UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

LOU ELLEN CHAPMAN, individually and on behalf of others similarly situated, Plaintiff, v. BOWMAN, HEINTZ, BOSCIA & VICIAN, P.C. Defendant.	Civil Action No.: 2:15-cv-120-JD-JEM

PLAINTIFF'S MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES

Introduction

As a result of the settlement now before this Court, each class member will receive approximately $17.21 from a common fund that exceeds the statutory damages available under the Fair Debt Collection Practices Act ("FDCPA"). At the same time, Bowman, Heintz, Boscia & Vician, P.C. ("Defendant") will ensure that its initial debt collection letter—the subject of this class action—contains proper disclosures as mandated by the FDCPA. This change will inure to the benefit not just of class members, but of all consumers who encounter Defendant's debt collection efforts in the future. Underscoring the favorable nature of the settlement is that not a single class member excluded himself or herself or lodged an objection, nor did any objections result from notice issued pursuant to the Class Action Fairness Act ("CAFA").

Because this settlement is an excellent result for Indiana consumers, Class Representative Lou Ellen Chapman respectfully submits that it should be approved. Likewise, this Court should

approve the unopposed request for an award of attorneys' fees and reimbursement of expenses to Ms. Chapman's counsel in the amount of $26,500—an amount independently negotiated by the parties and not agreed to until April 16, 2016.

Summary of the Settlement

This case centers on Defendant's alleged failure to comply with section 1692g(a)(4) of the FDCPA with respect to an initial debt collection letter it sent to Indiana consumers. Specifically, Ms. Chapman alleges that Defendant failed to provide proper disclosures mandated by the FDCPA regarding how consumers can obtain verification of the legitimacy of the debts Defendant sought to collect. Defendant denies any liability or that its practices violate the FDCPA.

As a result of this settlement, Defendant will create a common fund from which each class member[1] will receive approximately $17.21.[2] Notably, the settlement fund of $3,030 significantly exceeds one percent of Defendant's book value net worth as defined by *Sanders v. Jackson*, 209 F.3d 998, 1004 (7th Cir. 2000) ("net worth" within meaning of § 1692k means "balance sheet or book value net worth" of assets minus liabilities); 15 U.S.C. § 1682k(A)(2)(B) ("in the case of a

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[1] The settlement agreement defines a settlement class under Rule 23(b)(3) comprised of:

> (a) All persons with an Indiana address, (b) to whom Bowman, Heintz, Boscia & Vician, P.C. mailed an initial debt collection communication that stated: "If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you," (c) between March 30, 2014 and March 30, 2015, (d) in connection with the collection of a consumer debt.

ECF No. 19 at 2.

[2] The parties originally believed there to be 202 class members. However, upon further review and after removing duplicate entries, the class contains 176 members. Thus, the common fund will be divided equally by 176 persons instead of 202, which accounts for the increase in the per-person recovery from $15 to approximately $17.21.

class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector"). Thus, class members will receive more money in statutory damages as part of this settlement than if Ms. Chapman prevailed at trial and on appeal.

To the extent any settlement checks go uncashed after the claims administrator takes all reasonable steps to forward checks to any forwarding addresses, the remaining funds will be paid to a non-profit agreed upon by the parties as a *cy pres* recipient—Indiana Legal Services. None of the funds will revert back to Defendant.

Defendant also will pay—separate and apart from the monies paid to class members—full statutory damages of $1,000 to Ms. Chapman. To that end, section 1692k(a) of the FDCPA provides:

> (a) Amount of damages
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> Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—
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> * * *
>
> (2)
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> (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or
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> (B) in the case of a class action, **(i) such amount for each named plaintiff as could be recovered under subparagraph (A), and** (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(emphasis added). Thus, by its express terms, the FDCPA provides that Ms. Chapman can recover up to $1,000.00 in addition to such amount as each member of the class could recover.

In addition, Defendant will pay attorneys' fees and expenses in the amount of $26,500, and the costs of administering the settlement and providing direct mail notice to each class member.

Finally, Defendant has agreed to ensure, going forward, that its initial debt collection letters contain proper disclosures mandated by the FDCPA.

Argument

A. The Court should finally certify the settlement class.

In its preliminary approval order, this Court conducted a rigorous analysis under Rule 23 and preliminarily certified the class here for settlement purposes. ECF No. 19 at 2-13. Ms. Chapman agrees with that reasoning and does not believe that it should be revisited in granting final approval. Accordingly, for the same reasons stated in this Court's preliminary approval order, *see id.*, Ms. Chapman respectfully submits that this Court should finally certify the class for settlement purposes.

B. The Court should approve the settlement as fair, reasonable, and adequate under Rule 23(e).

"Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *see also Armstrong v. Bd. of Sch. Dirs. of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) ("Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.").

The Seventh Circuit has identified a number of factors used to assess whether a settlement proposal is fundamentally fair, adequate, and reasonable: (1) the strength of plaintiffs' case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among affected parties; (4) the

opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (quoting *Isby*, 75 F.3d at 1199). Each relevant factor supports the conclusion that the settlement is fundamentally fair, adequate, and reasonable, and that it should be approved.

a. The strengths of Ms. Chapman's case and the risks inherent in continued litigation and securing class certification—when compared to the settlement's benefits—favor approval of the settlement.

In evaluating the fairness of the consideration offered in settlement, it is not the role of the Court to second-guess the negotiated resolution of the parties. "[T]he court's intrusion upon what is otherwise a private, consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 626 (9th Cir. 1982)). The issue is not whether the settlement could have been better in some fashion, but whether it is fair: "Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, 150 F.3d at 1027.

Notably, the parties disagreed about the merits of this case and whether Ms. Chapman would secure certification of the class she sought to represent. Indeed, while the majority of decisions regarding the legal issue underlying this matter support Ms. Chapman's position, at the time of the settlement, at least one district court had rejected her position, and that very issue was before the Eleventh Circuit Court of Appeals during the parties' negotiations. While the Eleventh Circuit ultimately ruled in the plaintiff's favor after the settlement was reached, *Bishop v. Ross*

Earle & Bonan, P.A., --- F.3d ----, 2016 WL 1169064 (11th Cir. Mar. 25, 2016), the uncertainty surrounding that decision further underscored the benefits of immediate relief for Ms. Chapman and the class.

As well, the Supreme Court's decision in *Spokeo, Inc. v. Robins*, Case No. 13-1339 (2014)—a case before the Court this term—could negatively affect Ms. Chapman's claims. In short, the issue there—whether a plaintiff has standing to seek statutory damages absent actual harm—could change the framework within which Ms. Chapman must prove damages here. In contrast to continued litigation, the settlement provides absent class members immediate, guaranteed relief.

Despite these vigorous disagreements and risks, the settlement provides immediate cash relief to class members in excess of the limits imposed by the FDCPA. In particular, the FDCPA limits statutory damages to a maximum of one percent of Defendant's net worth. *See* 15 U.S.C. § 1682k(A)(2)(B). As a result of this settlement, Defendant will pay $3,030 to absent class members—an amount that exceeds one percent of its book value net worth. *See Sanders*, 209 F.3d at 1004.

Moreover, the settlement is reasonable on a per-class-member basis, as each class member will receive approximately $17.21—a number that, in itself, compares favorably to recent FDCPA class action settlements involving form debt collection letters. *See, e.g.*, *Baldwin v. Glasser & Glasser, P.L.C.*, No. 15-490, ECF No. 20 (E.D. Va. Mar. 24, 2016) (final approval for $15.09 per class member and $1,500 to plaintiff); *Schuchardt v. Law Office of Rory W. Clark*, No. 15-01329, 2016 WL 232435 (N.D. Cal. Jan. 20, 2016) (preliminary approval for $10 per class member); *Whitford v. Weber & Olcese, P.L.C.*, No. 15-00400, 2016 WL 122393 (W.D. Mich. Jan. 11, 2016) (final approval of class action settlement under FDCPA where each class member received $10,

and the class representative received $1,000); *Garza v. Mitchell Rubenstein & Assocs., P.C.*, No. 15-1572, 2015 WL 9594286 (D. Md. Dec. 28, 2015) (preliminarily approving $12.50 per class member).

As explained by Judge Simon in approving a class action settlement:

> Although $20 (the expected pro rata award of the net settlement fund for each class member who filed a claim notice) is not significant in a vacuum, "a dollar today is worth a great deal more than a dollar ten years from now," *Reynolds,* 288 F.3d at 284, and a major benefit of the settlement is that class members will obtain these benefits much more quickly than had the parties not settled. The parties have informed the Court that this case, were it to proceed, would face numerous challenges such that, even if the case reached trial, the class members would not receive benefits for many years, if they received any at all. Faced with the prospect of receiving no recovery—both because DirectBuy might have succeeded in any aspect of what would have been a vigorous defense absent settlement and because DirectBuy had no unencumbered assets—Class Counsel is confident that payment of up to $20.00 per household is an excellent result in this litigation. The parties assert that because the only amount the Plaintiffs could hope to recover after an award of damages is zero, a settlement involving any cash should be considered adequate

Swift v. Direct Buy, Inc., Cause Nos. 2:11–CV–401–TLS, 2:11–CV–415–TLS, 2:11–CV–417–TLS, 2:12–CV–45–TLS, 2013 WL 5770633, at *5 (N.D. Ind. Oct. 24, 2013).

In addition, Defendant will pay $1,000 to Ms. Chapman—the maximum statutory damages available under the FDCPA. Because class members will receive statutory damages in excess of what they could receive had Ms. Chapman prevailed at trial and on appeal in a certified class action, and because Ms. Chapman will receive the maximum statutory damages to which she is entitled, the settlement is fair, reasonable, and adequate. As a result, this Court should approve the settlement.

b. Absent a settlement, the parties—and the Court—faced the certainty of expensive and time-consuming litigation.

Every class action—indeed, every case—involves some level of uncertainty on the merits. Settlements resolve that inherent uncertainty, and are therefore strongly favored by the courts,

particularly in class actions. This action is not unique in this regard, and, absent settlement, the parties would be forced to litigate complex issues, including the propriety of class certification and whether Defendant's initial debt collection letter violated the FDCPA. *See Midland Funding, LLC v. Brent*, No. 3:08 CV 1434, 2011 WL 3557020, at *16 (N.D. Ohio Aug. 12. 2011) ("The Fair Debt Collection Practices Act is a set of complex laws with many components. The instant case would be very expensive to fully litigate, and might take years to finally resolve through the course of trial and appeal, creating additional attorney's fees and reducing any potential payout to the class.").

Because class members will receive statutory damages in excess of what they could receive had Ms. Chapman prevailed at trial and on appeal, and because the settlement avoids the risk, time, and expense of continued litigation, the settlement is fair, reasonable, and adequate. As a result, the Court should approve the settlement. *See Shulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 585-86 (N.D. Ill. 2011) ("The Seventh Circuit has held that the likely complexity, length, and expense of continued litigation are relevant factors in determining whether a class-action settlement is fair, reasonable, and adequate. Those factors support approval of the Settlement Agreement in this case.") (internal citation omitted).

c. The widespread support for the settlement supports final approval.

Of the 176 class members to whom First Class, Inc. distributed the court-approved notice, no class members excluded themselves from the settlement, nor did any make any kind of objection to it. *See* Affidavit of Bailey Hughes, attached as Exhibit A, at ¶¶ 9-10. At the same time, no objections resulted from notice of the settlement under CAFA to the Attorney General of the United States or the Attorney General of Indiana. This overwhelmingly favorable reaction to the settlement supports its approval. *See Schulte*, 805 F. Supp. 2d at 586 ("The Seventh Circuit has

instructed district courts to evaluate the amount of opposition to a settlement among affected parties in deciding whether to approve a class-action settlement. A very small percentage of affected parties have opposed the settlement."); *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000) (holding that few objections or exclusions "is strong circumstantial evidence in favor of the settlement"), *aff'd*, 267 F.3d 743 (7th Cir. 2001); *Wineland v. Casey's General Stores, Inc.*, 267 F.R.D. 669, 676 (S.D. Iowa 2009) ("No objections have been lodged against the proposed Settlement Agreement by either the class or opt-in collective members and no class members appeared at the fairness hearing in this matter. Such overwhelming support by class members is strong circumstantial evidence supporting the fairness of the Settlement.") (internal quotations and citations omitted).

Given that no class members—nor any attorneys general—objected to this settlement, it should be approved. *See, e.g.*, *Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *4 (D. Colo. Apr. 22, 2015) ("[N]ot a single person objected to the Settlement, and only one class member excluded himself from it. This is a strong indication that the Settlement is fair, reasonable, and adequate."); *see also Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *6 (E.D. Cal. Oct. 31, 2012) ("The absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.").

d. The views of experienced counsel, and the stage of the proceedings, support approval of the settlement.

During the pendency of this litigation, the parties were able to assess the relative strengths and weaknesses of their respective positions, and to compare the benefits of the proposed settlement to further litigation. Ms. Chapman served formal discovery, and the parties also exchanged informal discovery, including information regarding the net worth of Defendant, class

damages, and the number of potential class members. Counsel, who have substantial experience in litigating class actions, and the Court are therefore adequately informed to evaluate the fairness of the settlement. *See Swift*, 2013 WL 5770633, at *7 ("Third, as the Court has already noted, the 'opinion of competent counsel' supports a determination that the settlement is fair, reasonable, and adequate under Rule 23."); *Schulte*, 805 F. Supp. 2d at 586 ("The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable, and adequate under Rule 23.").

Indeed, Ms. Chapman "has retained counsel experienced and competent in class action litigation. Ms. [Chapman's] attorneys—Greenwald Davidson Radbil PLLC—have been appointed as class counsel in more than a dozen consumer protection class actions in the past two years." *McWilliams v. Advanced Recovery Sys., Inc.*, 310 F.R.D. 337, 340 (S.D. Miss. 2015) (collecting cases appointing Ms. Chapman's counsel as class counsel); *see also* Declaration of Michael L. Greenwald, attached as Exhibit B, at ¶¶ 6-9. As such, this factor favors approval of the settlement.[3]

e. Distribution of notice of the class action settlement satisfied due process and the requirements of Rule 23.

Rule 23 requires that the Court "direct notice in a reasonable manner to all class members who would be bound" by the settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the "best notice that is practicable under the circumstances." *See* Fed. R. Civ. P. 23(c)(2)(B). "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173

[3] *See also* ECF No. 19 at 12-13 ("No doubt Michael L. Greenwald of Greenwald Davidson Radbil PLLC has put extensive work into reviewing and investigating the potential claims in this case, and he and his firm have experience in handling class action litigation. Additionally, Mr. Greenwald has demonstrated his knowledge of the FDCPA and he has so far committed the resources necessary to representing the class and administrating the proposed settlement. The Court believes that Mr. Greenwald will fairly and adequately represent the interests of the class; and therefore, in compliance with Rule 23(g)(1), it is **ORDERED** that Michael Greenwald of Greenwald Davidson Radbil PLLC is appointed Class Counsel.").

(1974). The notice must describe "the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009); *see also Reynolds v. Nat'l Football League*, 584 F.2d 280, 285 (8th Cir. 1978) (class members had been "duly advised of this proceeding and of the proposed settlement, and were afforded a full opportunity to present their objections. Due process requires no more.").

Here, and in accordance with the Court's preliminary approval order, the parties hired a third-party class administrator—First Class, Inc.—to mail the approved notice to each class member. *See* Ex. A. This notice plan complied with Rule 23 and due process because, among other things, it informed class members of: (1) the nature of the action; (2) the essential terms of the settlement, including the definition of the class and claims asserted; (3) the binding effect of a judgment if the class member does not request exclusion; (4) the process for submitting an objection and/or exclusion, including the time and method for objecting or requesting exclusion and that class members may make an appearance through counsel; (5) information regarding the named plaintiff's request for reimbursement of her attorneys' fees and expenses; and (6) how to make inquiries and where to find additional information. Fed. R. Civ. P. 23(c)(2)(B); MANUAL FOR COMPLEX LITIGATION § 21.312. *See also Schulte*, 805 F. Supp. 2d at 596 ("The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.").

C. The Court should approve an award of attorneys' fees and reimbursement of litigation expenses in the amount of $26,500.

a. The FDCPA mandates an award of attorneys' fees to a prevailing plaintiff.

The FDCPA mandates an award of attorneys' fees to a successful consumer-plaintiff, and a district court commits reversible error by "[p]aying counsel in FDCPA cases at rates lower than those they can obtain in the marketplace," which "is inconsistent with the congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law." *Tolentino v. Friedman*, 46 F.3d 645, 653 (7th Cir. 1995). Specifically, the Seventh Circuit held:

> The reason for mandatory fees is that congress chose a "private attorney general" approach to assume enforcement of the FDCPA.
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> > Given the structure of the section, attorney's fees should not be construed as a special or discretionary remedy; rather, the act mandates an award of attorney's fees as a means of fulfilling Congress's intent that the Act should be enforced by debtors acting as private attorneys general.
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> *Graziano v. Harrison,* 950 F.2d 107, 113 (3d Cir.1991).
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> * * *
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> In order to encourage able counsel to undertake FDCPA cases, as congress intended, it is necessary that counsel be awarded fees commensurate with those which they could obtain by taking other types of cases. As we noted in *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir.1993),
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> > Our recent cases have stressed that the best measure of the cost of an attorney's time is what that attorney could earn from paying clients. For a busy attorney, this is the standard hourly rate. If he were not representing this plaintiff in this case, the lawyer could sell the same time to someone else. That other person's willingness to pay establishes the market's valuation of the attorney's services.
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> The Third Circuit has similarly stated:
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> > Congress provided fee shifting to enhance enforcement of important civil rights, consumer-protection, and environmental policies. By providing competitive rates we assure that attorneys will take such cases, and hence increase the likelihood that the congressional policy of redressing public interest claims will be vindicated.

> *Student Public Interest Research Group v. AT & T Bell Laboratories,* 842 F.2d 1436, 1449 (3d Cir.1988).
>
> Here, Tolentino prevailed on summary judgment, thereby protecting her rights under the statute, and has recovered the maximum statutory damages allowed to an individual plaintiff. Under *Farrar,* therefore, Tolentino has obtained a high degree of success.
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> Paying counsel in FDCPA cases at rates lower than those they can obtain in the marketplace is inconsistent with the congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law. *Florin v. Nationsbank of Georgia, N.A.,* 34 F.3d 560, 562–63 (7th Cir.1994).

Id.

Correspondingly, awards of reasonable attorneys' fees under federal statutes that include fee-shifting provisions, such as the FDCPA, "are not conditioned upon and need not be proportionate to an award of money damages." *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986); *see also Lewis v. Kendrick*, 944 F.2d 949, 957 (1st Cir. 1991) ("We believe we made it clear that we were not departing from the recognized principle that the fee is not limited by the size of the recovery, but may, in appropriate instances, greatly exceed it."); *accord Turner v. Oxford Mgmt. Services, Inc.*, 552 F. Supp. 2d 648, 656 (S.D. Tex. 2008) ("The disparity between the final award of damages and the attorneys' fees and expenses sought in this case is not unusual and is necessary to enable individuals wronged by debt collectors to obtain competent counsel to prosecute claims.").

Given the success reached for the class and Ms. Chapman in light of the restrictions on damages imposed by the FDCPA, this Court should award attorneys' fees and expenses totaling $26,500, which is unopposed by Defendant.

b. The hours expended, and class counsel's hourly rates, are reasonable in this certified class action.

Here, Defendant has agreed to pay a total of $26,500 in attorneys' fees and expenses to Ms. Chapman's counsel. The requested attorneys' fees and expenses are fair and reasonable in

light of the results reached for Ms. Chapman and the class, as well as the work that went into doing so. Indeed, this case has been pending for a year. During that time, Ms. Chapman's attorneys have devoted significant time and resources to this case by, *inter alia*: (a) conducting an investigation into the underlying facts regarding Ms. Chapman's claims; (b) preparing a class action complaint, motion for class certification, and motion to stay the same; (c) researching the law pertinent to class members' claims and Defendant's defenses; (d) engaging in written fact discovery, including propounding requests for production and interrogatories, and conducting an analysis of Defendant's net worth; (e) participating in a Rule 16 conference with the Court; (f) negotiating the parameters of the settlement; (g) preparing the parties' class action settlement agreement and the proposed notice to the class; (h) conferring routinely with Ms. Chapman and defense counsel; (i) preparing Ms. Chapman's unopposed motion for preliminary approval of the class action settlement; (j) preparing this motion for final approval of the class action settlement; and (k) conferring with the class administrator regarding notice and the claims process. *See* Ex. B, ¶¶ 17-24.

In addition, this case will require an estimated 20-25 additional hours of work to complete. That time will be spent preparing for, traveling from South Florida to, and attending the final approval hearing set for May 12, 2016, finalizing the settlement, including conferring with class members and the class administrator, and any other related matters necessary to conclude this case. *Id*., ¶ 23.

A detailed breakdown of the time spent on this matter is attached as Exhibit 1 to the Greenwald Declaration. *See* Ex. B. Class counsel's billing records are kept in increments of one-tenth of an hour. These records are kept in the ordinary course of class counsel's business, and the time entries were made contemporaneously with the respective tasks to which they relate.

After deducting $1,277.19 in expenses[4] from the requested fee and expense award of $26,500, class counsel seek a fee of $25,222.81. Dividing the requested fee of $25,222.81 by 77.6 hours (the time spent to date (55.1 hours), plus an estimated 22.5 additional hours to complete this matter) yields an average hourly rate (blended across all attorney timekeepers)[5] of $325.04. Class counsel respectfully submit that this rate is reasonable under the circumstances and should be approved.

For example, Chief Judge Reagan recently found "that the reasonable hourly rate for Class Counsel's services are as follows: for attorneys with at least 25 years of experience, $974 per hour; for attorneys with 15–24 years of experience, $826 per hour; for attorneys with 5–14 years of experience, $595 per hour; for attorneys with 2–4 years of experience, $447 per hour; for Paralegals and Law Clerks, $300 per hour; for Legal Assistants, $186 per hour." *Abbott v. Lockheed Martin Corp.*, No. 06-cv-701-MJR-DGW, 2015 WL 4398475, at *3 (S.D. Ill. July 17, 2015); *see also Kurgan v. Chiro One Wellness Centers LLC*, Case No. 10-cv-1899, 2015 WL 1850599, at *4 (N.D. Ill. April 21, 2015) (finding reasonable hourly rates of $500 and $600 for partners in FLSA class action).

In *Myatt v. Gladieux*, Judge Springmann found a rate of $350 per hour to be reasonable for the lead attorney in a class action. Cause No. 1:10-CV-64-TLS, 2015 WL 6455387, at *5 (N.D. Ind. Oct. 23, 2015) ("Based on a cumulative assessment of Class Counsel's evidence, a rate of

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[4] These expenses include, *inter alia*, the filing fee for the complaint ($400), the fees for service of the complaint ($123), and expenses associated with travel from South Florida to South Bend for the final approval hearing. Ex. B, ¶ 26. Class counsel has incurred additional reimbursable expenses, such as for photocopies, long distance telephone calls, and computerized legal research. Those expenses are not separately itemized, and are subsumed within the overall unopposed request for a fee and expense award of $26,500. *Id.*, ¶ 27.

[5] Greenwald Davidson Radbil PLLC does not employ paralegals.

$350 is a reasonable, current hourly rate for Myers's legal services.").[6] Separately, in connection with a class action settlement under the Electronic Fund Transfer Act—a statute with an identical damages provision to the FDCPA—Judge Barker adopted Judge Dinsmore's report and recommendation finding that an hourly rate of $550 was proper for lead counsel for the class plaintiff. *Hull v. Owen County State Bank*, No. 1:11-cv-01303-SEB-MJD, 2014 WL 1328142, at *5 (S.D. Ind. Mar. 31, 2014) ("As a result, the Court awards Mr. Calhoun a total of $54,152.00 for fees (98 hours at $550.00 per hour plus 1.8 hours at $140.00 per hour) and $2,178.04 in costs."). These rates greatly exceed the rate sought by undersigned counsel here.

Moreover, "[n]umerous district courts in the Seventh Circuit have considered the Consumer Law Attorney Fee Survey Report in analyzing the reasonableness of proposed hourly billing rates." *Moore v. Midland Credit Mgmt., Inc.*, No. 3:12-CV-166-TLS, 2012 WL 6217597, at *4 (N.D. Ind. 2012) (Springmann, J.). *See also, e.g.*, *Anderson v. Specified Credit Ass'n, Inc.*, Civil No. 11–53–GPM, 2011 WL 2414867, at *4 (S.D. Ill. June 10, 2011) (considering the 2010–2011 Consumer Law Attorney Fee Survey in determining the reasonableness of hourly billing rates); *Moreland v. Dorsey Thornton and Assocs. L.L.C.*, No. 10–cv–867, 2011 WL 1980282, at *3 (E.D. Wis. May 20, 2011) (considering the 2008–2009 Consumer Law Attorney Fee Survey in determining the reasonableness of hourly billing rates); *Suleski v. Bryant Lafayette & Assocs.*, No. 09–C–960, 2010 WL 1904968, at *3 (E.D. Wis. May 10, 2010) ("the United States Consumer Law Attorney Fee Survey for 2008–09 for the Midwest and California ... supports the reasonableness of the hourly rates sought by counsel in light of their experience as described in their attorney profiles on the Krohn & Moss website."). To a lesser degree, courts also consider the Laffey

[6] Unlike here, the fee petition in *Myatt* was contested.

Matrix,[7] which describes hourly rates in the Baltimore and Washington, D.C. regions.

The current edition of the United States Consumer Law Attorney Fee Survey Report, revised on May 22, 2015, is attached hereto as Exhibit C; *see also https://www.nclc.org/images/pdf/litigation/fee-survey-report-2013-2014.pdf* (last visited April 15, 2016). The updated report now provides average hourly rates for attorneys in more targeted legal markets, including Indianapolis. According to the Report, the average hourly rate for a consumer attorney in Indianapolis with 11-15 years of experience[8] is $450, which is considerably more than the hourly rate requested here. *See* Ex. C at p. 92. Likewise, the median hourly rate for consumer attorneys in Northern Indiana is $450 per hour, and the average hourly rate for all Indiana consumer attorneys is $425. Ex. C at p. 56. For consumer attorneys in the Midwest region generally, with 11-15 years of experience, the average attorney hourly rate is $411. Ex. C at p. 36. Thus, the most recent United States Consumer Law Attorney Fee Survey Report firmly supports the reasonableness of the requested fee here.

In addition, the current hourly rates set forth in the Laffey Matrix show an average hourly

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[7] "The Seventh Circuit has not formally adopted the Laffey Matrix, but has recognized that district courts in this Circuit have considered the Matrix when determining the reasonableness of attorney fee awards." *Moore*, 2012 WL 6217597, at *5. "The Court takes note of the Seventh Circuit's direction to use caution in applying the Matrix to a determination of a reasonable hourly billing rate for fee awards. 'This exercise of caution does not, however, bar the consideration of the Laffey Matrix as a factor in rate determinations,' *Ragland v. Ortiz*, No. 08 C 6157, 2012 WL 4060310, at *2 (N.D. Ill. Sept. 14, 2012), and this Court will consider it as one factor among many in its analysis. This is consistent with the practice of district courts throughout the Seventh Circuit." *Id*.

[8] Attorney Michael L. Greenwald, who performed the majority of the work in this case (49.3 of 55.1 total hours), graduated from Duke University School of Law in 2004 and has been practicing law for nearly 12 years. *See* Ex. B, ¶ 6, Ex. 1. Additional information about Mr. Greenwald's practice and experience can be found at *www.gdrlawfirm.com*. Likewise, biographical information on the other timekeepers in this matter can be found on the firm's website.

rate of $661 per hour for attorneys with 11-19 years of experience. *See* Exhibit D, attached hereto; *see also http://www.laffeymatrix.com/see.html* (last visited April 15, 2016). Therefore, the rates set forth in the Laffey Matrix dwarf the rate requested here, and underscore its reasonableness.

Because the most recent survey on hourly rates charged by consumer attorneys in Indiana reveals average hourly rates in excess of the rate sought here,[9] Ms. Chapman submits that this Court should approve her unopposed fee and expense request.

c. The requested fee and expense award includes expenses reasonably incurred in this class action and which are reimbursable under Rule 23.

The requested $26,500 fee and expense award includes the reimbursement of litigation expenses, including the filing fee for the complaint, the cost of service of process, and travel expenses associated with travel to the final approval hearing. *See* Ex. B, ¶ 26. Counsel have incurred additional reimbursable expenses, such as for photocopies, long distance telephone calls, and computerized legal research. Those expenses are not separately itemized herein, and are subsumed within the unopposed request for a fee and expense award of $26,500. *Id*., ¶ 27.

d. The other factors to be weighed when determining a reasonable award of attorneys' fees support the requested fee and expense award.

As the Seventh Circuit has noted, "[t]here are several factors that a court should consider when calculating attorney's fees, including (1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the

[9] In an unpublished decision, Judge Nuechterlein recently found an hourly rate of $400 to be reasonable for undersigned counsel in an FDCPA class action. *Oaks v. Parker L. Moss, P.C.*, Case No. 3:15-cv-00196-CAN, ECF No. 36 (N.D. Ind. Apr. 8, 2016). While the court found a $20,000 fee award to be reasonable, Ms. Chapman respectfully submits that Judge Nuechterlein based his decision on an improper comparison to *Lambeth v. Advantage Fin. Servs., LLC*, No. 1:15-CV-33-BLW, 2015 WL 4624008 (D. Idaho Aug. 3, 2015), which was a settlement, unlike here, under Rule 23(b)(2), and thus did not require notice to the class and the attendant time and effort involved with notice and administration. Moreover, and unlike here where undersigned counsel will travel from South Florida to the final approval hearing, there was no travel involved in *Oaks* or *Lambeth*.

preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the plaintiff's 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." *Tolentino*, 46 F.3d at 652. These factors support the reasonableness of the requested fee.

First, and as noted above, the time and labor involved support the reasonableness of the requested fee. Second, "[t]he FDCPA is a complex statute, and its provisions are subject to different interpretations." *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 621 (2010) (Kennedy, J., dissenting). While the question at the heart of this case was fairly straightforward, district courts had reached opposite conclusions. As such, had this case proceeded to summary judgment or trial, and then ultimately to an appeal, there was no guarantee that Ms. Chapman would have prevailed on her or the class's claims.

Third, considering the limitations on damages imposed by the FDCPA, this settlement can only be seen as a complete victory for Ms. Chapman and the class. It bears mention that the FDCPA provides no *minimum* amount of statutory damages to be awarded. Consequently, this Court ultimately could have awarded Ms. Chapman and the class some amount less than one percent of Defendant's net worth, or perhaps no money at all, even in the face of victory. *See* 15 U.S.C. § 1692k(b)(2) (among the factors to be considered in awarding class damages: the frequency and persistence of noncompliance by the defendant, the nature of the noncompliance, and whether such noncompliance was intentional). Despite this, the class will receive a recovery in excess of one percent of Defendant's net worth, plus a change in Defendant's business practices. This result supports the reasonableness of class counsel's requested fee and expense award.

Fourth, there may be no question that class counsel's knowledge and experience significantly contributed to the fair and reasonable settlement reached, particularly the efficient and judicious manner in which it was achieved. This factor supports counsel's requested attorneys' fees. *See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 683 (D. Md. 2013) ("As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.").

Fifth, acceptance of this matter impacted class counsel's ability to handle other matters. Class counsel—Greenwald Davidson Radbil PLLC—is a relatively small firm that includes three partners, one associate, and one of-counsel attorney. *See* http://www.gdrlawfirm.com/firm-profile (last visited April 15, 2016). The amount of work that Ms. Chapman's counsel can handle at any given time is accordingly limited. As a consequence, the time they devoted to this matter curtailed their ability to accept other work.

Sixth, like many consumers bringing claims under the FDCPA, Ms. Chapman entered into a contingent attorneys' fee agreement with her counsel. As a result, class counsel would only receive payment for their efforts in this matter if they obtained a recovery. Of note, class counsel has not received any payment for their work in this case to date. That the attorneys' fee arrangement in this case was contingent "weighs in favor of the requested attorneys' fees award, because [s]uch a large investment of money [and time] place[s] incredible burdens upon . . . law practices and should be appropriately considered." *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1256 (D.N.M. 2012); *accord Been v. O.K. Indus., Inc.*, No. 02–285, 2011 WL 4478766, at *9 (E.D. Okla. Aug. 16, 2011) ("Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney's success.").

Seventh, the results obtained in the settlement strongly support the requested fee. Here, the

settlement provides benefits to Ms. Chapman, absent class members, and the public at large that could not have been achieved even assuming full victory at trial. To be sure, the $3,030 settlement fund—while not enormous in absolute terms—exceeds the statutory damages allowed under the FDCPA, which are capped by statute at one percent of Defendant's net worth. *See* 15 U.S.C. § 1692k(a)(2)(B). In other words, class members will do better by this settlement in terms of statutory damages than had they proceeded to trial and prevailed. And, of course, the settlement provides immediate cash relief, whereas any hypothetical recovery from trial would probably take years to receive in light of the likely appeals that would follow.

As well, Ms. Chapman's individual recovery of $1,000 represents the maximum allowable statutory damages under the FDCPA, which could not have been bested at trial. *See id.*, § 1692k(a)(2)(A). And the change in Defendant's business practices resulting from the settlement—which could not necessarily have been secured at trial since an injunction may not have been available, *see, e.g.*, *Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961 (N.D. Ohio 2009) ("This Court agrees that declaratory and injunctive relief are not appropriate under the FDCPA.")—serves to benefit *all* consumers who may become the subject of Defendant's debt collection efforts in the future. Thus, the significant recoveries obtained not just for Ms. Chapman and absent class members, but for consumers everywhere—particularly in light of statutorily-limited damages and the uncertainties in continued litigation highlighted above—strongly support class counsel's requested fees.

Further, as noted above, this Court need not be concerned with the size of the requested fee award in relation to the amounts recovered for class members. The Supreme Court has counseled that fee awards pursuant to federal fee-shifting statutes "are not conditioned upon and need not be proportionate to an award of money damages." *Rivera*, 477 U.S. at 576. This is so because, "[i]n

order to encourage able counsel to undertake FDCPA cases, as Congress intended, it is necessary that counsel be awarded fees commensurate with those which they could obtain by taking other types of cases." *Tolentino*, 46 F.3d at 653.

Eighth, the fee requested here is in line with (and less than) awards in similar FDCPA class actions, further underscoring its reasonableness. *See, e.g.*, *Baldwin*, Case 3:15-cv-00490-HEH, ECF No. 20 (awarding $28,250 in fees and expenses to class counsel); *Good v. Nationwide Credit, Inc.*, No. 14-4295, 2016 WL 929368, at *15 (E.D. Pa. Mar. 14, 2016) (awarding attorneys' fees and expenses of $125,000 in FDCPA class action); *Whitford*, 2016 WL 122393 (awarding $30,000 in fees and expenses to class counsel); *Gonzalez v. Dynamic Recovery Solutions, LLC*, Nos. 14-24502, 14-20933, 2015 WL 738329, at *2 (S.D. Fla. Feb. 23, 2015) (awarding $65,000 in attorneys' fees and expenses to class counsel); *Esposito v. Deatrick & Spies, P.S.C.*, No. 13-1416, 2015 WL 390392, at *4 (N.D.N.Y. Jan. 28, 2015) (awarding fees and expenses of $36,750 in class settlement alleging Electronic Fund Transfer Act claims); *Green v. Dressman Benzinger Lavelle, PSC*, No. 14-00142, 2015 WL 223764, at *2 (S.D. Ohio Jan. 16, 2015) (awarding fees and expenses totaling $30,000 in FDCPA class action); *Donnelly v. EquityExperts.org, LLC*, No. 13-10017, 2015 WL 249522, at *2 (E.D. Mich. Jan. 14, 2015) (awarding attorneys' fees of $90,000 and costs and expenses in the amount of $5,947.58 in FDCPA class settlement); *Reade–Alvarez v. Eltman, Eltman, & Cooper, P.C.*, No. 04-2195, 2006 WL 3681138 (E.D.N.Y. Dec. 11, 2006) (awarding $50,000 in fees in FDCPA class case).

Finally, the lack of any objections here from class members weighs strongly in favor of the fee request. Indeed, the class notice apprised absent class members that class counsel would seek an award of attorneys' fees and reimbursement of expenses of up to $35,000.00. Significantly, not a single class member objected to the settlement, or to any portion of it. "The absence of objections

or disapproval by class members to Settlement Class Counsel's fee-and-expense request further supports finding it reasonable." *See Hess v. Sprint Commc'ns Co. L.P.*, No. 11-00035, 2012 WL 5921149, at *4 (N.D. W. Va. Nov. 26, 2012).

Conclusion

Ms. Chapman respectfully submits that this settlement is fair, reasonable, and adequate and should be approved. Moreover, the agreed-upon attorneys' fees and expenses were negotiated long after the parties' settlement agreement, and are fair and reasonable under the circumstances. As noted, Defendant does not oppose the relief requested herein.

Dated this 19th day of April, 2016.

/s/ Michael L. Greenwald
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Class Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically filed on April 19, 2016, via the Court Clerk's CM/ECF system, which will provide notice to all counsel of record.

/s/ Michael L. Greenwald
MICHAEL L. GREENWALD