mantle Oil & Gas, L.L.C.*, No. CIV.A. 13-4866,

2014 WL 2465310, at *5 (E.D. La. Jun. 2, 2014); *Fralick v. Plumbers & Pipefitters Nat. Pension Fund*, No. 3:09–CV–0752–D, 2011 WL 487754, at *8 (N.D. Tex. Feb. 11, 2011). For example, the court finds it appropriate to exclude Associate Orlowski's entries for e-filing a response to the motion to dismiss, her docketing of the scheduling conference, and scheduling a meeting with opposing counsel as all clerical in nature. This totals a reduction of .6 hours of Associate Orlowski's time.

The remainder of the contested entries relate to Associate Orlowski's "receiving and reviewing" of email correspondence in this case and two entries for prefiling research. The court will not exclude the time entered for conducting prefiling research on TTI and the claims to be filed in this action. Those tasks are inherently legal and indeed governed by the requirements of Federal Rule of Civil Procedure 11. As to the entries for receiving and reviewing emails from TTI, the court cannot conclusively exclude these activities as clerical. Clearly these were emails addressed to counsel and involve a variety of substantive issues, including settlement discussions, affidavits, and other disputes. The court appreciates that a substantial amount of present-day litigation is conducted via email communications. As such, the court cannot discount the email communications as per se clerical. While Plaintiff's submissions could contain more specificity, they do generally contain the subject of the communication and the substantive matter addressed. (Doc. No. 32-4.) The court will therefore not exclude those entries from the reasonable amount of fees in this case.

Accordingly, the court finds an appropriate reduction of time of .6 hours as to Associate Orlowski based upon clerical work entered.

iv. Duplicative Work

TTI argues that Plaintiff's counsel's reported hours should also be reduced for duplicative billing. (Doc. No. 32, at 9–10.) Specifically, TTI points to .9 hours where both partners reviewed the motion to dismiss response as well as 18 entries totaling 7 hours for intraoffice meetings. *Id.* at 10, citing Doc. No. 32-5. Plaintiff responds that because it primarily used an associate to perform the work in this case for cost savings purposes, a lot of the work required partner oversight. (Doc. No. 34, at 3.) Plaintiff contends that intraoffice meetings were used to edit work, discuss, and improve the strategies of the associate to best move forward with the case. *Id.* As to the duplicate partner time, Plaintiff responds that Partner Halvorsen needed to review the brief in question to confirm the accuracy of the authorities cited, and Partner Klote needed to review the brief to assess arguments and continuity. *Id.*

Generally, time charged for work that is excessive or duplicative should be excluded for an award of attorney's fees. *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993). Here, it is not apparent to the court that the intraoffice meetings cited by TTI are per se duplicative. Rather, the record reflects that these were litigation strategy meetings, wherein the litigation team discussed several strategies for the case, such as TTI's motion to dismiss and preparation of a response, editing work product, and the offer of judgment. (Doc. No. 32-5.) These efforts are collaborative by nature, and as Plaintiff has pointed out, are due in part to allowing associate counsel to take the lead of the work in this case to save costs. While the court finds this approach to be reasonable, only one attorney should bill for these joint meetings to avoid duplicate billing. In this case, Associate Orlowski appears to have taken the lead on this case as Plaintiff has pointed out, and the court finds it appropriate that her hours should be counted for such meetings. Accordingly, there should be no reduction of Associate Orlowski's hours, but the court finds it appropriate to reduce Partner Halverson's hours by 2.9 hours and to reduce Partner Klote's hours by 1.3 hours. As

Plaintiff has provided a plausible explanation for why both partners needed to review the response to TTI's motion to dismiss for independent reasons, the court finds no basis to further reduce the Partners' hours for duplicative billing on these grounds.

v. Block Billing and Vague Entries

TTI argues for a further reduction of Plaintiff's counsel's hours for block billing and vague time entries. (Doc. No. 32, at 10.) Specifically, TTI cites five entries by Associate Orlowski that were block-billed by lumping together discrete tasks. (Doc. No. 32-6.) These entries include: (1) "Reviewed docs, spoke with client re: claims"; (2) "Retrieved Krier Order, re-reviewed, drafted final offer to TT to avoid unnecessary expense"; (3) "Received and reviewed email from TT re: Krier opinion. Reviewed case file re: claim of no dispute"; (4) "Confirmed dismissal okay if evidence of no dispute. Drafted and emailed the same to TT"; and (5) "Received reply to MTD. Reviewed to determine if sur-reply necessary." *Id.* These entries total 2.2 hours and TTI argues that they should be reduced by 50% to 1.1 hours on account of the block-billing. (Doc. No. 32, at 10–11.) Plaintiff contends that these tasks were not discrete but were instead intertwined. (Doc. No. 34, at 3.) Plaintiff contends that counsel would have had to bill more to separate out the tasks by having to round to the nearest .1 hour for each task. *Id.*

"Block billing" refers to a "time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks." *Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1554 n.15 (10th Cir. 1996); *see also Hollowell v. Orleans Regional Hosp., LLC*, 217 F. 3d 379, 392–93, n.18 (5th Cir. 2000); *Barrow v. Greenville Indep. Sch. Dist.*, 2005 WL 6789456, at *3 (N.D. Tex. Dec. 20, 2005). "Block billing is disfavored because it prevents the court from accurately determining the time spent on any particular task, thus impairing the court's evaluation of whether the hours were

reasonably expended." *Hoffman v. L & M Arts*, No. 3:10-CV-0953-D, 2015 WL 3999171, at *4 (N.D. Tex. July 1, 2015). A reduction for block billing is not automatic, but may be warranted where the records presented are inadequate to determine reasonable hours. *See Fralick*, 2011 WL 487754, at *5. When making a reduction because of block billing courts in the Fifth Circuit reduce a percentage of the hours or the lodestar figure, and this amount usually ranges from 10% to 30%. *See, e.g., SCA Promotions, Inc. v. Yahoo! Inc*., No. 3:14-CV-957-O, 2016 WL 8223206, at *12 (N.D. Tex. Nov. 21, 2016), *report and recommendation adopted*, No. 3:14-CV-00957-O, 2017 WL 514545 (N.D. Tex. Feb. 8, 2017) (including a 20% reduction for block billing); *Hoffman*, 2015 WL 3999171, at *5 (applying a 30% reduction for block billing); *Fralick*, 2011 WL 487754, at *14 (applying a 10% reduction for block billing).

Here, the court agrees that the first four entries cited above appear to be discrete tasks that could have and should have been separately billed in exercising billing judgment. Because these tasks were not separated, the court cannot discern how much time was allocated to each task. As such, the court finds it appropriate to reduce the time billed. However, because block billing was not a pervasive practice in this instance and instead only applied to these few entries, the court finds it appropriate to reduce the block billed hours only by 10% from 1.6 hours to 1.4 hours. As to the final entry on February 9, 2021, the court finds this is really a single entry simply broken down into two sentences wherein Associate Orlowski received the reply to the motion to dismiss and reviewed it to determine whether a sur-reply was necessary. Accordingly, the court will not reduce the .6 hours for that task.

In sum, the court finds that .2 hours of Associate Orlowski's time should be reduced for block billing on the entries specified.

c. Lodestar Calculation

In sum, the court has found hourly rates of $286.59 for Plaintiff's counsel's partners and $257.93 for Plaintiff's counsel's associate to be reasonable. Further, the court reduced the billing hours as set forth herein. Based on the foregoing, the court calculates a lodestar amount of $5,918.06 in accordance with the chart below:

Name	**Hours**	**Rate**	**Total**
Associate Orlowski	20.5	$257.93	$5,287.57
Partner Halvorsen	1.6	$286.59	$458.54
Partner Klote	.6	$286.59	$171.95
		Total	**$5,918.06**

d. *Johnson* Factors

The court now considers whether the lodestar amount should be adjusted upward or downward. The party seeking adjustment bears the burden of establishing that an adjustment is warranted based on a proper assessment of the *Johnson* factors. *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 329 (5th Cir. 1995). "Once the lodestar amount is determined, there is a strong presumption that it represents a reasonable fee." *Perdue v. Kenny A.*, 559 U.S. 542, 553–54 (2010). The court finds that several of the *Johnson* factors are already included in the court's lodestar figure, including factors one (the time and labor required for the litigation), three (the skill required to perform the legal services properly), five (the customary fee), and nine (the experience, reputation, and ability of the attorneys). Thus, the court finds no basis to further reduce the award due to these factors. *See Black v. SettlePou, P.C.*, 732 F.3d 492, 502 (5th Cir. 2013) ("[t]he lodestar may not be adjusted due to a *Johnson* factor that was already taken into account during the initial calculation of the lodestar."). TTI only raises additional reduction-based arguments on factors two (the novelty and difficulty of the questions presented), four (the preclusion of other employment

by the attorney due to acceptance of the case), eight (the amount involved and the result obtained), and twelve (awards in similar cases). (Doc. No. 32, at 11–13.) Ultimately, TTI requests a further 5% reduction of the award after considering the *Johnson* factors. *Id.* at 13.

As to the novelty of the issues presented, TTI argues that this was a simple case as far as consumer protection cases go and that this factor should therefore reduce the Plaintiff's fee award. (Doc. No. 32, at 11.) Plaintiff responds that the parties disputed difficult credit reporting issues and complex debt collection rules that ultimately resulted in a successful outcome for Plaintiff despite TTI's motion to dismiss. (Doc. No. 34, at 3–4.) Given the procedural history of this case and the disputes raised by the parties, the court does not find that this case was so simple such that the further reduction of the award is warranted on that basis.

Regarding the preclusion of other employment by Plaintiff's counsel due to the acceptance of this case, TTI notes that Plaintiff's counsel has resolved 540 FDCPA cases over the past three years. (Doc. No. 32, at 11.) As such, TTI contends that Plaintiff's counsel did not forego other work in order to take this case. *Id.* Plaintiff responds only that counsel spent necessary time on this case to reach a successful outcome and that that time could not be spent elsewhere. (Doc. No. 34, at 4.) Here, Plaintiff's counsel was able to maintain what appears to be hundreds of cases while this case was pending (Doc. No. 31-2), and Plaintiff's argument that work on this case could have been spent elsewhere is generic and would arguably apply to every case. As such, the court finds this case did not preclude Plaintiff's counsel from other employment. Moreover, there is no evidence that the ability to take on other work impacted the outcome or the amount of hours worked in this case. Therefore, the court declines to reduce the lodestar figure based on this factor.

TTI argues that two of Plaintiff's three FDCPA counts were dismissed in this case and points out that the ratio of fees to the costs of judgment is too large such that a downward

adjustment is justified. (Doc. No. 32, at 12.) Plaintiff contends it had a successful outcome in this case and that proportionality is inapplicable. (Doc. No. 31-1, at 6–8.) Here, while two of Plaintiff's claims were dismissed, Plaintiff ultimately succeeded on TTI's motion to dismiss as to the asserted FDCPA claim under § 1692e(8). (Doc. No. 19.) This outcome resulted in an offer of judgment and entry of judgment for more than the statutory amount. (Doc. Nos. 29, 30); 15 U.S.C. § 1692k(a). Given this outcome, the court does not find a reduction of the lodestar figure to be further warranted on this basis. Moreover, the issue of proportionality is unnecessary for the court to evaluate given the already significant reduction in its lodestar amount.

Lastly, TTI argues that Plaintiff has requested an hourly rate that far exceeds awards in similar cases, citing to cases where $200 hourly rates were employed. (Doc. No. 32, at 13.) However, as set forth in the court's lodestar analysis, the hourly rates in this case were already reduced to $286.59 for Plaintiff's counsel's partners and $257.93 for Plaintiff's counsel's associate. Thus, TTI's argument that the hourly rate far exceeds similar cases is not applicable given the court's lodestar determination.

The court finds the remaining factors are not relevant to the instant case or were already considered in its lodestar analysis. Given the incorporation of several *Johnson* factors into the court's lodestar award, and the court's finding that other factors do not warrant a further reduction, the court declines to further adjust the fee award.

B. Costs

Plaintiff seeks reimbursement for costs in the amount of $475.00, including $400.00 for the filing fee in this matter and $75.00 to serve TTI. (Doc. No. 31-1; Doc. No. 31-3.) TTI does not oppose these costs. (Doc. No. 32, at 15.)

A court may award costs to prevailing parties under Federal Rule of Civil Procedure 54(d). Fed.R.Civ.P. 54(d). Pursuant to 28 U.S.C. § 1920, a court may tax the following costs:

1) Fees of the clerk and marshal;

2) Fees for printed or electronically recorded transcripts necessarily obtained for use in this case;

3) Fees and disbursements for printing and witnesses;

4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in this case;

5) Docket fees under section 1923 of this title;

6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation in services under section 1828 of this title.

28 U.S.C. § 1920.

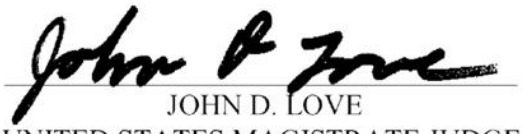
A district court may decline to award costs set forth in § 1920, but may not award costs omitted from the statute. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441–42 (1987). Plaintiff requests $400 for the costs of filing the complaint. (Doc. No. 31-3.) This filing fee of the Clerk is allowed under § 1920, and is therefore recoverable. Plaintiff next requests $75.00 for process server fees related to service. *Id.* Costs for private process server fees are not set forth under § 1920 and Plaintiff cites no authority to recover them under 15 U.S.C. § 1692k(a)(3). Moreover, the Fifth Circuit has held that "costs for private process servers are not recoverable, absent exceptional circumstances." *Zastrow v. Houston Auto M. Imports Greenway*, Ltd., 695 F. App'x 774, 780 (5th Cir. 2017). Plaintiff has not shown any exceptional circumstances here to warrant the award of the costs for the private process server hired to serve TTI. Accordingly, the court finds the costs associated with the private process server are not recoverable here, and Plaintiff is only entitled to $400 in costs.

CONCLUSION

In sum, the court **RECOMMENDS** that Plaintiff's motion for fees and costs (Doc. No. 31) be **GRANTED-IN-PART** and **DENIED-IN-PART** as set forth herein. Specifically, the court **RECOMMENDS** that TTI pay Plaintiff $5,918.06 in reasonable attorney's fees and $400 in costs.

Within fourteen (14) days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the Report. A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen (14) days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United States Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996).

So ORDERED and SIGNED this 30th day of September, 2021.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE