**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

HEIDI L. GATHEN, on behalf of herself and others similarly situated, Plaintiff, v. CIANFRONE, NIKOLOFF, GRANT & GREENBERG, P.A., Defendant.	:	**Case No. 22-00284-CI**

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS AND LITIGATION EXPENSES

Introduction

Heidi L. Gathen ("Plaintiff") brought this class action under the Fair Debt Collection Practices Act ("FDCPA") and Florida Consumer Collection Practices Act ("FCCPA"), alleging that Cianfrone, Nikoloff, Grant & Greenberg, P.A. ("Defendant") mailed misleading debt collection communications. In addition, Plaintiff alleged that some of those communications also attempted to collect invalid, unenforceable homeowners' assessments on behalf of one of Defendant's community association clients. Following more than a year of litigation and months of settlement negotiations, the parties reached an agreement to resolve this case on behalf of two settlement classes.

Aside from changing certain of its collection practices moving forward, Defendant will create two non-reversionary class settlement funds totaling $17,560, to be distributed pro-rata to participating class members.

Overshadowing Class Members,[1] who have claims strictly under the FDCPA in connection with allegedly misleading collection letter verbiage, will receive approximately $7.42 each. On the other hand, Countryside North Class Members, who have claims under both the FDCPA and FCCPA in connection with Defendant's collection of the disputed homeowners' assessments, will receive approximately $156.94 each. Countryside North Class Members stand to receive greater individual recoveries because they asserted additional claims and had greater potential for suffering actual damages as compared to Overshadowing Class Members.

Separate from the class settlement funds, Defendant also will pay (1) individual statutory damages to Plaintiff under both the FDCPA and FCCPA; (2) the costs of distributing class notice and administrating the settlement; and (3) a reasonable award of attorneys' fees, costs, and litigation expenses in the agreed amount of $44,000, subject to this Court's approval.

In line with the Court's preliminary approval order, Class-Settlement.com—the Court-appointed settlement administrator—disseminated direct mail notice to all class members on April 17, 2023 to apprise them of this settlement and their rights under the settlement agreement. As well, Class Counsel posted to their website relevant case documents, including a copy of the settlement agreement.[2] To date, no class members have objected to the settlement or to Class Counsel's proposed attorneys' fee award. The deadline to do so is May 26, 2023.[3]

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[1] Capitalized terms have the same meaning set forth in the parties' Class Action Settlement Agreement, which Plaintiff submitted to the Court in connection with her motion for preliminary approval of the class settlement. *See* ECF No. 19.

[2] *See* www.gdrlawfirm.com/Cianfrone (last visited April 24, 2023).

[3] Plaintiff is filing this motion now pursuant to the timing set forth in this Court's preliminary approval order, and to ensure that class members have an opportunity to review the fee petition prior to the objection deadline. *See Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1252 (11th Cir. 2020) (addressing Federal Rule 23(h) and holding that "Rule 23(h)'s plain language requires a district court to sequence filings such that class counsel file and serve their attorneys'-fee motion before any objection pertaining to fees is due"). The Florida Supreme

Given the monetary and prospective benefits achieved through this settlement, Plaintiff seeks an award of attorneys' fees and reimbursement of costs and litigation expenses for Class Counsel in the total amount of $44,000. As detailed herein and in the accompanying Declaration of Jesse S. Johnson in Support of Plaintiff's Motion for Attorneys' Fees and Reimbursement of Costs and Litigation Expenses ("Johnson Decl."), this request is reasonable and supported by the record and applicable law.

Significantly, Defendant does not oppose Plaintiff's request.

Summary of the Class Settlement

This Court certified two settlement classes comprised of individuals to whom Defendant mailed debt collection communications between January 20, 2020 and January 19, 2022. *See* ECF No. 22. There are approximately 673 Overshadowing Class Members and 84 Countryside North Class Members, including Plaintiff.

Each participating Overshadowing Class Member will receive a pro-rata share of a dedicated $5,000 settlement fund, or approximately $7.42 each. Additionally, each participating Countryside North Class Member will receive a pro-rata share of a separate $12,560 settlement fund, or approximately $149.52 each. The 84 individuals who are members of both classes each will receive approximately $156.94 in total when combining their recoveries from both settlement funds. Should any settlement checks go uncashed after the administrator takes all reasonable steps to forward checks to any forwarding addresses, the remaining settlement monies will be redirected to the designated *cy pres* recipient, Bay Area Legal Services.

Court does not appear to have spoken on this issue, though Plaintiff strives for visibility to the class members.

Separate from the class funds, Defendant also will pay the costs for class notice and settlement administration, plus $2,000 in individual statutory damages to Plaintiff under 15 U.S.C. § 1692k(a)(2)(B)(i) and Fla. Stat. § 559.77(2).

As well, Defendant confirmed that it no longer utilizes the specific collection language challenged by Overshadowing Class Members: "If you dispute the amount due, we would appreciate you submitting any documentation or evidence that you have in support of your contention that the amounts due are not correct," and "Please only respond in writing by mail or facsimile."

Pertinent here, Defendant separately will pay an award of attorneys' fees, costs, and litigation expenses in the agreed amount of $44,000. The parties negotiated this figure only *after* agreeing on all other class settlement terms.

Argument

I. The requested fee award is reasonable and appropriate and should be approved.

A. Awards of attorneys' fees are mandatory in successful FDCPA and FCCPA actions.

While Defendant has agreed to pay attorneys' fees, costs, and litigation expenses in the total amount of $44,000, it is noteworthy that to encourage private action and enforcement, both the FDCPA and FCCPA mandate an award of attorneys' fees to a successful consumer-plaintiff. *See* 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").[4] By their inclusion of mandatory fee-shifting provisions in the FDCPA and FCCPA, Congress and the Florida legislature have indicated that society has a significant stake in assisting consumers who may not otherwise have

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

the means to pursue these cases, and in rewarding those attorneys who assist in pursuing them. *Accord In re Martinez*, 266 B.R. 523, 537 (Bankr. S.D. Fla. 2001), *judgment entered,* (Bankr. S.D. Fla. Aug. 22, 2001), *aff'd*, 271 B.R. 696 (S.D. Fla. 2001), *aff'd*, 311 F.3d 1272 (11th Cir. 2002) (noting that the FDCPA mandates an award of attorney's fees to fulfill Congressional intent that the statute should be enforced by debtors acting as private attorneys general).[5]

B. The Florida Supreme Court has adopted the *Johnson* factors to assess the reasonableness of a fee request in consumer protection cases.

In *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 834 (Fla. 1990), the Florida Supreme Court held that in consumer protection cases like this one the twelve factors set forth in *Johnson v. Ga. Highway Express*, 488 F.2d 714 (5th Cir. 1974), should be considered to determine a reasonable attorney's fee. 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. *Johnson*, 488 F.2d at 717-720.

Moreover, "[o]ther 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.*,

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[5] The FCCPA 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).

176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001).

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

C. The time and labor involved in this case support a finding that the agreed-upon fee request is reasonable.

The first *Johnson* factor to consider is the time and labor required of counsel—often referred to as counsel's "lodestar." Under the lodestar method, trial courts are required "to determine a lodestar figure by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." *Fla. Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1151 (Fla. 1985).

1. Class Counsel devoted 170.6 hours to prosecuting this case to date.

To date, Greenwald Davidson Radbil PLLC ("GDR") have committed more than 170 hours to performing the legal services reasonably necessary to bring this matter through preliminary settlement approval. *See* Johnson Decl. at ¶¶ 30, 33-34. This time included (a) conducting an investigation into the underlying facts concerning the FDCPA and FCCPA claims at hand; (b) researching and preparing a federal court class action complaint; (c) researching Defendant's motion to dismiss for lack of jurisdiction and conferring with defense counsel regarding re-filing the action in state court; (d) preparing the operative class action complaint before this Court; (e) preparing the parties' agreed case management order and accompanying correspondence to the Court; (f) preparing Plaintiff's first sets of interrogatories, requests for production, and requests for admission to Defendant; (g) preparing Plaintiff's objections and responses to Defendant's first sets of interrogatories and requests for production directed to Plaintiff; (h) preparing a Rule 1.310 notice of deposition to Defendant with accompanying testimony topics; (i) researching and preparing Plaintiff's class settlement demand, and engaging

in follow-up negotiations with Defendant; (j) preparing, negotiating, and revising the parties' written class settlement agreement and accompanying exhibits, including the proposed class notice; (k) obtaining bids for class settlement administration services and conferring with Defendant regarding the same; (l) preparing Plaintiff's motion for preliminary approval of the class settlement and accompanying proposed preliminary approval order; (m) coordinating with Defendant and the administrator to effectuate the Court-approved notice plan; (n) responding to class member inquiries; (o) researching and drafting the instant fee motion and counsel's declaration in support; and (p) conferring repeatedly with Plaintiff and defense counsel throughout the entirety of the litigation. *See id*. at ¶ 30.

What's more, much work remains to be done to obtain final settlement approval. 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 and attend the final fairness hearing scheduled for June 29, 2023; (3) continue to confer with class members as needed to answer questions about the settlement; and (4) continue to coordinate with Class-Settlement.com and Defendant regarding exclusion requests, settlement check mailings, and other related administration concerns. *See id.* at ¶ 35.

Class Counsel accordingly have spent a total of 170.6 hours litigating this case to date[6] 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 15 hours to see this case through its conclusion. *See id*. at ¶¶ 33-35. Thus, by the time this matter concludes, GDR

[6] 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 ¶ 33 n.1.

expects to have spent 185.6 hours litigating this case—a total that Class Counsel submit is reasonable in this certified class action benefiting hundreds of Florida consumers.

2. GDR's hourly rates are reasonable and have been approved in similar actions nationwide.

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); *see also Lizardi v. Federated Nat'l Ins. Co.*, 322 So. 3d 184, 188 (Fla. 2d DCA 2021) ("The trial court must then determine the reasonable hourly rate by looking at the prevailing market rate for attorneys of reasonably comparable skill or experience."). Moreover, though federal courts are not the arbiter of hourly rates in state court, "a trial court determining attorneys' fees in an FCCPA case should give due consideration and great weight to the hourly rates federal courts have found to be reasonable in FDCPA cases." *Dish Network Serv. L.L.C. v. Myers*, 87 So.3d 72, 78 (Fla. 2nd DCA 2012).

Here, James L. Davidson and Jesse S. Johnson—both partners at GDR—billed on this matter at respective rates of $500 and $450 per hour.[7] Johnson Decl. at ¶ 36.[8] These rates are in line with rates specifically approved for GDR in consumer protection class actions, including as recently as this year. *See*, *e.g.*, *Denning v. Mankin Law Grp., P.A.*, No. 21-2822, 2023 WL 2655187, at *4 (M.D. Fla. Feb. 15, 2023) (recommending approval of GDR hourly rates of $450 and $500), *report and recommendation adopted,* No. 21-2822, 2023 WL 2655189 (M.D. Fla. Mar. 22, 2023); *Sinkfield v. Persolve Recoveries, LLC*, No. 21-80338, ECF No. 81 (S.D. Fla.

[7] The class action fee agreement between Plaintiff and Class Counsel states that GDR's senior partners bill at a rate of $500 per hour. *See* Johnson Decl. at ¶ 36.

[8] 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.

Dec. 21, 2022) (same); *Acuna v. Medical Com. Audit, Inc.*, No. 21-81256, 2022 WL 1222693, at *2-3 (S.D. Fla. Apr. 26, 2022) (same); *Cooper v. Investinet, LLC*, No. 21-1562, 2022 WL 1125394, at *2 (S.D. Ind. Apr. 14, 2022) (approving GDR hourly rates ranging from $400 to $500).[9]

Furthermore, these rates are consistent with prevailing market rates Florida courts previously found to be reasonable. *See, e.g.*, *Universal Prop. & Cas. Ins. Co. v. Celestrin*, 316 So. 3d 752, 753 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 26, 2021) ($120,570 lodestar, with 222.8 hours, equal to $541 per hour, modestly cutting total billed hours thereafter); *Parrot, Inc. v. Nicestuff Distrib. Int'l, Inc.*, No. 06-61231, 2010 WL 680948, at *8 (S.D. Fla. Feb. 24, 2010) ("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. 03-61063, 2009 WL 9054828, at *7-8 (S.D. Fla. Jan. 20, 2009) (rates ranging from $400 for associates to $600 for a senior partner were reasonable in a fee-shifting case under the Driver's Privacy Protection Act).[10]

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[9] *See also Brockman v. Mankin Law Grp., P.A.*, No. 20-893, 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); *Riddle v. Atkins & Ogle Law Offices, LC*, No. 19-249, 2020 WL 3496470, at *2 (S.D. W. Va. June 29, 2020) (same); *Aikens v. Malcolm Cisneros*, No. 17-2462, ECF No. 76 at 16 (C.D. Cal. Jan. 2, 2020) (same); *Dickens v. G.C. Servs. Ltd. P'ship*, No. 16-803, 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.").

[10] *See also CC-Aventura, Inc. v. Weitz Co., LLC*, No. 06-21598, 2008 WL 276057, at *2 (S.D. Fla. Jan. 31, 2008) (holding as reasonable eighth-year associate hourly rate of $400); *Topp, Inc. v. Uniden Am. Corp.*, No. 05-21698, 2007 WL 2155604, at *2-3 (S.D. Fla. July 25, 2007) (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. 17-137, 2018 WL 4802139, at *6 (C.D. Cal. Oct. 2, 2018) (hourly rates ranging from $450 to $495 in FDCPA case); *De Amaral v. Goldsmith & Hull*, No. 12-3580, 2014 WL 1309954, at *3 (N.D. Cal. Apr. 1, 2014)

Applying Mr. Johnson's and Mr. Davidson's hourly rates to their accumulated time here results in a total expected lodestar of $84,550, which includes Mr. Johnson's additional estimated time to usher the settlement through final approval. *See* Johnson Decl. at ¶¶ 36-37. But here, Plaintiff's fee request of $44,000—inclusive of costs and litigation expenses, outlined below—amounts to a substantial discount of more than 47% compared to counsel's lodestar. *See id.* at ¶ 38.

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

Turning next to the third and ninth *Johnson* factors, Class Counsel have significant experience litigating, and resolving, consumer protection class actions. *See id.* at ¶¶ 10-28. Indeed, multiple district courts have commented on GDR's useful knowledge and experience in connection with class action litigation. For example, 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).

Judge Rodney Smith of the Southern District of Florida held the same when approving an FDCPA class action settlement in *Lloyd v. James E. Albertelli, P.A.*: "Additionally, GDR is an experienced firm that has successfully litigated many complex consumer class actions. Because of its experience, GDR has been appointed class counsel in many class actions throughout the country, including several in this District." No. 20-60300, 2020 WL 7295767, at *2 (S.D. Fla. Dec. 10, 2020).

(rates of $450 per hour for a partner and $350 for an associate were reasonable in FDCPA case); *Rodriguez v. Pressler & Pressler, L.L.P.*, CV-06-5103, 2009 WL 689056, at *1 (E.D.N.Y. Mar. 16, 2009) (hourly rates of $450 and $300 in FDCPA case).

And, more recently, Judge Mary S. Scriven of the Middle District of Florida 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." *Brockman*, 2021 WL 913082, at *3.

Class Counsel utilized their skill and experience to pursue this case and resolve it in an efficient manner, resulting in a settlement that not only puts thousands of dollars in consumers' pockets but also provides meaningful changes to Defendant's collection practices. The results-driven performance here favors Plaintiff's fee request. *See Acuna*, 2022 WL 1222693, at *4 ("As to the ninth factor, GDR is an experienced firm that has successfully litigated many complex consumer class actions.").

E. Class Counsel assumed substantial risk to pursue this litigation on a contingent fee basis.

Per the fourth and sixth *Johnson* factors, 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."); *see also Gross v. Wash. 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."). In *Johnson*, the federal Fifth Circuit Court of Appeals 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 federal 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.”). And as Judge King in the Southern District of Florida wrote:

> 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.”).

Here, Class Counsel undertook this litigation on a contingency, devoting well over a year to this matter with no guarantee that they would be paid for their efforts. What’s more, GDR is a relatively small law firm, with only four full-time attorneys, two of whom devoted substantial time to this case. The fourth and sixth *Johnson* factors correspondingly support the instant fee request. *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.”).

F. The novelty and difficulty of the questions in this case, together with the results obtained, favor approval of the fee request.

The second and eighth *Johnson* factors also compel approval. Defendant put up a substantial defense of this case, including moving to dismiss Plaintiff's initial complaint in federal court, resulting in the re-filing of this action before this Court. Absent settlement, Defendant likely would have seen this case through trial, and appeal. *See*, *e.g.*, *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.").

Indeed, the parties disagreed about the merits, as Defendant vigorously disputed any liability under either the FDCPA or FCCPA. *See* ECF Nos. 6-8. Defendant maintained that its collection language complied with applicable law, and that the disputed Countryside North assessments were, in fact, allowed under the association's governing documents. Alternatively, even if the assessments were not allowed, Defendant argued an entitlement to rely upon Countryside North's interpretation of its own governing documents, meaning Defendant was not required to conduct a pre-collection investigation of the alleged debts. *See* ECF No. 6 at 12. Further, Defendant also argued that even if the assessments were invalid, its violations of the FDCPA and FCCPA were the result of a bona fide error, which forecloses liability. *Id.*

This case was more complex than a typical FDCPA or FCCPA class action, and yet Plaintiff achieved her 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 members, yet Plaintiff

obtained more for them now than likely could have been expected at trial in terms of statutory damages.

Additionally, 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").[11]

At bottom, there was uncertainty about the ultimate outcome of this litigation. *See, e.g.*, *Bennett v. Behring Corp.*, 96 F.R.D. 343, 349-50 (S.D. Fla. 1982), *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"). But in the face of these significant risks, Plaintiff obtained a settlement that guarantees substantial financial recoveries and also requires meaningful changes to Defendant's collection practices that will not just

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[11] 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) ("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).

benefit Class Members, but also any consumers who may become the subjects of Defendant's collection efforts in the future.

The settlement at bar represents an excellent result for Plaintiff and the Class Members. They have achieved recoveries likely exceeding the best possible outcome at trial for statutory damages, as the $5,000 Overshadowing fund and $12,560 Countryside North fund exceed the statutory damages caps imposed by the FDCPA and FCCPA of one percent of Defendant's balance sheet net worth. *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). This successful resolution supports the requested fee and expense award. *See, e.g.*, *Shoemaker v. Bass & Moglowsky*, No. 19-316, 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.").

Moreover, had Plaintiff declined settlement and proceeded to certify litigation classes over Defendant's objection, then prevailed at summary judgment or at trial, she likely could not have recovered more in statutory damages than what this settlement now provides. To be sure, as explained above, doing so could have led to a considerably smaller recovery for class members—or potentially no recovery at all.

Class Members' anticipated individual recoveries here—approximately $7.42 for Overshadowing Class Members, or $156.94 for Countryside North Class Members—compare favorably with other FDCPA and FCCPA class settlements. *See, e.g.*, *Denning*, 2023 WL

2655189, at *2 (approving class settlement under FDCPA and FCCPA resulting in anticipated individual recoveries of between $57 and $117); *Brockman v. Mankin Law Grp., P.A.*, No. 20-893, 2021 WL 911265, at *2 (M.D. Fla. Mar. 10, 2021) ($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) ($10 per class member); *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 each); *Hall v. Frederick J. Hanna & Assocs., P.C.*, 2016 WL 2865081, at *3 (N.D. Ga. May 10, 2016) ($10 each); *Green v. Dressman Benzinger Lavelle, PSC*, No. 14-142, 2015 WL 223764, at *3 (S.D. Ohio Jan. 16, 2015) (approximately $31 each); *Little-King v. Hayt Hayt & Landau*, No. 11-5621, 2013 WL 4874349, at *14 (D.N.J. Sept. 10, 2013) ($7.87 each).

The results obtained here—the eighth *Johnson* factor—thus support the reasonableness of the $44,000 fee and expense award sought.

G. Fee awards in similar cases provide additional support for Plaintiff's request.

Courts also analyze whether the requested fee award "comports with customary fee awards in similar cases." *Gevaerts v. T.D. Bank*, No. 14-20744, 2015 WL 6751061, at *13 (S.D. Fla. Nov. 11, 2015). Plaintiff's request here falls well in line with fee awards approved in other similar class actions. *See, e.g.*, *Denning*, 2023 WL 2655187, at *4 (awarding $85,000 in fees and costs in class action under the FDCPA and FCCPA); *Newman*, 2020 WL 5269442, at *4 (approving $50,000 in fees and expenses in FDCPA class action); *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) (awarding $150,000 in fees and expenses);

Schuchardt, 314 F.R.D. at 689-90 (awarding $52,500 in fees and expenses in FDCPA class action); *McWilliams*, 2017 WL 2625118, at *3 (awarding attorneys' fees of $116,562.50 and expenses of $1,782.55 in FDCPA class action); *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 in fees and expenses).[12] Accordingly, the twelfth *Johnson* factor favors approval.

H. That no class member has objected to the requested fee and expense award to date further supports its approval.

While not a recognized *Johnson* factor, courts also look to the reaction of class members in considering the reasonableness of a proposed fee and expense award. Significantly, to date, no Class Member has objected to any aspect of the settlement, including the proposed fee and expense award. The absence of objections strongly indicates that the requested attorneys' fees and expenses are fair and reasonable and should be approved. *See Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006) ("The lack of significant objection from the Class supports the reasonableness of the fee request."); *In re Rent–Way Sec. Litig.*, 305 F. Supp. 2d 491, 514 (W.D. Pa. 2003) ("The absence of substantial objections by other class members to the fee application supports the reasonableness of Lead Counsel's request.").

I. The parties negotiated the fee and expense award only after reaching agreement on the class settlement terms.

It is worth noting that the parties agreed upon the proposed fee award *after* reaching agreement on all other class settlement terms. *Accord Bragg v. Bill Heard Chevrolet, Inc.*, No.

[12] *See also 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 v. Nationwide Credit, Inc.*, 314 F.R.D. 141, 164 (E.D. Pa. 2016) (awarding $125,000 in attorneys' fees and expenses in FDCPA class action); *Donnelly v. EquityExperts.org, LLC*, No. 13-10017, 2015 WL 249522, at *2 (E.D. Mich. Jan. 14, 2015) (fees of $90,000 and expenses of $5,947.58 in FDCPA class action).

11-666, 2007 WL 2781105, at *5 (M.D. Fla. Aug, 28, 2007) ("The Class Settlement was bifurcated to address and finalize the terms of the Class recovery, prior to negotiating and resolving fees and costs."). This progress of negotiations further supports the reasonableness of the fee request. *See, e.g.*, *Galvez v. Touch-Tel U.S.A.*, No. 08-5642, 2013 WL 12238943, at *2 (C.D. Cal. Oct. 9, 2013) ("Furthermore, the parties negotiated the attorneys' fees and costs provision with the assistance of an experienced mediator appointed by the Ninth Circuit, Mr. Liacouras, and reached their result after agreeing on the substantive terms of the class settlement.").

And, importantly, Defendant has agreed to pay any fee and expense award separately from the funds for Class Members. Thus, the fee and expense award will not diminish Class Members' recoveries. *See Good*, 314 F.R.D. at 162 ("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.").

II. Class Counsel's costs and litigation expenses are reasonable and appropriate for reimbursement.

Lastly, Class Counsel have incurred $891.45 in costs and litigation expenses, including filing fees, summons fees, and costs for service of process on Defendant. *See* Johnson Decl. at ¶¶ 40-41. The categories of expenses for which Class Counsel seek reimbursement are the type of expenses routinely charged to paying clients in the marketplace and, therefore, should be reimbursed under 15 U.S.C. § 1692k(a)(3) and Fla Stat. § 559.77(2). *Accord Behrens v. Wometco Enters., Inc.,* 118 F.R.D. 534, 549 (S.D. Fla. 1988), *aff'd,* 899 F.2d 21 (11th Cir. 1990) (awarding as reasonable and necessary, reimbursement for "travel, depositions, filing fees,

postage, telephone, and copying").[13] Plaintiff seeks reimbursement of these costs and expenses as part of the $44,000 fee and expense award he seeks for Class Counsel.

Conclusion

Plaintiff respectfully requests that this Court enter an order awarding $44,000 in total in attorneys' fees, costs, and litigation expenses. As noted, Defendant does not oppose this award, nor do any Class Members to date.

Dated: April 26, 2023

Respectfully submitted,

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Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2023, I filed a copy of the foregoing with the Court through the Florida Courts E-Filing Portal, which provides electronic notice to all counsel of record.

/s/ Jesse S. Johnson
Jesse S. Johnson

[13] Of note, Class Counsel do not seek separate reimbursement for photocopies, telephone services, or online legal research fees. Rather, those additional costs are subsumed within the total fee and expense request of $44,000.