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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>ANNA GUTIERREZ, an individual,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>HERBERT P. SEARS CO., INC. ; WESTERN DENTAL SERVICES, INC.,</p> <p style="text-align: right;">Defendants.</p>	<p>CASE NO. 15cv0332 DMS (DHB)</p> <p>ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR FEES AND COSTS</p>
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This case comes before the Court on Plaintiff Anna Gutierrez’s motion for fees and costs. Defendants Herbert P. Sears Co., Inc. and Western Dental Services filed a joint opposition to the motion, and Plaintiff filed a reply.¹

Plaintiff moves for attorneys fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k(a)(3), the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788.30(c) and the Consumer Credit Reporting Agencies Act, Cal. Civ. Code § 1785.31(a)(1). Each of those statutes provides for costs and reasonable attorneys fees to the prevailing party in cases such as this. The parties do not dispute

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¹ Along with the reply brief, Plaintiff filed an objection and motion to strike an exhibit filed in support of Defendants’ opposition to the motion for fees and costs. Counsel for Defendant Herbert P. Sears Co., Inc. admits that exhibit and one other were filed in error, and asks that they be replaced with proper exhibits. The Court grants that request, and thus denies as moot Plaintiff’s motion to strike. The Court also denies Plaintiff’s request for sanctions as a result of the erroneous filing.

1 Plaintiff's entitlement to attorneys fees under these statutes. Defendants do dispute,
2 however, whether the requested fees and costs are reasonable.

3 Plaintiff requests \$87,713.07 in fees and costs using the lodestar approach.
4 Defendants assert Plaintiff's counsel's hourly rates are unreasonable as are the number
5 of hours spent on the litigation. Defendants also contest the amount of costs.

6 Turning first to the attorneys fees, Plaintiff asserts her counsel should be awarded
7 fees at the hourly rate of \$349 for Mr. Hartman and \$425 for Mr. Semnar. In support
8 of these hourly rates, Plaintiff submitted a Fee Survey Report that lists hourly rates for
9 consumer law attorneys in California, (*see* Decl. of Jared M. Hartman in Supp. of Mot.
10 ("Hartman Decl."), Ex. A), and a declaration from Michael Marrinan, a local,
11 experienced attorney who specializes in representing plaintiffs in civil rights cases.
12 (*See* Decl. of Michael Marrinan in Supp. of Mot.) Both of those sources support the
13 hourly rates requested. This Court's past orders also support a finding that the hourly
14 rates requested are reasonable. *See Steele v. City of San Diego*, Case Number 12cv1012
15 DMS (WMC), Docket No. 26; *Wilde v. City of San Diego*, Case Number 12cv1262
16 DMS (BGS), Docket No. 19 (finding \$425 was reasonable hourly rate for attorneys
17 with 14 years experience). Defendants assert the Court should reduce the hourly rate
18 for both Plaintiff's counsel to \$250, but they fail to provide any evidence to support that
19 assertion. Accordingly, the Court finds the requested hourly rates of \$349 for Mr.
20 Hartman and \$425 for Semnar are reasonable.

21 The number of hours spent on the litigation is hotly contested, with both sides
22 accusing the other of mismanaging the litigation and forcing the other to expend
23 unnecessary time and money in their respective prosecution and defense of the case.
24 Defendants assert Plaintiff's mismanagement of the case warrants an across-the-board
25 reduction of the requested fees, but the Court disagrees. Although Plaintiff could have
26 been more thorough in her initial investigation into the facts of this case, specifically,
27 her credit reports, Defendants also could have conducted a more thorough investigation
28 of their own records to discover what they actually reported to the credit reporting

1 agencies. Both sides bear responsibility for the delayed discovery of the relevant facts,
2 not just Plaintiff. Thus, the Court denies Defendants' request to impose an across-the-
3 board reduction on Plaintiff's requested fees.

4 Defendants also object to specific entries in counsel's billing records, such as
5 their initial consultation with Plaintiff, (Opp'n to Mot. at 18), and other legal tasks. (*Id.*
6 at 20-23.) The Court overrules those objections, with two exceptions.

7 First, the Court agrees with Defendants that the hours spent on the motion for
8 contempt against Experian were unreasonable. According to the billing records, it
9 appears Plaintiff's counsel was working with counsel for Experian to get information
10 responsive to the subpoena. It appears the motion for contempt was premature, as
11 evidenced by Plaintiff's eventual decision to take that motion off calendar.
12 Accordingly, those hours will not be included in the fees requested.

13 Second, the Court agrees with Defendants that the hours spent on the motion for
14 spoliation of evidence were unreasonable. According to defense counsel, the removal
15 of that evidence from Defendant's database occurred prior to the filing of the Complaint
16 in this case and according to Defendant's standard operating procedures. There is no
17 evidence in the present motion that Defendant destroyed that evidence in response to
18 the Complaint or as a means to avoid liability in this case. Thus, those hours will not
19 be included in the fees requested.

20 The Court also finds that other hours spent on this case were unreasonable, and
21 should not be included in the fees requested. Specifically, there are numerous entries
22 describing or including clerical tasks, such as preparing and uploading documents,
23 setting up conference calls, *etc.* (*See, e.g.*, Hartman Decl., Ex. B 3/26/15 entry, 5/5/15
24 entry 6/19/15 entry.) Although those tasks were necessary to the case, the Court finds
25 they could and should have been performed by clerical staff, not counsel, and are
26 therefore unreasonable. The Court also finds the time spent on the motion for
27 subpoenas was unreasonable because such a motion was unnecessary. *See Fed. R. Civ.*
28 *P. 45(a)(3).*

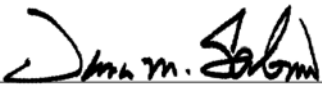
1 With these adjustments, the Court finds Plaintiff is entitled to recover reasonable
2 attorneys fees for Mr. Semnar in the amount of \$36,273.05, which equals approximately
3 85 hours of work, and fees for Mr. Hartman in the amount of \$28,207.93, which is
4 approximately 81 hours of work, for a total of \$64,480.98 in fees.

5 Turning to the issue of costs, Plaintiff requests costs in the amount of \$7,366.42.
6 Although Plaintiff is clearly entitled to recover her costs, the costs requested go beyond
7 those recoverable by 28 U.S.C. § 1920. Under that statute, the Court finds Plaintiff is
8 entitled to recover costs in the amount of \$796.30, which includes the filing fee, service
9 of process fee and fees for certain copies.² Plaintiff has not shown she is entitled to
10 recover the other requested costs.

11 In light of the above, the Court grants in part and denies in part Plaintiff's motion
12 for fees and costs. Specifically, the Court grants Plaintiff's requests for fees and costs,
13 but awards fees in the amount of \$64,480.98 and costs in the amount of \$796.30 for a
14 total of \$65,277.28.

15 **IT IS SO ORDERED.**

16 DATED: January 12, 2016

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19 HON. DANA M. SABRAW
20 United States District Judge
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27 ² Plaintiff made several copies of documents for delivery to chambers. However,
28 the Court does not require courtesy copies of documents unless they are more than
twenty-five pages in length. All of the courtesy copies provided were under that page
limit and thus unnecessary. Accordingly, the Court declines to award costs for those
copies.