UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Berry v. Kolkman; and Constable Kolkman LLC

Berry v. Kolkman, No. 2:24-cv-00705 (D. Utah May 27, 2026) · No. 2:24-cv-00705 · Decided May 27, 2026

SUMMARY

The United States District Court for the District of Utah grants Julie Berry's motion for attorney's fees arising from a prior discovery order under Federal Rule of Civil Procedure 37. The court finds that 3.8 hours of work and attorney Eric Stephenson's hourly rate of $450 are reasonable, and orders Constable Kolkman LLC to pay $1,710.00. The underlying action concerns alleged violations of the Fair Debt Collection Practices Act.

CASE DETAILS

COURT	United States District Court for the District of Utah, Central Division
WRITING FOR THE COURT	Daphne A. Oberg
JURISDICTION	United States District Court for the District of Utah, Central Division
DECIDED	May 27, 2026
DOCKET	2:24-cv-00705
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for attorney's fees and expenses under Federal Rule of Civil Procedure 37(a)(5)(A) after obtaining an order granting her discovery motion against Constable Kolkman LLC. The LLC opposed the motion only as to the reasonableness of counsel's hourly rate.
STANDARD OF REVIEW	The court evaluated whether the requested hours and hourly rate were reasonable under the lodestar method and Rule 37(a)(5)(A).
PRECEDENTIAL VALUE	unpublished

TOPICS

attorney fees · discovery dispute · civil procedure · fair debt collection

PRACTICE AREAS

civil procedure · fair debt collection · attorney fees

QUESTIONS PRESENTED

1. Whether Berry was entitled to recover the reasonable expenses, including attorney's fees, incurred in bringing the successful discovery motion.
2. Whether 3.8 hours of work and an hourly rate of $450 were reasonable under the lodestar method.

HOLDINGS

1. Attorney's fees awarded under Rule 37 are calculated using the lodestar method: reasonable hours multiplied by a reasonable hourly rate.
2. Berry established that 3.8 hours of work at an hourly rate of $450 were reasonable, resulting in an award of $1,710.00.

KEY QUOTATIONS

> *"The "lodestar" method is used to calculate an award of attorney's fees under Rule 37."* (Analysis)

> *"The court determines the lodestar amount by multiplying the hours counsel "reasonably spent on the litigation by a reasonable hourly rate.""* (Analysis)

> *"Constable Kolkman LLC must pay Ms. Berry's reasonable expenses of $1,710.00 incurred in bringing the underlying discovery motion."* (Conclusion)

FACTUAL BACKGROUND

Berry's counsel spent 3.8 hours reviewing the LLC's discovery responses, preparing for and conducting a meet-and-confer, and drafting and filing the discovery motion. Counsel requested compensation at an hourly rate of $450, supported by a timesheet, declaration, counsel's experience, and prior fee awards. The LLC challenged the rate based primarily on a Clio report listing lower statewide and nationwide average rates, but did not challenge the hours claimed.

PROCEDURAL HISTORY

Berry brought an action alleging violations of the Fair Debt Collection Practices Act. On November 5, 2025, the court granted her discovery motion concerning Constable Kolkman LLC's discovery responses after the LLC failed to respond, ordered the LLC to pay reasonable expenses including attorney's fees, and directed the parties to confer regarding the amount. Berry timely moved for $1,710.00 in fees, and the court granted the motion.

DISPOSITION

other

CASES CITED

- Nursa, Inc. v. Optima Care Jersey City LLC, No. 2:24-cv-00843, 2026 U.S. Dist. LEXIS 73710, at *26 (D. Utah Apr. 1, 2026)

- Webb v. County of Stanislaus, No. 2:21-mc-00696, 2022 U.S. Dist. LEXIS 78387, at *7 (D. Utah Apr. 29, 2022)
- Case v. Unified Sch. Dist. No. 233, 157 F.3d 1243, 1249 (10th Cir. 1998)
- United Phosphorus, Ltd. v. Midland Fumigant, Inc., 205 F.3d 1219, 1234 (10th Cir. 2000)
- Vitelli v. Medicredit, Inc., No. 1:22-cv-00066, 2022 U.S. Dist. LEXIS 205613, at *9–12 (D. Utah Nov. 10, 2022)
- Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984)
- Christensen v. Johnson Smith & Assocs., No. 2:19-cv-00676, 2021 U.S. Dist. LEXIS 3694, at *19 (D. Utah Jan. 7, 2021)

OPINION

Berry

PER CURIAM.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

JULIE BERRY, MEMORANDUM DECISION AND

ORDER GRANTING MOTION FOR

Plaintiff, ATTORNEY’S FEES

(DOC. NO. 76)

v. Case No. 2:24-cv-00705

ROB KOLKMAN; and CONSTABLE

KOLKMAN LLC, District Judge Howard C. Nielson, Jr. Defendants. Magistrate Judge Daphne A. Oberg Julie Berry brought this action against Rob Kolkman, Constable Kolkman LLC, and others, claiming violations of the Fair Debt Collection Practices Act (FDCPA).1 On November 5, 2025, the court granted Ms. Berry’s discovery motion regarding Constable Kolkman LLC’s discovery responses, after the LLC failed to respond to the motion.2 The court ordered Constable Kolkman LLC to pay Ms. Berry’s reasonable expenses, including attorney’s fees, incurred in bringing the motion.3 The court also ordered the 1 (See Compl., Doc. No. 2); 15 U.S.C. § 1692 et seq. The other defendants, Olson Associates P.C. and NAR Inc., have been dismissed. (See Doc. No. 80.) 2 (Order Granting Pl.’s Disc. Mot. Re: Constable Kolkman LLC’s Disc. Resps., Doc. No. 64.) 3 (Id. at 6–8 (awarding expenses pursuant to Rule 37(a)(5)(A) of the Federal Rules of Civil Procedure).) parties to confer regarding the amount—and set a deadline for Ms. Berry to file a motion if they were unable to agree.4 Ms. Berry timely filed this motion for attorney’s fees, seeking $1,710.00.5 Constable Kolkman LLC opposed, arguing Ms. Berry’s attorney’s $450 hourly rate is unreasonable.6 Because the hourly rate and overall fee request are reasonable, Ms. Berry’s motion for attorney’s fees is granted.7

ANALYSIS

The “lodestar” method is used to calculate an award of attorney’s fees under Rule 37.8 The court determines the lodestar amount by multiplying the hours counsel "reasonably spent on the litigation by a reasonable hourly rate."9 "The party requesting the fees bears the burden of showing that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable 4 (Id. at 8.) 5 (Mot. for Att'y's Fees (Mot.), Doc. No. 76.) 6 (Defs. Rob Kolkman & Constable Kolkman, LLC's Opp'n to Pl.'s Mot. for Attorney's Fees (Opp'n), Doc. No. 85.) 7 Both parties contend the other failed to adequately confer on the amount, as ordered. The court declines to address this, and instead rules on the merits of the motion. However, the parties are reminded that conferrals should include an in-person meeting or phone call, not merely an exchange of emails. 8 See, e.g., Nursa, Inc. v. Optima Care Jersey City LLC, No. 2:24-cv-00843, 2026 U.S. Dist. LEXIS 73710, at *26 (D. Utah Apr. 1, 2026) (unpublished); Webb v. Cnty. of Stanislaus, No. 2:21-mc-00696, 2022 U.S. Dist. LEXIS 78387, at *7 (D. Utah Apr. 29, 2022) (unpublished). 9 Case v. Unified Sch. Dist. No. 233, 157 F.3d 1243, 1249 (10th Cir. 1998) (citation omitted). skill, experience, and reputation."10 "The focus must be on the prevailing market rate in the relevant community."11 "The court may not use its own knowledge to establish the appropriate rate unless the evidence of prevailing market rates before the court is inadequate."12 Ms. Berry requests fees for the 3.8 hours her attorney, Eric Stephenson, spent reviewing Constable Kolkman LLC's discovery responses, preparing to meet and confer, meeting and conferring, and drafting and filing the discovery motion—multiplied by Mr. Stephenson's standard hourly rate of $450.13 Mr. Stephenson provided a timesheet and declaration supporting the motion.14 According to Mr. Stephenson, his actual hourly rate during this case was $450 to $550, which he contends is consistent with "market rates in Utah for litigation attorneys of similar skill level and experience."15 He contends consumer litigation is a specialized and complex practice of law, and he notes he has more than twenty years of experience.16 Ms. Berry also provided copies 10 United Phosphorus, Ltd. v. Midland Fumigant, Inc., 205 F.3d 1219, 1234 (10th Cir. 2000) (internal quotation marks omitted). 11 Id. (internal quotation marks omitted). 12 Id. 13 (Mot. 2, Doc. No. 76.) 14 (Decl. of Counsel (Stephenson Decl.), Doc. No. 76-1.) 15 (Id. ¶ 13.) 16 (Id. ¶¶ 5, 12.) of two state court orders approving fee awards with the same or higher hourly rates for Mr. Stephenson.17 Constable Kolkman LLC does not challenge the reasonableness of the time spent, but it argues Mr. Stephenson's hourly rate of $450 is unreasonable and does not reflect the prevailing market rate.18 In support, Constable Kolkman LLC provides an undated excerpt from a "legal trends report" from Clio (a legal tech company), containing a chart of hourly rates by state and nationwide hourly rates by practice area.19 The chart lists an hourly rate of $291 for Utah lawyers, and nationwide hourly rates of $320 for "collections law" and $327 for "civil litigation"—the two areas Constable Kolkman LLC identifies as relevant.20 Relying solely on this source, Constable Kolkman LLC asserts "attorneys' fees are significantly lower than the claimed $450 per hour."21 Ms. Berry's requested fees reflect a reasonable number of hours and a reasonable hourly rate, even though both parties' submissions regarding the prevailing 17 (Ex. P-2 to Mot., Jackson v. Merrick Bank Corp., No. 180906822,

Order of Final Approval of Class Action Settlement (Utah Third Dist. Ct. July 27, 2022), Doc. No. 76-2; Ex. P-3 to Mot., Frontgate v. Thompson, No. 219912409, Findings of Fact & Conclusions of Law (Utah Third Dist. Ct. July 27, 2022), Doc. No. 76-3.) 18 (Opp'n, Doc. No. 85.) 19 (See Ex. B to Opp'n, Doc. No. 85-2.) The document refers to some data collected in 2024, although it is unclear whether this data was used as a source for the hourly rates charts. 20 (See id.; Opp'n 3, Doc. No. 85.) 21 (Opp'n 3, Doc. No. 85.) market rate are lacking.22 First, with regard to the number of hours, Constable Kolkman LLC does not challenge the reasonableness of the time spent. Based on Ms. Berry's submissions, the court finds Mr. Stephenson reasonably spent 3.8 hours on work relating to the discovery motion. Next, neither party provides sufficient information regarding the prevailing market rate. While evidence regarding Mr. Stephenson's own hourly rate and his assessment of the legal market is relevant to determining the prevailing market rate, it does not establish this rate conclusively.23 And the state court orders Ms. Berry submitted are unhelpful, where neither indicates whether the award was based on the prevailing market rate (and one contains no reference to an hourly rate). Constable Kolkman LLC's submission is also unhelpful. The undated Clio report shows only a single, statewide hourly rate for Utah, which is not broken down by practice area, geographical area within the state, or attorney experience. There is no indication this rate reflects the current, prevailing market rate for FDCPA litigation in this community by attorneys of comparable skill, experience, and reputation to Mr. Stephenson. Likewise, nationwide hourly rates for "collections law" and "civil litigation" do not establish the prevailing market rate in this community for FDCPA litigation by comparable attorneys. 22 The parties' limited submissions are understandable given the modest amount at stake. 23 See Vitelli v. Medicredit, Inc., No. 1:22-cv-00066, 2022 U.S. Dist. LEXIS 205613, at
*11 (D. Utah Nov. 10, 2022) (unpublished) (citing Blum v. Stenson, 465 U.S. 886, 895
n.11 (1984)). Where the parties' submissions are inadequate to establish the prevailing market rate, the court relies on prior fee awards in similar cases and on its own knowledge of the prevailing market rate. Notably, in two prior FDCPA cases litigated by Mr. Stephenson in this district, courts found an hourly rate of $400 reasonable under the lodestar method, in 2021 and 2022.24 In the 2022 decision, the court reduced Mr. Stephenson's requested rate from $450 to $400.25 But here, three years later, the higher rate is reasonable, based on the court's familiarity with prevailing market rate in the community and Mr. Stephenson's experience. Accordingly, Mr. Stephenson's hourly rate of $450 is reasonable. Because Ms. Berry's requested fees reflect reasonable time spent multiplied by a reasonable hourly rate, and the overall amount is reasonable, her motion is granted. 24 See Id. at *12; Christensen v. Johnson Smith & Assocs., No. 2:19-cv-00676, 2021 U.S. Dist. LEXIS 3694, at *19 (D. Utah Jan. 7, 2021) (unpublished). 25 See Vitelli, 2022 U.S. Dist. LEXIS 205613, at *9–12.

CONCLUSION

Ms. Berry's motion for attorney's fees" is granted. Constable Kolkman LLC must pay Ms. Berry's reasonable expenses of $1,710.00 incurred in bringing the underlying discovery motion. DATED this 27th day of May, 2026. BY THE COURT: Sctihe A. Oberg 4 United States Magistrate Judge 26 (Doc. No. 76.)