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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLORA MARIE GIOVANNONI,

Plaintiff - Appellant,

v.

BIDNA & KEYS, A PROFESSIONAL
LAW CORPORATION, et al.,

Defendants - Appellees.

No. 06-15640

D.C. No. C 05-01654-JF-HRL

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeremy Fogel District Judge, Presiding

Submitted October 17, 2007**
San Francisco, California

Before: ROTH***, THOMAS, and CALLAHAN, Circuit Judges

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. 34(a)(2).

*** The Honorable Jane R. Roth, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

This is an appeal from an attorney's fee award entered in an action pursuant to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.* For the reasons stated below, we affirm in part and remand in part the order of the district court.

Flora Marie Giovannoni brought an action in district court against a debt collection law firm and the collection attorneys that it employed (collectively referred to as defendants), claiming various violations of the FDCPA. On October 21, 2005, after accepting defendants' Federal Rules of Civil Procedure Rule 68 offer of judgment, Giovannoni filed her motion for attorney's fees and costs, seeking compensation in the amount of \$8,677.50 for 33.3 hours spent by her counsel (hereinafter Schwinn), \$423.00 in taxable costs, and \$88.10 in non-taxable costs. On November 17, 2005, the clerk of the court taxed costs in the amount of \$250.00. Thereafter, on February 6, 2006, the district court awarded Giovannoni her attorney's fees in the amount of \$4,338.75, half of the amount requested. In making such award, the district court concluded that the requested fees were excessive, Giovannoni's claims were not novel or difficult to resolve, and Schwinn's hours were increased by his admittedly unyielding approach. After Giovannoni filed a motion to alter or amend the judgment, the district court, on March 20, 2006, affirmed its prior order and gave a more detailed explanation of

the factors which led it to reduce the fee requested: Schwinn had unreasonably prolonged settlement negotiations, he did not represent Giovannoni as efficiently and effectively as would be expected of an attorney who billed \$300 per hour, and, considering all factors generally, a reduction of the attorney's fees by half was appropriate. This timely appeal followed.

The district court had jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291.

So long as the district court applied proper legal standards and did not clearly err in any factual determination, its award of attorney's fees is reviewed for abuse of discretion. Ferland v. Conrad Credit Corp., 244 F.3d 1145, 1147-48 (9th Cir. 2001). Pertinent to our review is whether the district court satisfied its obligation "to articulate . . . the reasons for its findings regarding the propriety of the hours claimed or for any adjustments it makes either to the prevailing party's claimed hours or to the lodestar." Id. (quoting Gates v. Deukmejian, 987 F.2d 1392, 1398 (9th Cir. 1992)).

Giovannoni first claims that the district court erred in its determination of her attorney's fee award by performing an across-the-board, fifty percent reduction in the fee amount requested. We do not agree. First, we conclude that the district court's factual findings, although sparse, were not clearly erroneous. Second, we

conclude that the district court used the proper legal standard in calculating the fee award by implicitly using the “lodestar” method. See id. at 1149 n.4; see also Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996). The record demonstrates that the district court adopted Schwinn’s \$300 hourly fee as a reasonable hourly rate. See id. Further, the district court’s orders awarding attorney’s fees and denying the motion to alter or amend judgment, read together, provide a sufficiently detailed basis for determining that half, or fifty percent, of Schwinn’s time prosecuting the matter was unreasonably spent. See id.; see also Gates, 987 F.2d at 1398. Accordingly, the award reflecting a fifty percent reduction in Giovannoni’s requested attorney’s fees does not amount to an abuse of discretion.

Giovannoni next claims that the district court erred by failing to award her non-taxable costs of \$88.10. We agree. In addition to a “reasonable attorney’s fee”, a judgment in Giovannoni’s favor under the FDCPA entitles her to “the costs of the action.” 15 U.S.C. § 1692k(a)(3). “Even though not normally taxable as costs, out-of-pocket expenses incurred by an attorney which would normally be charged to a fee paying client are recoverable as attorney’s fees.” Chalmers v. City of Los Angeles, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986). The record indicates that the non-taxable costs sought by Giovannoni fit this description. Accordingly, we

conclude that the district court abused its discretion by failing to award these costs.

For the reasons stated by the district court in its February 6, 2006, and March 20, 2006, orders, we **AFFIRM** in part the order awarding attorney's fees, but **REMAND** on the issue of Giovannoni's non-taxable costs of \$88.10, as those costs should be reimbursed in full. As to defendants' motion under Fed. R. App. P. Rule 38 and request under 28 U.S.C. § 1912 for attorneys' fees and double costs, we **DENY** that relief because we conclude that Giovannoni's appeal is not frivolous. See Sea Harvest Corporation v. Riviera Land Company, 868 F.2d 1077, 1081 (9th Cir. 1989).