

LODGED

36,186

SEP 26 1983

CLERK, U. S. DISTRICT COURT
DISTRICT OF ARIZONA

OCT 11 1983

1 John G. Balentine
Charles R. Pyle
2 SOUTHERN ARIZONA LEGAL AID, INC.
155 E. Alameda
3 Tucson, Arizona 85701
Telephone: 623-9461
4
5
6
7

U.S. DISTRICT COURT
BY: TOTT

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 NATALIE NUNEZ, on)
behalf of herself and)
11 all others similarly)
situated)
12)
Plaintiffs,) NO. CIV 79-117 TUC MAR
13)
vs) JUDGMENT
14)
15 INTERSTATE CORPORATE,)
SYSTEMS, INC.,)
16)
Defendant.)
17)

18 Final judgment, pursuant to defendant's Offer of
19 Judgment dated August 12, 1983, and the plaintiffs' Acceptance
20 thereof dated August 18, 1983, is hereby entered in favor of
21 plaintiffs and against defendant as follows:

- 22 1. In the sum of \$1,000 for the named plaintiff and
23 \$3,500 for the plaintiff class.
24 2. Defendant's validation procedures utilized with
25 plaintiff and the class are in violation of 15 U.S.C. §1692g in
26

*Valentine
Giles
MAR*

1 that plaintiffs were not informed of and afforded the procedures
2 set forth in the Act.

3 3. The defendant has utilized forms and envelopes, all
4 of which exhibit the symbol of a panther like animal on a
5 triangular background, in communicating with the plaintiffs.
6 Utilization of materials with a symbol other than defendant's
7 address on any envelope when communicating by mail with the
8 plaintiffs is in violation of 15 U.S.C. §1692f(8).

9 4. Defendant is permanently enjoined and restrained
10 from engaging in any of the following activities against
11 plaintiff and members of the plaintiff class:

12 a. Claiming or attempting to collect from
13 plaintiff or the plaintiff class any collection costs or expenses
14 unless the same have previously been declared due and owing by a
15 court of competent jurisdiction.

16 b. Utilizing forms and procedures which fail to
17 properly notify plaintiff and the class of their rights and
18 procedures for obtaining validation of the debt pursuant to 15
19 U.S.C. §1692g.

20 c. Using a symbol other than the defendant's
21 address on any envelope or forms when communicating with
22 plaintiff or members of the class by the use of the mail as
23 provided by 15 U.S.C. §1692f(8).

24 d. Sending materials through the mail which makes
25 it apparent that the defendant is attempting to collect a debt
26 from the plaintiff or from a member of the plaintiff class.

1 5. Plaintiffs are awarded their costs herein, and
2 plaintiffs' attorneys are granted leave to file a request for
3 attorney's fees with supporting materials within 30 days from
4 entry of judgment herein.

5 Dated this ¹¹ ~~26~~th day of ~~September~~, 1983. *Od. MAR*

6
7
8 By: *Mary Anne Richey*

Mary Anne Richey
Mary Ann Richey
United States District Court Judge

36,186

FILED

JAN 20 3 45 PM '84

U.S. DISTRICT COURT
BY _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

RECEIVED

JAN 24 1984

S. A. L. A.

NATALIE NUNEZ, on behalf
of herself and all others
similarly situated,

Plaintiffs,

vs.

INTERSTATE CORPORATE,
SYSTEMS, INC.,

Defendant.

No. CIV 79-117-TUC-MAR

ORDER

Plaintiffs have petitioned for attorneys' fees under the Fair Debt Collection Practices Act, 16 U.S.C. §§ 1692-1692o (1982)(Supp. 1983). 15 U.S.C. § 1692k(a)(3) provides for "a reasonable attorney's fee, as determined by the court" in the case of any successful action to enforce liability under the Act. Plaintiffs have requested a sum of \$8,452.00.

There has been no objection by defendant, Interstate Corporate Systems. Local Rule 11(h) provides that failure to file a brief or memorandum of points and authorities in opposition to a motion shall constitute consent to the granting of the motion. Rules of Practice, United States District Court, District of Arizona. Therefore the defendant has consented to the granting of the sum requested.

The Supreme Court recently stated that a court must "provide a concise but clear explanation of its reasons for the fee award." Hensley v. Eckerhart, 461 U.S. _____, _____ (1983);

2/6
Jelis
MAR
AUP

1 103 S.Ct. 1933, 1942 (1983).

2 Defendant Interstate Corporate Systems filed an offer
3 of judgment accepted by plaintiffs. The court then entered
4 final judgment; it awarded damages of \$1,000 to the named
5 plaintiff and \$3,500 to the class, declared that certain practices
6 of defendant violated the Act, and permanently enjoined various
7 debt collection practices of Interstate Corporate Systems, such
8 as the use of improper validation procedures for a debt, use
9 of forms that do not notify the debtors of their rights, and
10 attempts to collect for expenses or collection costs that have
11 not been declared due and owing by a court.

12 In awarding attorneys' fees, ninth circuit cases have
13 recently been "blending" the features of two approaches, the
14 "Lodestar" approach and the "Kerr guidelines." Moore v. Jas. H.
15 Matthews & Co., 682 F.2d 830, 840 (1982), Kieth v. Volpe, 86
16 F.R.D. 565, 573-77 (C.D. Cal. 1980); Stanford Daily, Inc. v.
17 Zurcher, 64 F.D.R. 680, 682, aff'd 550 F.2d 464 (9th Cir. 1977),
18 rev'd on other grounds, 436 U.S. 547 (1978). With the "Lodestar"
19 approach, as set forth in Lindy Brothers' Builders, Inc. v.
20 American Radiator & Standard Sanitary Corp., 487 F.2d 161 (3rd
21 Cir. 1973), a court first determines fees in terms of actual
22 hours worked and normal billing rates, geared to the rate in the
23 community and the knowledge and experience of the attorneys.
24 The sum is then increased or diminished in light of other factors,
25 such as the contingent nature of the fee and the quality of the
26 attorneys' work. To blend the "Lodestar" approach with the

1 "Kerr guidelines," a court modifies the Lodestar sum according
2 to the factors suggested by Johnson v. Georgia Highway Express,
3 Inc., 488 F.2d 714 (5th Cir. 1974) and adopted in the ninth
4 circuit by Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69
5 (9th Cir. 1975), cert. denied, 425 U.S. 951 (1976). The factors
6 include the novelty and difficulty of the questions, the pre-
7 clusion of other employment, time limitations, undesirability of
8 the case, the results obtained, and awards in similar cases.

9 The Supreme Court has recently approved this "blended"
10 approach in Hensley v. Eckerhart, but has admonished that a
11 court must consider explicitly the relationship between the
12 extent of success and the amount of the fee award, and so must
13 subtract hours spent on unrelated losing claims, 461 U.S. at
14 _____, 103 S.Ct. at 1040-41.

15 In this case, the plaintiffs have achieved success across
16 the scope of the lawsuit. Thus all of the hours the attorneys
17 spent can be counted toward the award of fees.

18 Plaintiffs offer a detailed accounting of the hours
19 spent. Plaintiffs' attorneys do not have a "billing rate," as
20 they are employed by Legal Aid. They suggest reasonable hourly
21 rates, comparable to rates in the locality for the attorneys'
22 level of knowledge and experience. One attorney worked 46.6
23 hours at \$80 an hour, and a second, 44.2 hours at \$75 an hour,
24 which comes to \$7,043.

25 Plaintiffs request a multiplier of .2 on the grounds that
26 the case was somewhat innovative; it involved class-wide relief,

1 for a class of about 300 persons; the case was "undesirable" in
2 that it would not be sufficiently remunerative to attract private
3 attorneys; it precluded other legal aid work for the poor, at
4 a time when legal aid funds, and thereafter services, were being
5 cut; and the degree of success was great. Although the amount
6 in damages was not great, the lawsuit performed a public service
7 in halting some prevalent illegal debt collection practices
8 and laying the groundwork for similar challenges elsewhere.
9 Although plaintiffs did not have to see the case through complex
10 litigation, their careful, preparatory work led to a consent
11 judgment, and a savings of legal expenses. Plaintiffs' request
12 is reasonable. Defendant has not objected.

13 IT IS THEREFORE ORDERED that attorneys' fees be awarded
14 to plaintiffs in the amount of \$8,452.00.

15
16 Dated: January 20, 1984

17
18 
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26