UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

DOUGLAS A. DENNING, on behalf of himself and others similarly situated, Plaintiff, v. MANKIN LAW GROUP, P.A., Defendant.	:	**Case No. 8:21-cv-02822-MSS-MRM** **PLAINTIFF'S MOTION FOR APPROVAL OF AN AWARD OF ATTORNEYS' FEES, COSTS, AND LITIGATION EXPENSES**

Introduction

Douglas A. Denning ("Plaintiff") brought this class action under the Fair Debt Collection Practices Act ("FDCPA") and Florida Consumer Collection Practices Act ("FCCPA") over Mankin Law Group, P.A.'s ("Defendant") debt collection efforts on behalf of Countryside North Community Association, Inc. ("Countryside North"). In short, Plaintiff alleged Defendant sought to collect invalid and unenforceable Countryside North assessments, thus violating several provisions of the FDCPA and FCCPA.

After defeating Defendant's bid for dismissal, and in the midst of briefing on his contested class certification motion, Plaintiff attended a full-day mediation with Defendant, which was overseen by an experienced mediator with considerable class action experience. The parties' negotiations resulted in a class resolution providing substantial monetary relief in addition to a commitment by Defendant to no longer collect the challenged assessments. Thus, where Plaintiff undertook this litigation to recoup

monies for class members and change Defendant's collection practices for the better, he achieved both.

Defendant will establish two non-reversionary class settlement funds to compensate class and subclass members for statutory and actual damages incurred. In all, Defendant will pay class and subclass members $23,880, a sum that well exceeds the combined statutory damages caps imposed by the FDCPA and FCCPA. Assuming full participation for both funds,[1] each class member will recover over $57, and each subclass member will receive an additional $60. Defendant also separately will pay Plaintiff $2,000 in individual statutory damages, as expressly allowed under the FDCPA and FCCPA, plus all costs of distributing class notice and administering the settlement.

As well, Defendant separately will pay an award of attorneys' fees, costs, and litigation expenses for class counsel in the amount of $85,000, which amount the parties separately negotiated at the conclusion of their mediation, and which is detailed in the class notice disseminated to all class members by direct mailings. Of course, such an award, as well as final approval of the settlement, remains subject to this Court's approval. And given the excellent results obtained and lack of any opposition to date, Plaintiff now seeks such approval for an award of attorneys' fees, costs, and litigation expenses for class counsel in the agreed total amount of $85,000. As detailed below and in counsel's accompanying declaration, the fee and expense requests are reasonable and well supported by the record and applicable Eleventh Circuit law. Also significant,

[1] The deadline for class members to exclude themselves is January 17, 2023. ECF No. 46.

Defendant does not oppose this relief.

Class Settlement Summary

The parties' agreement here consists of five primary components. First, Defendant will create two non-reversionary class settlement funds, one in the amount of $15,000 for the benefit of 263 class members to whom Defendant mailed a debt collection letter seeking allegedly improper Countryside North assessments, and another in the amount of $8,880 for the benefit of 148 subclass members who both received a collection letter and subsequently made a payment to Defendant in response. Barring exclusions, each class member will receive a pro-rata share of $57.03 from the class fund, and each subclass member will receive an additional $60 from the subclass fund, for a total of $117.03 per subclass member.

The $15,000 class fund exceeds two percent of Defendant's book value net worth, which is significant considering that the FDCPA and FCCPA each limits class statutory damages to one percent of the debt collector's net worth. In other words, by securing a settlement fund that exceeds two percent of Defendant's book value net worth, Plaintiff has assured the class and subclass a recovery above and beyond statutory damages limits. Further, the $8,880 subclass fund additionally compensates those individuals who suffered potential actual damages in the form of out-of-pocket losses attributable to Defendant's challenged collection conduct. Upon final approval, should any settlement checks remain uncashed after their void date, the parties will redirect any remaining settlement proceeds to Bay Area Legal Services, the Court-approved *cy pres* recipient. To reiterate, none of the settlement monies will revert to Defendant.

Second, separate and apart from the class and subclass funds, Defendant also will pay $2,000 in individual damages to Plaintiff, the most to which he is entitled under 15 U.S.C. § 1692k(a)(2)(A) and Fla. Stat. § 559.77(2).[2] Third, Defendant also separately paid the costs of printing and distributing class notice, and will pay any remaining costs for settlement administration, as conducted by Class-Settlement.com, the court-approved settlement administrator.

Fourth, Defendant has provided written confirmation that it no longer collects the Countryside North assessments indirectly challenged by way of this lawsuit, representing a significant change in Defendant's collection practices that benefits class members as well as their neighbors, and which change was not necessarily available at trial.

Fifth, Defendant also will pay—separate and apart from the class settlement funds, Plaintiff's individual damages awards, and notice and administration costs—attorneys' fees, costs, and litigation expenses to class counsel in the total amount of $85,000, subject to this Court's approval. The parties negotiated this amount under the direction of mediator Steven Jaffe, Esq., only *after* agreeing upon all other class settlement terms. This Court will consider the agreed fee and expense request at the final fairness hearing on March 22, 2023. If approved, Defendant will pay the award in conjunction with all other settlement payments.

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[2] While this Court noted *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020), in its preliminary approval order, *see* ECF No. 46 at 2 n.2, the negotiated individual awards represent statutory damages recoveries prescribed by law, and not any form of incentive award banned by *Johnson*. Thus, *Johnson* presents no impediment to this Court finally approving the parties' fair and reasonable settlement agreement, which will be the subject of additional motion briefing in advance of the final fairness hearing in March 2023.

Following this Court's preliminary approval of the settlement, Class-Settlement.com distributed direct mail notice to all class members, using their names and addresses from Defendant's collection records. That notice describes the terms of the settlement, including that Plaintiff would seek an award of attorneys' fees, costs, and expenses for class counsel in the negotiated amount of $85,000 in total. Thus far, no one has objected to any aspect of the settlement, including the proposed fee and expense award. Defendant also provided notice of the settlement to the requisite government agencies pursuant to the Class Action Fairness Act ("CAFA"). No objections have resulted from the CAFA notice, either.

Argument

I. Awards of attorneys' fees to prevailing consumer-plaintiffs are mandatory under the FDCPA and FCCPA, and such awards need not be proportional to the money damages recovered.

Both the FDCPA and FCCPA mandate awards of attorneys' fees to successful consumer-plaintiffs like Plaintiff to encourage private action and enforcement. 15 U.S.C. § 1692k(a)(3); Fla. Stat. § 559.77(2); *see also Figueroa Polanco v. Igor & Co.*, No. 18-60932, 2022 WL 198810, at *2 (S.D. Fla. Jan. 3, 2022) ("both the FDCPA and FCCPA provide for an award of reasonable attorney's fees").[3]

By so including mandatory fee shifting in the FDCPA, Congress has indicated that society has an important stake in assisting consumers who may not otherwise have the means to pursue these types of cases against debt collectors, and in rewarding those

[3] Internal footnotes, citations, and quotations are omitted, and emphasis is added, unless noted.

attorneys who assist in that pursuit. The Ninth Circuit explained:

> Generally, litigants in the United States pay their own attorneys' fees, regardless of the outcome of the proceedings. *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003). However, "[i]n order to encourage private enforcement of the law ... Congress has legislated that in certain cases prevailing parties may recover their attorneys' fees from the opposing side. When a statute provides for such fees, it is termed a 'fee shifting' statute." *Id.* The FDCPA is one such statute, providing that any debt collector who fails to comply with its provisions is liable "in the case of any successful action ... [for] the costs of the action, together with a reasonable attorney's fee as determined by the court." 15 U.S.C. § 1692k(a)(3). The FDCPA's statutory language makes an award of fees mandatory.

Camacho v. Bridgepoint Fin., Inc., 523 F.3d 973, 978 (9th Cir. 2008); *see also 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.").

These rationales hold true with respect to the Florida legislature's intent with the FCCPA, as the statute specifically directs courts to give "due consideration and great weight . . . to the interpretations of the Federal Trade Commission and the Federal Courts relating to the [FDCPA]." Fla. Stat. § 559.77(5).

Importantly, awards of reasonable attorneys' fees under statutes with fee-shifting provisions, like 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."). This is

because a rule so limiting an award of attorneys' fees would seriously undermine the mechanism that Congress chose to enforce the FDCPA. *See Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995) (recognizing that mandatory fee shifting under the FDCPA is the result of Congress choosing "a 'private attorney general' approach to assume enforcement of the FDCPA").

Accordingly, "[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." *Id.* at 653; *see also Gross v. Washington Mut. Bank*, No. 02-4135, 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.").

Paying counsel less than what the market would bear—by proportioning a fee award to the amount of damages recovered—"is inconsistent with the Congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law." *Tolentino*, 46 F.3d at 653; *see also Moton v. Nathan & Nathan, P.C.*, 297 F. App'x 930, 931-32 (11th Cir. 2008) (vacating flat fee award of $500 based on damages recovered in FDCPA action because it was an abuse of discretion not to perform a lodestar analysis for purposes of determining the award). 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. 16-104, 2016 WL 6208395, at *5 (D. Me. Oct. 24, 2016); *see also Alhassid v. Bank of Am.*, 688 F. App'x 753, 760 (11th Cir. 2017) ("[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."); *Renninger v. Phillips & Cohen Assocs. Ltd.*, No 10-5, 2010 WL 3259417, at *3 (M.D. Fla. Aug. 18, 2010) (Hernandez Covington, J.) (refusing to proportion attorneys' fees to FDCPA damages, and collecting cases in support).

II. Plaintiff is entitled to a reasonable attorneys' fee and expense award of $85,000 for class counsel's extensive work in defeating a motion to dismiss and securing excellent recoveries for Plaintiff and all class and subclass members.

The Eleventh Circuit has confirmed that a lodestar analysis is the appropriate means for determining attorneys' fee awards under the FDCPA:

> The starting point in fashioning an award of attorney's fees is to multiply the number of hours reasonably expended by a reasonable hourly rate. This "lodestar" may then be adjusted for the results obtained. Although a district court has wide discretion in performing these calculations, the court's order on attorney's fees must allow meaningful review—the district court must articulate the decisions it made, give principled reasons for those decisions, and show its calculation.

Moton, 297 F. App'x at 932.

Then, after calculating counsel's lodestar, this Court may use its discretion to fashion a reasonable fee award taking into consideration the factors originally set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974): (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 Roundtree v. Bush Ross, P.A.*, No. 14-357, 2016 WL 360721, at *2 (M.D. Fla. Jan. 28, 2016) (Whittemore, J.) (considering *Johnson* factors in awarding attorneys' fees in FDCPA class action).

A. Class counsel reasonably will have amassed a lodestar of more than $171,000 by the time this litigation concludes.

1. Class counsel devoted some 350 hours of work to prosecuting Plaintiff and the class's claims.

To start, the accompanying declaration outlines the significant work undertaken by Greenwald Davidson Radbil PLLC ("GDR") to obtain the excellent results achieved here. Those efforts included: (a) conducting an investigation into the underlying facts regarding Plaintiff's and the class's claims; (b) preparing a class action complaint; (c) researching the law pertinent to class members' claims and Defendant's potential

defenses; (d) researching and preparing Plaintiff's opposition to Defendant's motion to dismiss his claims; (e) researching and preparing Plaintiff's motion to strike Defendant's supplement to its motion to dismiss; (f) preparing for, traveling to, and attending the hearing before Magistrate Judge Wilson on Defendant's motion to dismiss and Plaintiff's related motion to strike; (g) following that hearing, researching and preparing Plaintiff's sur-reply brief in further opposition to Defendant's motion to dismiss; (h) conducting written discovery directed to Defendant regarding various merits, damages, and class-related issues; (i) researching, preparing, and conferring with Plaintiff for his answers, responses, and objections to Defendant's written discovery requests directed to him; (j) researching and preparing Plaintiff's motion for class certification and appointment of class counsel; (k) researching and preparing Plaintiff's response to Defendant's objections to Magistrate Judge McCoy's report and recommendation to deny Defendant's motion to dismiss; (l) researching and preparing Plaintiff's mediation statement; (m) conducting a net worth analysis for Defendant and preparing a class settlement demand in connection with mediation; (n) attending a full-day mediation with Plaintiff, Defendant, and mediator Jaffe; (o) following mediation, working with defense counsel and the mediator to finalize the parties' class settlement term sheet; (p) conferring repeatedly with Plaintiff and defense counsel throughout the entirety of the litigation; (q) preparing the parties' class action settlement agreement, along with the proposed class notice; (r) obtaining administration proposals and coordinating with Class-Settlement.com and defense counsel to devise and implement a class notice and settlement administration program to best serve class members; (s) researching and preparing Plaintiff's unopposed

motion for preliminary approval of the class settlement, and the proposed order accompanying the same; (t) researching and preparing the instant motion for approval of an award of attorneys' fees, costs, and litigation expenses for class counsel; (u) preparing counsel's declaration in support of Plaintiff's fee and expense motion; and (v) conferring with Class-Settlement.com to oversee class notice mailing. *See* Declaration of Jesse S. Johnson ("Johnson Decl.") at ¶ 39.

And, of course, there still remains much work to be done. GDR's attorneys still must (1) research and prepare Plaintiff's motion for final approval of the class settlement, and the proposed order accompanying the same; (2) prepare for, travel to, and attend the final fairness hearing scheduled for March 22, 2023 in Tampa; (3) confer with class and subclass members as needed to answer questions about the settlement; and (4) continue to confer with Class-Settlement.com regarding exclusion requests, settlement check mailings, and other related administration concerns. *See id.* at ¶ 40.

Class counsel accordingly have spent a total of 350.0 hours litigating this case to date[4] and, in light of the foregoing work remaining to be done to obtain final approval and distribute payments to class and subclass members, anticipate spending an additional 25 hours to see this case through its conclusion. *See id*. at ¶¶ 43-44.[5] Thus, by the time

[4] Worth noting, this tally does not include additional attorney time on this case that GDR designated as non-billable in an exercise of billing discretion. *See* Johnson Decl. at ¶ 43 n.1.

[5] Courts may properly rely on summaries of the total number of hours spent by counsel. *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

this matter concludes, class counsel expect to have spent 375 hours litigating this case—a total that they submit is eminently reasonable in this certified class action benefitting nearly 300 Florida consumers, particularly considering the extensive motion practice in this matter.

2. Courts in this district and elsewhere nationwide have approved GDR's hourly rates over the past year.

Turning to hourly rates, 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). Two of GDR's attorneys contributed significantly to the prosecution of the class's claims: partner Jesse S. Johnson led the firm's efforts at a rate of $450 per hour, and senior partner James L. Davidson billed at $500 per hour.[6]

Significantly, just last year, this Court considered a request for attorneys' fees in a similar FDCPA class settlement and approved as reasonable GDR's partner rates of $400 and $450. *Brockman v. Mankin Law Grp., P.A.*, No. 20-893, 2021 WL 913082, at *2 (M.D. Fla. Mar. 10, 2021) (Scriven, J.) ("These rates are within the range of reasonableness for class litigation in this district."). Prior to that, in 2019, Judge Moody specifically approved the same GDR partner rates for similar FDCPA class work by the firm. *Dickens v. G.C. Servs. Ltd. P'ship*, No. 16-803, 2019 WL 1771524, at *1 (M.D. Fla.

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the record."); *see also Lobatz v. U.S. W. Cellular of Cal., Inc.*, 222 F.3d 1142, 1148-49 (9th Cir. 2000).

[6] Three additional GDR attorneys also assisted here, but their time has been voluntarily designated as non-billable and thus is not a part of GDR's lodestar calculation.

Apr. 10, 2019) ("As for the billing rates, Class Counsel 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.").[7]

Since the issuance of *Brockman* and *Dickens*, GDR has increased its hourly rates by $50 each. District courts, including the Southern District of Florida, recently have approved GDR's increased partner rates of $450 and $500, and so should this Court. *See Acuna v. Medical Com. Audit, Inc.*, No. 21-81256, 2022 WL 1597814, at *2 (S.D. Fla. May 20, 2022) (approving GDR partner hourly rates of $450 and $500); *Cooper v. Investinet, LLC*, No. 21-1562, 2022 WL 1125394, at *2 (S.D. Ind. Apr. 14, 2022) (same).[8]

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[7] This Court's and Judge Moody's findings in *Brockman* and *Dickens*, respectively, are consistent with prevailing market rates for FDCPA litigation in this district. *See, e.g.*, *Hepsen v. J.C. Christensen & Assocs., Inc.*, 394 F. App'x 597, 599-600 (11th Cir. 2010) (approving $300 hourly rate in individual FDCPA action 12 years ago); *Zachloul v. Fair Debt Collection & Outsourcing*, No. 09-128, 2010 WL 1730789, at *2 (M.D. Fla. Mar. 19, 2010) (Pizzo, J.) (same); *Stone v. Nat'l Enter. Sys.*, No. 08-1523, 2009 WL 3336073, at *4 (M.D. Fla. Oct. 15, 2009) (approving $394 hourly rate, in 2009, in individual FDCPA action for attorney with 15 years of experience) (Conway, J.); *Gray v. Fla. First Fin. Grp., Inc.*, 359 F. Supp. 2d 1316, 1319 (M.D. Fla. 2005) (Bucklew, J.) (approving $325 per hour in FDCPA class action 17 years ago).

[8] The reasonableness of GDR's current hourly rates is buttressed by prior findings by district courts nationwide supporting GDR's then-current rates based upon the firm's experience and expertise in FDCPA class action litigation. *See, e.g., Newman v. Edoardo Meloni, P.A.*, No. 20-60027, 2020 WL 5269442, at *2 (S.D. Fla. Sept. 4, 2020) ("The Court therefore finds the attorneys' hourly rates [of $350 to $450] are reasonable and appropriate for the lodestar calculation."); *Riddle v. Atkins & Ogle Law Offices, LC*, No. 19-249, 2020 WL 3496470, at *2 (S.D. W. Va. June 29, 2020) ("Lead attorney Jesse S. Johnson has more than ten years of class action litigation experience and billed at $400 per hour. Senior partner James L. Davidson has sixteen years of experience and billed at $450 per hour. The defendant does not dispute these rates or the attorneys' experience and skill, and the rates are within the range of reasonableness for this district."); *Aikens v.*

At bottom, applying Mr. Johnson's and Mr. Davidson's hourly rates to their accumulated time here results in a total expected lodestar of $171,030, which includes Mr. Johnson's additional estimated time to usher the settlement through final approval. *See* Johnson Decl. at ¶¶ 45-46. Supporting the reasonableness of Plaintiff's $85,000 request is the fact that courts in this circuit also may make "adjustments" to the submitted lodestar based upon the results obtained. *Moton*, 297 F. App'x at 932. Indeed, some courts have applied multipliers to class counsel's lodestar when determining proper fee awards in class cases. *See, e.g.*, *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 696 (N.D. Ga. 2001) (approving "requested fee award [that] would be tantamount to applying a multiplier between 2.5 and 4 to the lodestar amount submitted by counsel"); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 356 (N.D. Ga. 1993) (approving fees resulting in lodestar multiplier of 1.8).

But here, class counsel do not seek any enhancement to their lodestar. Rather, Plaintiff's fee request actually amounts to a *discount*, of 50%, of class counsel's lodestar. *See* Johnson Decl. at ¶ 47.

3. Assessments beyond the lodestar calculation bolster the reasonableness of Plaintiff's fee request.

Consideration of the remaining *Johnson* factors similarly supports approval of the agreed fee award here. First, as to results (the eighth *Johnson* factor), the settlement at bar

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Malcolm Cisneros, No. 17-2462, ECF No. 76 at 16 (C.D. Cal. Jan. 2, 2020) (approving GDR's partners' hourly rates ranging from $400 to $450); *McWilliams v. Advanced Recovery Sys., Inc.*, No. 15-70, 2017 WL 2625118, at *3 (S.D. Miss. June 16, 2017) (approving $400 and $350 for partner and associate work); *Marcoux v. Susan J. Szwed, P.A.*, No. 15-93, 2017 WL 679150, at *5 (D. Me. Feb. 21, 2017) (same).

represents a resounding success for Plaintiff and the class and subclass. They have achieved recoveries likely exceeding the best possible outcome at trial for statutory damages, as the $15,000 class settlement fund exceeds the combined statutory damages caps imposed by the FDCPA and FCCPA of two percent of Defendant's balance sheet net worth (one percent for each of the FDCPA and FCCPA). *See* 15 U.S.C. § 1692k(a)(2)(B); Fla. Stat. § 559.77(2); *accord Sanders v. Jackson*, 209 F.3d 998, 1004 (7th Cir. 2000) ("net worth" under the FDCPA at § 1692k means "balance sheet or book value net worth" of assets minus liabilities).

Plus, the $8,880 subclass settlement fund provides additional compensation to those individuals in the subclass with potential actual damages stemming from out-of-pocket losses. That is, if class members made payments to Defendant in response to the collection letters at issue, they qualify for subclass membership and will take part in the subclass settlement fund in the form of $60 pro-rata shares. Had Plaintiff declined settlement and proceeded to certify a litigation class and subclass over Defendant's objection, and prevail at summary judgment or at trial, he likely could not have recovered more in statutory damages than what this settlement now provides. To be sure, as explained below, doing so could have led to a considerably smaller recovery for class and subclass members—or potentially no recovery at all.

Class members' anticipated individual recoveries—approximately $57.03 at minimum, or $117.03 for each subclass member—compare extremely favorably with other FDCPA class settlements, including settlements recently approved by this Court. *See, e.g., Brockman v. Mankin Law Grp., P.A.*, No. 20-893, 2021 WL 911265, at *2

(M.D. Fla. Mar. 10, 2021) (Scriven, J.) ($60.15 per claimant); *Claxton v. Alliance CAS, LLC*, No. 19-61002, 2020 WL 2759826, at *2 (S.D. Fla. May 27, 2020) ($15.76 per person); *Sullivan v. Marinosci Law Grp., P.C., P.A.*, No. 18-81368, 2019 WL 6709575, at *2 (S.D. Fla. Nov. 22, 2019) ($27.51 per class member); *Dickens v. GC Servs. Ltd. P'ship*, No. 16-803, 2019 WL 2280456, at *2 (M.D. Fla. May 28, 2019) (Scriven, J.) ($10 per class member); *Cobb v. Edward F. Bukaty, III, PLC*, No. 15-335, 2016 WL 4925165, at *4 (M.D. La. Sept. 14, 2016) ($52.28 each); *Bellum v. Law Offices of Frederic I. Weinberg & Assocs., P.C.*, No. 15-2460, 2016 WL 4766079, at *3 (E.D. Pa. Sept. 13, 2016) ($10.92); *Hall v. Frederick J. Hanna & Assocs., P.C.*, 2016 WL 2865081, at *3 (N.D. Ga. May 10, 2016) ($10); *Green v. Dressman Benzinger Lavelle, PSC*, No. 14-142, 2015 WL 223764, at *3 (S.D. Ohio Jan. 16, 2015) (approximately $31); *Little-King v. Hayt Hayt & Landau*, No. 11-5621, 2013 WL 4874349, at *14 (D.N.J. Sept. 10, 2013) ($7.87).

Plaintiff also obtained Defendant's commitment not to collect the challenged Countryside North assessments—a public benefit not just for the class members but also their neighbors within the Countryside North community, and one not necessarily available at trial. *See Hicks v. Client Servs., Inc.*, No. 07-61822, 2008 WL 5479111, *10 (S.D. Fla. Dec. 11, 2008) ("As this Court has previously found, the FDCPA 'specifically provide[s] for money damages as the appropriate relief,' but does not specifically provide for injunctive relief."). The degree of success here (the eighth *Johnson* factor) thus further supports the reasonableness of the $85,000 fee and expense award sought.

Second, the novelty and difficulty of the questions presented (the second *Johnson* factor) must not be taken lightly. Indeed, "[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); *Midland Funding, LLC v. Brent*, No. 08-1434, 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.").

The FCCPA is similarly complex, and the particular provision at issue here contained a knowledge component that created additional difficulty from a merits perspective. Defendant vigorously disputed any liability under either statute, as demonstrated by its motion to dismiss. *See* ECF No. 11. Defendant maintained that the disputed assessments were, in fact, allowed under Countryside North's governing documents; that even if not allowed, Plaintiff and the class members nonetheless ratified the assessments through acquiescence; that even if no ratification, Defendant was entitled to rely upon Countryside North's interpretation of its own governing documents and so Defendant was not required to conduct a pre-collection investigation of the alleged debts; and that even if the assessments were invalid, Defendant's violations of the FDCPA and FCCPA were the result of a bona fide error, which forecloses liability.

In short, this case was more complex than a typical FDCPA or FCCPA class action, and yet Plaintiff achieved his settlement success relatively early in the litigation,

before the Court could consider dueling summary judgment motions, and before the propriety of class certification (in a non-settlement context) had been decided. These risks awaited the class and subclass members, yet Plaintiff obtained more for them now than likely could have been expected at trial.

Further, even assuming class members *had* prevailed at trial, neither the FDCPA nor the FCCPA assures any *minimum* statutory damages award. Rather, in determining a class award, the jury must balance such factors as the nature of the debt collector's noncompliance, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional. *See* 15 U.S.C. § 1692k(b)(2); Fla. Stat. § 559.77(2). It follows that the jury here ultimately could have awarded the class little in the way of statutory damages, or even none at all. *See Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 683 (N.D. Cal. 2016) ("Because damages are not mandatory [in an FDCPA class action], continued litigation presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for the Class").[9]

Third, concerning the third and ninth *Johnson* factors, GDR's attorneys have earned a solid reputation through their extensive experience leading consumer protection class actions, as they have been so appointed by a host of courts throughout the country,

[9] The risk of a minimal damages award was not merely hypothetical. *See, e.g.*, *Dickens v. GC Servs. Ltd. P'ship*, 220 F. Supp. 3d 1312, 1324 (M.D. Fla. 2016) (Moody, Jr., J.) ("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. 06-1397, 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).

including this one. *See* Johnson Decl. at ¶¶ 13-20. In the *Brockman* matter, this Court recently recognized: "Because of its experience, GDR has been appointed class counsel in many class actions throughout the country, including several in this district. GDR employed that experience here in negotiating a favorable result that avoids protracted litigation, trial, and appeals." 2021 WL 913082, at *3.

And in *Roundtree v. Bush Ross, P.A.*, Judge Whittemore certified three FDCPA classes and noted in appointing GDR class counsel that the firm "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). Here, GDR drew upon this deep experience in negotiating an excellent class resolution before any further delays owing to class certification and summary judgment briefing, then potentially trial and appeals thereafter.

Fourth, GDR undertook this case on a contingency fee basis, as is customary in consumer protection class litigation. As a result, class counsel would only receive payment for their efforts in this matter if they obtained a recovery for Plaintiff and the class and thus have not received any payment for their work in this case to date. That the attorneys' fee arrangement here is contingent (the fifth and sixth *Johnson* factors) "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); *see also Ressler v. Jacobson*, 149 F.R.D. 651, 654-55 (M.D. Fla. 1992) (Nimmons, J.) ("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.").[10]

Fifth, the agreed award sought here is further justified in light of this certified class action, and the requested fees being well in line with—or even much lower than—those awarded in other recent successful FDCPA class cases (the twelfth *Johnson* factor). *See, e.g.*, *Newman*, 2020 WL 5269442, at *4 (approving $50,000 in fees and expenses); *Dickens*, 2019 WL 1771524, at *1 (awarding $270,000 in fees and expenses); *Grant v. Ocwen Loan Servicing*, No. 15-1376, 2019 WL 367648, at *9 (M.D. Fla. Jan. 30, 2019) (Howard, J.) (awarding $150,000 in fees and expenses); *Schuchardt*, 314 F.R.D. at 689-90 (awarding $52,500 in fees and expenses); *Blandina v. Midland Funding, LLC*, No. 13-11792, 2016 WL 3101270, at *8 (E.D. Pa. June 1, 2016) (awarding $245,000 in attorneys' fees and expenses); *Roundtree*, 2016 WL 360721, at *2 (awarding $170,000).

Sixth, while not a specific *Johnson* factor, the absence of objections after direct mail notice disclosing a proposed fee and expense award of $85,000 affirms the reasonableness of that award. Such a positive reaction from the class lends considerable support to Plaintiff's fee request. *See Blandina*, 2016 WL 3101270, at *8 ("[T]his Court has also considered the fact that Class Counsel took this matter on a contingency basis,

[10] Worth mentioning, GDR is a relatively small law firm with only four full-time attorneys. The amount of work the firm can handle at any given time is limited, so the time its attorneys devoted to this action over the past year necessarily curtailed its ability to accept other work (the fourth *Johnson* factor). *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1365 (S.D. Fla. 2011) ("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.").

there were no objections to the amounts requested by any potential or actual Class Members, and that through the settlement, Class Counsel has obtained for the Class members an amount approximating the maximum statutory damage award permitted.").

B. Plaintiff's request includes reimbursement of reasonable costs and litigation expenses incurred by class counsel.

Lastly, subsumed within Plaintiff's request is reimbursement of the type of costs and litigation expenses routinely charged to paying clients in the marketplace, and which therefore are properly reimbursable under Rule 23. *See, e.g.*, *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (awarding as reasonable and necessary, reimbursement for "1) meals, hotels, and transportation; 2) photocopies; 3) postage, telephone, and fax; 4) filing fees; 5) messenger and overnight delivery; 6) online legal research; 7) class action notices; 8) experts, consultants, and investigators; and 9) mediation fees"); *see also* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and *nontaxable* costs that are authorized by law or by the parties' agreement.").

GDR has incurred reimbursable costs and expenses in the total amount of $4,669.61. *See* Johnson Decl. at ¶ 49. These costs and expenses include the filing fee for the complaint ($402), travel and dining expenses associated with the hearing on Defendant's motion to dismiss ($292.61), and mediation fees ($3,975.00). *Id*. at ¶ 50. GDR also anticipates incurring additional expenses in connection with the final fairness hearing in March, including for travel to Tampa, overnight lodging, and related meals. However, these expenses—as well as others not separately itemized here, like charges for

online legal research—are not included in Plaintiff's request.

Conclusion

As a result of negotiations led by mediator Jaffe, Defendant has agreed to pay a reasonable attorneys' fee and expense award in the total amount of $85,000, which represents a substantial discount to the lodestar GDR reasonably amassed in this case to research the claims, overcome Defendant's motion to dismiss, develop the factual record, and negotiate a favorable resolution for all class and subclass members. Given the strong success of class counsel's efforts here—including outstanding recoveries for Plaintiff and the class and subclass, likely exceeding those available at trial—Plaintiff respectfully submits that this award is eminently reasonable for this certified class action.

Notably, the proposed award will not diminish class members' recoveries in any way, as it will be paid in addition to, and not *from*, the class and subclass settlement funds. *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."). Because the award is fair and reasonable, unopposed by Defendant or class members, and supported by the record and applicable law, the proposed fee and expense award should be approved under the FDCPA, the FCCPA, and Rule 23 in connection with final approval of the class settlement, after the final fairness hearing.

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Respectfully submitted,

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