UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ALLECIA SINKFIELD, on behalf of herself and others similarly situated, Plaintiff, v. PERSOLVE RECOVERIES, LLC, Defendant.	**Civil Action No.: 9:21-cv-80338-RKA**

PLAINTIFF'S MOTION FOR APPROVAL OF AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES[1]

Introduction

After months of litigation, including an adjudicated motion to dismiss, discovery, and with a fully briefed motion for class certification pending, the parties reached an agreement to settle this case whereby Persolve Recoveries, LLC ("Defendant") will create a non-reversionary settlement fund in the amount of $20,000 to cover payments to participating class members.[2] The settlement fund exceeds 1% of Defendant's book value net worth, and thus is more than Plaintiff could have recovered for the class in statutory damages had she prevailed at trial. *See* 15 U.S.C. § 1692k(a)(2)(B) (limiting statutory damages in a class action to the lesser of $500,000 of 1% of the net worth of the debt collector). Additionally, Defendant is now registered with the Office of Financial Regulation of the Florida Financial Services Commission as a consumer collection agency.

[1] Allecia Sinkfield ("Plaintiff") is filing this motion now pursuant to the deadline set forth in this Court's preliminary approval order. *See* ECF No. 78.

[2] Plaintiff estimates that each participating class member will receive between $73 and $219.

Defendant will separately pay the costs of settlement administration and an individual damages award to Plaintiff. Defendant also will pay—separate from the above amounts—Plaintiff's counsel's reasonable attorneys' fees and expenses as awarded by the Court up to $70,000.

Given the meaningful result reached for the class, Plaintiff now seeks an award of attorneys' fees in the amount of $68,692 and reimbursement of litigation expenses for her counsel—Greenwald Davidson Radbil PLLC ("GDR")—in the amount of $1,308. As detailed herein and in the Declaration of James L. Davidson ("Davidson Decl."), attached as Exhibit A, Plaintiff's requests are reasonable and supported by her counsel's billing records and applicable law.

Defendant does not oppose the relief requested through this motion.

Legal Standard

In assessing applications for attorneys' fees in class actions involving fee-shifting statutes like the Fair Debt Collection Practices Act ("FDCPA"), courts in this Circuit consider the factors originally set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). Those factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of any professional relationship with the client; and (12) awards in similar cases. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) (King, J.); *Bragg v. Bill Heard Chevrolet, Inc.*,

No. 1:11–cv–666, 2007 WL 2781105, at *5 (M.D. Fla. Aug, 28, 2007) (considering reasonableness of attorneys' fees in light of *Johnson* factors); *Roundtree v. Bush Ross, P.A.*, No. 14-cv-00357-JDW-AEP, 2016 WL 360721, at *2 (M.D. Fla. Jan. 28, 2016) (same).[3]

These twelve factors are not exclusive, but instead are merely guidelines, and the Eleventh Circuit has encouraged district courts to consider additional factors unique to the particular case. *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1359. "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (Middlebrooks, J.).

As set forth more fully below, these factors support Plaintiff's fee, cost and expense request.

Argument

I. Plaintiff's request for $68,692 in attorneys' fees and $1,308 in litigation costs and expenses is reasonable.

A. An award of attorneys' fees in a successful FDCPA action is mandated by statute and need not be proportionate to the recoveries of the class and named plaintiff.

It is noteworthy that to encourage private action and enforcement, the FDCPA mandates an award of attorneys' fees to a successful consumer-plaintiff. *See* 15 U.S.C. § 1692k(a); *Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995) ("The [FDCPA's] statutory language makes an award of fees mandatory."); *Dauval v. Preferred Collection & Mgmt. Servs., Inc.*, No. 8:11–CV–2269–JDW–TGW, 2013 WL 12159442, at *1 (M.D. Fla. April 15, 2003) ("Subsection 1692k(a)(3)

[3] Internal citations, quotations, and footnotes are omitted.

of the FDCPA mandates an award of costs and reasonable attorneys' fees in the case of any successful action to enforce the foregoing liability."). By its inclusion of a mandatory fee-shifting provision in the FDCPA, Congress has indicated that society has a significant stake in assisting consumers who may not otherwise have the means to pursue these cases, and in rewarding attorneys who pursue these actions. *See Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991) ("Given the structure of [the FDCPA], 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.").

"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." *Tolentino*, 46 F.3d at 653. That "commensurate" fee is best measured by "what that attorney could earn from paying clients" at a "standard hourly rate." *Id.* Paying counsel less "is inconsistent with the Congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law." *Id.* As the Northern District of Ohio opined:

> [O]ne of the fundamental principles of class action litigation is that it provides an incentive to pursue recovery for tortious conduct that would otherwise go unchecked because the individual harm to a potential plaintiff is too small to justify the cost of litigation. Collective action is the best, and, in many cases, the only feasible, way to redress the harm on an individual basis and discourage similar conduct in the future.

Lonardo v. Travelers Indem. Co., 706 F. Supp. 2d 766, 791 (N.D. Ohio 2010); *see also Turner v. Oxford Mgmt. Servs., 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.").

Correspondingly, awards of reasonable attorneys' fees under federal statutes that include

fee-shifting provisions "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 Renninger v. Phillips & Cohen Assocs.*, No. 8:10–cv–5–T–33EAJ, 2010 WL 3259417, at *3 (M.D. Fla. Aug. 18, 2010) (noting that in consumer protection cases, attorneys' fees need not be awarded in proportion to the damages recovered).[4] As the District of Maine wrote:

> In the debt collection context, to apply a rigid proportionality rule to a case where there is no actual demonstrable damage would allow a debt collector to ignore the requirements of federal and state law, confident that its violation would be sanctioned by a maximum award of $1,000 and by attorney's fees roughly limited to the amount of the award. If the proportionality argument were rigorously applied, the potential benefit of the violation of the consumer protections of the FDCPA and [the Maine Fair Debt Collection Practices Act] could exceed the potential sanction. Furthermore, if plaintiff's counsel knew, based on a cap on the statutory award, that a substantial portion of her work would go uncompensated, she would have little incentive to do the legal spadework essential for successful litigation and debtors would as a practical matter find it difficult to recruit attorneys to represent them in small, but significant violations of the law.

Archambault v. GC Servs. Ltd. P'ship, No. 16-cv-00104-JAW, 2016 WL 6208395, at *5 (D. Me. Oct. 24, 2016).

[4] *See also Alhassid v. Bank of America*, 688 F. App'x 753, 760 (11th Cir. 2017) ("And, a reduction was not needed to make the fees and costs proportional to the damages since there is no express requirement of proportionality between the amount of the FDUTPA judgment and the attorney's fees and costs incurred in obtaining that judgment."); *Randle v. H & P Capital, Inc.*, 513 F. App'x 282, 283 (4th Cir. 2013) (affirming award of $76,876.59 in attorneys' fees and expenses where plaintiff recovered $6,000); *Dowling v. Litton Loan Servicing LP*, 320 F. App'x 442, 449 (6th Cir. 2009) (affirming award of $52,419.56 in attorneys' fees and expenses where plaintiff recovered $26,000).

B. The time and labor involved in this case supports a finding that the fee request is reasonable.

Turning to the *Johnson* factors, the first factor to consider is the time and labor required of counsel—often referred to as counsel's "lodestar." "To arrive at a lodestar figure . . . the district court must first determine the number of hours reasonably spent by the plaintiffs' counsel on the matter, then multiply those hours by an hourly rate the court deems reasonable for similarly complex non-contingent work." *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 772 (11th Cir. 1991). The lodestar is typically presumed to yield a reasonable fee. *See Pa. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986) ("A strong presumption that the lodestar figure-the product of reasonable hours times a reasonable rate-represents a 'reasonable' fee is wholly consistent with the rationale behind the usual fee-shifting statute, including the one in the present case."); *Zambrano v. Dom & Dom Pizza Inc.*, No. 11–20207–CIV, 2012 WL 2921513, at *2 (S.D. Fla. July 17, 2012) (O'Sullivan, J.) ("[T]he Supreme Court has found that there is a strong presumption that the lodestar product is the reasonable fee to which counsel is entitled.").

1. GDR expended a total of 179.90 hours in prosecuting this action to date.

To date, GDR has expended 179.90 hours performing legal services reasonably necessary to litigate this matter, resulting in a total lodestar to date of $88,265. *See* Davidson Decl. at ¶¶ 26, 30.[5] This time included (a) researching and preparing the class action complaint, ECF No. 1; (b) opposing, and prevailing on, Defendant's motion to dismiss, ECF No. 17; (c) preparing the joint scheduling report, ECF No. 14; (d) preparing Plaintiff's initial disclosures; (e) opposing Defendant's request for judicial notice, ECF No. 26; (f) researching and preparing the class

[5] The attached Davidson Declaration summarizes the time GDR has spent to date on this matter. GDR did not attach its billing records to this motion but will provide its billing records to the Court upon request. *See, e.g.*, *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988) ("It is perfectly proper to award attorney's fees based solely on affidavits in the record.").

certification motion, and reply in support, ECF Nos. 36, 45; (g) opposing, and prevailing, on, Defendant's motion to strike Plaintiff's reply in support of class certification, ECF No. 47; (h) researching and preparing a second class certification motion, and reply in support, ECF Nos. 59, 65; (i) propounding written discovery to Defendant; (j) preparing a Rule 30(b)(6) deposition notice for Defendant and taking the deposition of Defendant's corporate representative; (k) drafting and negotiating the parties' class action settlement agreement, including the proposed preliminary and final approval orders and the class notice; (l) preparing Plaintiff's initial and renewed motions for preliminary approval of the settlement; and (m) preparing this fee and expense petition, among other tasks. *Id*. at ¶ 22.

GDR estimates that it will spend an additional approximately 15-25 hours on this matter, including coordinating with the settlement administrator; finalizing the class notice; researching and preparing the motion for final approval of the class action settlement; preparing for, and attending, the final fairness hearing; communicating with class members; and any other related matters necessary to conclude this case. *Id*. at ¶ 31. As a result, GDR will have spent between 194.90 and 204.9 hours litigating this case during the nearly two years it has been pending, resulting in a total expected lodestar of between $95,765 and $100,765. *Id*. at ¶ 32.

2. GDR's hourly rates are reasonable.

The prevailing market rate for similar services by similarly trained and experienced lawyers in the relevant legal community is the established basis for determining a reasonable hourly rate. *Duckworth v. Whisenant*, 97 F.3d 1393, 1396 (11th Cir. 1996).

Here, Michael L. Greenwald and James L. Davidson—partners at GDR—billed on this matter at a rate of $500 per hour. Davidson Decl. at ¶ 18. Jesse S. Johnson—another partner at GDR—billed on this matter at a rate of $450 per hour. *Id.* The firm's associate, Alexander Kruzyk,

billed at a rate of $400 per hour. *Id.*[6]

These rates are in line with rates specifically approved for GDR in consumer protection class actions, including earlier this year. *See, e.g., Acuna v. Medical Com. Audit, Inc.*, No. 9:21-cv-81256-WPD, 2022 WL 1597814, at *2 (S.D. Fla. May 20, 2022) (Dimitrouleas, J.) (approving GDR hourly rates ranging from $450 to $500); *Cooper v. Investinet, LLC*, No. 1:21-cv-01562-TWP-DML, 2022 WL 1125394, at *2 (S.D. Ind. Apr. 14, 2022) (approving GDR hourly rates ranging from $400 to $500); *Brockman v. Mankin Law Group, P.A.*, No. 8:20-cv-893-T-35JSS, 2021 WL 913082, at *2 (M.D. Fla. Mar. 10, 2021) (approving GDR's partners' hourly rates ranging from $400 to $450); *Newman v. Edoardo Meloni, P.A.*, No. 20-60027, 2020 WL 5269442, at *2 (S.D. Fla. Sept. 4, 2020) (same); *Aikens v. Malcolm Cisneros*, No. 5:17-cv-02462-JLS-SP, ECF No. 76 at 16 (C.D. Cal. Jan. 2, 2020) (same); *Dickens v. G.C. Servs. Ltd. P'ship*, No. 8:16-cv-803-T-30TGW, 2019 WL 1771524, at *1 (M.D. Fla. Apr. 10, 2019) ("As for the billing rates, [GDR] charged associate and partner rates ranging from $350 to $450 per hour. The Court agrees that for this type of litigation and the market rate in Tampa, the rates are reasonable.").

Furthermore, these rates are consistent with prevailing market rates previously found to be reasonable by courts within this Circuit and elsewhere. *See, e.g., Parrot, Inc. v. Nicestuff Distrib. Int'l, Inc.*, No. 06-61231-CIV, 2010 WL 680948, at *8 (S.D. Fla. Feb. 24, 2010) (Dimitrouleas, J.) ("For the year, 2007, an hourly rate of $440.00 for a partner with 19 years of experience, and $290.00 for a fourth-year associate, fall well within rates charged by law firms in the local market."); *Fresco v. Auto. Dirs.*, No. 03–CIV–61063, 2009 WL 9054828, at *7-8 (S.D. Fla. Jan. 20, 2009) (Martinez, J.) (rates ranging from $400 for associates to $600 for a senior partner were reasonable, more than a decade ago, in a fee-shifting case under the Driver's Privacy Protection

[6] Mr. Kruzyk left the firm in July 2022.

Act).[7]

3. GDR also incurred reimbursable costs and expenses.

In addition, to date, GDR has incurred $1,308 in reimbursable litigation costs and expenses, which include the filing fee for the complaint, the fee for service of process, and costs for the court reporter and transcript from the deposition of Defendant's corporate representative. Davidson Decl. at ¶ 34. The categories of expenses for which GDR seeks reimbursement are the type of expenses routinely charged to paying clients in the marketplace; therefore, the full requested amount should be reimbursed under Rule 23. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988) (King, J.), *aff'd,* 899 F.2d 21 (11th Cir. 1990) (awarding as reasonable and necessary, reimbursement for "travel, depositions, filing fees, postage, telephone, and

[7] *See also CC-Aventura, Inc. v. Weitz Co., LLC*, No. 06-21598-CIV, 2008 WL 276057, at *2 (S.D. Fla. Jan. 31, 2008) (Simonton, M.J.) (holding as reasonable eighth-year associate hourly rate of $400 and first-year associate hourly rate of $200); *Topp, Inc. v. Uniden Am. Corp.*, No. 05-21698-CIV, 2007 WL 2155604, at *2-3 (S.D. Fla. July 25, 2007) (Simonton, M.J.) (holding as reasonable attorney hourly rate of $551); *accord Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App'x 496, 498 (6th Cir. 2011) (district court did not abuse its discretion in approving rates ranging from $250 to $450 per hour); *Salazar v. Midwest Servicing Grp., Inc.*, No. CV 17-0137 PSG (KSX), 2018 WL 4802139, at *6 (C.D. Cal. Oct. 2, 2018) (finding reasonable hourly rates ranging from $450 to $495 in FDCPA case); *Kurgan v. Chiro One Wellness Ctrs. LLC*, 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); *De Amaral v. Goldsmith & Hull*, No. 12-3580, 2014 WL 1309954, at *3 (N.D. Cal. Apr. 1, 2014) (finding rates of $450 per hour for a partner and $350 for an associate to be reasonable in FDCPA case); *Hull v. Owen Cnty. 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."); *Briggins v. Elwood TRI, Inc.*, 3 F. Supp. 3d 1277, 1296 (N.D. Ala. Mar. 11, 2014) (finding reasonable hourly rates of between $200 and $625 for attorneys in FLSA action); *Lowther v. A.K. Steel Corp.*, No. 1:11-cv-877, 2012 WL 6676131, at *5 (S.D. Ohio Dec. 21, 2012) (employing a lodestar cross-check, the court concluded that $500 per hour was a reasonable rate for the two senior attorneys and that rates between $100 and $450 per hour were reasonable for other attorneys and involved staff); *Rodriguez v. Pressler & Pressler, L.L.P.*, CV-06-5103, 2009 WL 689056, at *1 (E.D.N.Y. Mar. 16, 2009) (approving hourly rate of $450 and $300 in FDCPA case).

copying").[8]

C. The novelty and difficulty of the questions in this case favor approval of the fee and expense request.

As for the second *Johnson* factor, every class action involves some level of uncertainty on the merits. This action is not unique in this regard. *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.").

Here, the parties disagreed about the merits, and there was uncertainty about the ultimate outcome of this litigation. If the litigation had moved forward, Plaintiff would have had to obtain class certification over Defendant's objection, and prevail at summary judgment, or trial, and on a potential appeal, to obtain any benefits for members of the class. *See, e.g.*, *Bennett v. Behring Corp.*, 96 F.R.D. 343, 349-50 (S.D. Fla. 1982) (Gonzalez, J.), *aff'd,* 737 F.2d 982 (11th Cir. 1984) (plaintiffs faced a "myriad of factual and legal problems" that led to "great uncertainty as to the fact and amount of damage," which made it "unwise [for plaintiffs] to risk the substantial benefits which the settlement confers ... to the vagaries of a trial").

Moreover, because damages under the FDCPA are not mandatory, there is no guarantee that Plaintiff would have recovered any money for the class even had she prevailed at class certification and on the merits. *See Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 683 (N.D. Cal. 2016) ("Because damages are not mandatory, continued litigation presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for

[8] Of note, GDR does not seek reimbursement for photocopies, telephone, fax, or online legal research fees, or any costs associated with attendance at the final fairness hearing.

the Class. In light of the risks and costs of continued litigation, the immediate reward to Class Members is preferable.").

D. The skill required to perform the legal services properly and the experience, reputation, and ability of GDR favor approval of the fee request.

Turning to the third and ninth *Johnson* factors, GDR has significant experience in litigating, and resolving, consumer protection class actions. *See* Davidson Decl. at ¶ 7. Indeed, multiple district courts have commented on GDR's useful knowledge and experience in connection with class action litigation. For example, in *Schwyhart v. AmSher Collection Servs., Inc.*, Judge John E. Ott, Chief Magistrate Judge of the Northern District of Alabama, stated upon granting final approval of a class action settlement in which he appointed GDR as class counsel:

> I cannot reiterate enough how impressed I am with both your handling of the case, both in the Court's presence as well as on the phone conferences, as well as in the written materials submitted. . . . I am very satisfied and I am very pleased with what I have seen in this case. As a judge, I don't get to say that every time, so that is quite a compliment to you all, and thank you for that.

No. 2:15-cv-1175-JEO (N.D. Ala. Mar. 15, 2017).

And in *McWilliams v. Advanced Recovery Systems, Inc.*, Judge Carlton W. Reeves of the Southern District of Mississippi described GDR as follows:

> More important, frankly, is the skill with which plaintiff's counsel litigated this matter. On that point there is no disagreement. Defense counsel concedes that her opponent—a specialist in the field who has been class counsel in dozens of these matters across the country—'is to be commended for his work' for the class, 'was professional at all times' . . . , and used his 'excellent negotiation skills' to achieve a settlement fund greater than that required by the law. The undersigned concurs . . . Counsel's level of experience in handling cases brought under the FDCPA, other consumer protection statutes, and class actions generally cannot be overstated.

No. 3:15-CV-70-CWR-LRA, 2017 WL 2625118, at *3 (S.D. Miss. June 16, 2017).

Similarly, in *Roundtree v. Bush Ross, P.A.*, Judge James D. Whittemore of the Middle District of Florida wrote, in certifying three separate classes and appointing GDR class counsel:

"Greenwald [Davidson Radbil PLLC] has been appointed as class counsel in a number of actions and thus provides great experience in representing plaintiffs in consumer class actions." 304 F.R.D. 644, 661 (M.D. Fla. 2015).

GDR utilized their skill and experience to revolve this case in an efficient manner, resulting in a settlement that will provide meaningful cash relief to participating class members. This success strongly favors GDR's fee request. *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."); *Gross v. Washington Mut. Bank*, No. 02–CV–4135, 2006 WL 318814, at *6 (E.D.N.Y. Feb. 9, 2006) ("The type of litigation undertaken by class counsel here, which addresses important consumer concerns that would likely be ignored without such class action lawsuits, must be encouraged.").

E. GDR assumed substantial risk to pursue the litigation on a contingent fee basis.

Per the sixth *Johnson* factor, rewarding attorneys in class actions is important because absent class actions, most individual claimants would lack the resources to litigate, as individual recoveries are often too small to justify the burden and expense of litigation. *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001) ("Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling . . . claimants to pool their claims and resources" to "achieve a result they could not obtain alone."). In *Johnson*, the Fifth Circuit recognized that fees should be adequate "to enable litigants to obtain competent counsel worthy of a contest with the caliber of counsel available to their opposition . . . ." 488 F.2d at 719-20.

The court observed that "[a]dequate compensation [for successful counsel in contingent cases] is necessary . . . to enable an attorney to serve his client effectively and to preserve the

integrity and independence of the profession." *Id.* The Second Circuit has voiced the same concern in the analogous context of antitrust class actions. *See Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir. 1973) ("In the absence of adequate attorneys' fee awards, many antitrust actions would not be commenced, since the claims of individual litigants, when taken separately, often hardly justify the expense of litigation.").

Here, GDR undertook this litigation on a contingent fee basis. As Judge King observed:

> Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer.... A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Behrens, 118 F.R.D. at 548; *see also Ressler v. Jacobson*, 149 F.R.D. 651, 654-55 (M.D. Fla. 1992) ("Here, of course, the fee was entirely contingent, which meant that, had Petitioners recovered nothing for the Class, they would not have been entitled to any fee at all. The substantial risks of this litigation abundantly justify the fee requested herein.").

Further, during the duration of the litigation, GDR employed only five litigators. As a result, GDR focused meaningful resources on obtaining the results here, thus limiting their ability to focus on additional matters. The fourth *Johnson* factor correspondingly supports the instant request. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1365 ("It is uncontroverted that the time spent on the Action was time that could not be spent on other matters. This factor too supports the requested fee.").

F. The results obtained favor approval of the fee and expense request.

The eighth *Johnson* factor also compels approval of the requested fee award. Defendant will create a settlement fund of $20,000 for the benefit of the members of the class, with each

participating class member expected to receive between $73 and $219. The class recovery here exceed the statutory damages Plaintiff could have recovered for the class had she prevailed at trial. *See* 15 U.S.C. § 1692k(a)(2)(B) (limiting class statutory class damages to the lesser of $500,000 or 1% of the debt collector's net worth).

Moreover, had Plaintiff pressed forward to trial, the risk of a minimal damages award was not hypothetical. *See Dickens v. GC Servs. Ltd. P'ship*, 220 F. Supp. 3d 1312, 1324 (M.D. Fla. 2016) ("Having considered these factors and the parties' briefs, the Court finds that the statutory award in this case should be nominal, whether that award applies to Dickens alone or a class of plaintiffs."), *vacated and remanded,* 706 F. App'x 529 (11th Cir. 2017); *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, No. 1:06 CV 1397, 2011 WL 1434679, at *11 (N.D. Ohio 2011) (analyzing the factors set forth in 15 U.S.C. § 1692k, and awarding no "additional damages" to members of the class). Instead, through settlement, Plaintiff has secured significantly more for herself and the class. Defendant also has registered as a consumer collection agency, allowing greater state oversight, which will benefit all consumers who encounter its debt collection efforts in the future.

Thus, the settlement—against the backdrop of the limitations imposed by the FDCPA—constitutes an excellent result for Plaintiff and the members of the class. This successful resolution supports the requested fee and expense award. *See, e.g.*, *Shoemaker v. Bass & Moglowsky*, No. 19-cv-316-wmc, 2020 WL 1671561, at *2 (W.D. Wis. Apr. 3, 2020) ("More critically, the monetary award each class member will receive likely exceeds that available under the remedies provision of the FDCPA, and the settlement requires defendant to alter its business practices, rendering this an 'exceptional settlement' and entitling class counsel to an award of fees that represents three-

quarters of the total settlement.").[9]

G. Awards in similar cases favor approval of the fee request.

Courts also analyze whether the requested fee award "comports with customary fee awards in similar cases." *Gevaerts v. T.D. Bank*, No. 11:14-cv-20744-RLR, 2015 WL 6751061, at *13 (S.D. Fla. Nov. 11, 2015) (Rosenberg, J.). The fee requested by GDR here is in line with fee awards in other consumer class actions under fee-shifting statutes. *See, e.g.*, *Dickens*, 2019 WL 1771524, at *1 (awarding $270,000 in attorneys' fees and expenses in FDCPA class action); *Grant v. Ocwen Loan Servicing*, No.: 3:15-cv-01376-J-34-PDB, 2019 WL 367648, at *9 (M.D. Fla. Jan. 30, 2019) (awarding $150,000 in attorneys' fees and expenses in FDCPA class action); *Globus v. Pioneer Credit Recovery, Inc.*, 15-CV-152V, 2016 WL 4069285, at *3 (W.D.N.Y. July 27, 2017) (awarding $172,500 in attorneys' fees and expenses in class action under the FDCPA and Electronic Funds Transfer Act).[10]

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[9] Importantly, Defendant will pay any fee and expense award separately from the fund for class members, and thus the requested fees and expenses will not diminish class members' recoveries. *See Good v. Nationwide Credit, Inc.*, No. 14–4295, 2016 WL 929368, at *16 (E.D. Pa. Mar. 14, 2016) ("Even if the Court were to approve less than the $125,000 negotiated amount, the class would not gain a greater recovery; rather, Defendant would simply keep the money.").

[10] *See also Johnston v. Kass Shuler, P.A.*, No. 8:16–cv–3390–T–23AEP, 2017 WL 3113448, at * 1 (M.D. Fla. July 20, 2017) (awarding $32,000 in attorneys' fees and expenses in FDCPA class action); *McWilliams*, 2017 WL 2625118, at *3 (awarding attorneys' fees of $116,562.50 and expenses in the amount of $1,782.55 in FDCPA class action); *Blandina v. Midland Funding, LLC*, No. 13-11792, 016 WL 3101270, at *8 (E.D. Pa. June 1, 2016) (awarding $245,000 in attorneys' fees and expenses in FDCPA class action); *Alexander v. Coast Prof'l Inc.*, No. 12-1461, 2016 WL 861329, at *8 (E.D. Pa. Mar. 7, 2016) (awarding $185,000 in attorneys' fees and expenses in FDCPA class action); *Good*, 2016 WL 929368, at *15 (awarding attorneys' $125,000 in attorneys' fees and expenses in FDCPA class action); *Roundtree*, 2016 WL 360721, at *2 (awarding attorneys' fees and expenses of $170,000 in FDCPA class action); *Donnelly v. EquityExperts.org, LLC*, No. 4:13–CV–10017–TGB, 2015 WL 249522, at *2 (E.D. Mich. Jan. 14, 2015) (awarding attorneys' fees of $90,000 and expenses in the amount of $5,947.58 in FDCPA class action); *Bragg*, 2007 WL 2781105, at *5 (awarding attorneys' fees of $650,000 and expenses in the amount of $60,000 in class action under Truth in Lending Act, Florida Motor Vehicle Financing Act, and the Florida Deceptive and Unfair Trade Practices Act.).

Conclusion

The Supreme Court has observed that without the possibility of class actions, aggrieved persons with small claims may be left without an effective remedy. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980) (observing that "[w]here it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class action device"). Attorneys who undertake the risk to vindicate legal rights that may otherwise go unredressed function as "private attorneys general." *Id*. at 338.

Here, by obtaining cash compensation for several thousand Florida consumers, GDR filled exactly this role. As such, Plaintiff respectfully requests that this Court approve an award of attorneys' fees in the amount of $68,692 and $1,308 in litigation costs and expenses as reasonable. As noted, Defendant does not oppose the requested relief.

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Respectfully submitted,

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