UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FRANDLEY LOUIS, on behalf of herself and others similarly situated, Plaintiff, v. BCG EQUITIES, LLC, Defendant.	**Case No. 24-61084-CV-DIMITROULEAS**

PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF AN AWARD OF ATTORNEYS' FEES, COSTS, AND LITIGATION EXPENSES

Introduction

Frandley Louis ("Plaintiff") brought this class action under the Fair Debt Collection Practices Act ("FDCPA") for BCG Equities, LLC's ("Defendant") pursuit of debt collection efforts without being registered as a consumer collection agency with the Office of Financial Regulation of the Florida Financial Services Commission. Plaintiff alleged, in short, that Defendant filed consumer collection lawsuits throughout the state of Florida at a time when it was not permitted to do so, thus violating several provisions of the FDCPA.

Defendant denies any wrongdoing or violations of the law, but the parties nonetheless reached an efficient and orderly resolution guaranteeing more than five dozen class members substantial monetary and injunctive relief. Plaintiff set out to recover money for class members and to change Defendant's collection practices for the better, and through the settlement now before this Court, she has achieved both, while avoiding the risks and delays associated with discovery, dispositive motion practice, and trial.

For the benefit of the class, Defendant will establish a $6,500 non-reversionary settlement fund that will compensate participating class members beyond the statutory damages cap imposed by the FDCPA. This amounts to $100 per class member, assuming full participation.[1] Defendant also separately will pay Plaintiff $1,000 in individual statutory damages—as the FDCPA specifically allows—plus all costs of distributing class notice and administering the settlement.

What's more, Defendant separately will pay an award of attorneys' fees, costs, and litigation expenses for class counsel. The parties separately negotiated this award in the amount of $37,000, though it remains subject to this Court's approval as well as final settlement approval. Also important, in addition to the class's financial relief, Defendant confirmed it is no longer

[1] The deadline for class members to exclude themselves is November 25, 2024. ECF No. 13.

pursuing consumer collection lawsuits in Florida without registering as a consumer collection agency with the state—a prospective change in Defendant's business practices that will benefit consumers for years to come.

Following this Court's preliminary approval of the settlement, Class-Settlement.com—the court-appointed settlement administrator—distributed notice to potential class members by direct mail, using their names and addresses from Defendant's records. That notice included a description of the terms of the settlement, including that Plaintiff would seek an award of attorneys' fees, costs, and expenses of no more than $45,000 in total. Thus far, no class member has objected to any aspect of the settlement, including the proposed fee and expense award.[2] 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.

In light of the excellent results obtained and lack of any opposition to date, Plaintiff now seeks approval for an award of attorneys' fees, costs, and litigation expenses for class counsel in the total agreed amount of $37,000. As detailed below and in the accompanying declarations of Jesse S. Johnson and Matthew D. Bavaro, attached as Exhibit A and Exhibit B, respectively, the fee and expense request is reasonable and well supported by the record and applicable Eleventh Circuit law.

Significantly, Defendant does not oppose this relief.

Class Settlement Summary

Defendant will create a non-reversionary class settlement fund of $6,500 for the benefit of up to 65 individuals against whom it filed a collection action in a Florida court. Those class members who do not exclude themselves will receive a pro-rata share of the settlement fund of

[2] The deadline to object is November 25, 2024. ECF No. 13.

$100 each, assuming full participation. The settlement fund exceeds the FDCPA's cap on statutory damages of one percent of Defendant's book value net worth. And should any settlement checks remain uncashed after their void date, the parties will redirect any remaining settlement proceeds to Legal Aid Society of Palm Beach County, the Court-approved *cy pres* recipient. None of the funds will revert to Defendant.

Separate and apart from the settlement fund, Defendant will pay $1,000 in individual damages to Plaintiff—the most to which she is entitled under 15 U.S.C. § 1692k(a)(2)(A). Defendant also separately paid the costs of class notice and will pay any remaining costs for settlement administration.

Importantly, Defendant has confirmed in writing that it no longer files, and will continue not to file, lawsuits to collect consumer debt in the state of Florida without first registering as a consumer collection agency with the State of Florida Office of Financial Regulation. This represents a significant change in its collection practices in direct response to the class claims resolved here—and one which was not necessarily available at trial.

Finally, Defendant also will pay—separate and apart from the class settlement fund and Plaintiff's individual award—class counsel's attorneys' fees, costs, and litigation expenses, in the agreed amount of $37,000, subject to the Court's approval. The parties negotiated this amount *after* determining all other class settlement terms. To be sure, the parties did not reach an agreement on a proposed fee and expense award until earlier today—long after signing their settlement agreement, and weeks after this Court's preliminary approval of the same.

Legal Standard

The Eleventh Circuit has confirmed that a lodestar analysis is the appropriate means for determining awards of attorneys' fees 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 v. Nathan & Nathan, P.C., 297 F. App'x 930, 932 (11th Cir. 2008).[3]

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) (considering *Johnson* factors in awarding attorneys' fees in FDCPA class action).

Further, courts also consider additional factors unique to the case. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) (King, J.). This includes "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

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

prosecuting a class action." *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (Middlebrooks, J.).

Argument

I. The FDCPA mandates awards of attorneys' fees to prevailing consumer-plaintiffs, and such awards need not be proportional to the plaintiffs' recoveries.

To encourage private action and enforcement, the FDCPA mandates an award of attorneys' fees to a successful consumer-plaintiff. 15 U.S.C. § 1692k(a)(3); *see also Dauval v. Preferred Collection & Mgmt. Servs., Inc.*, No. 11-2269, 2013 WL 12159442, at *1 (M.D. Fla. April 15, 2003) ("Subsection 1692k(a)(3) 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 including mandatory fee shifting in the statute, 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 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.").

Importantly, awards of reasonable attorneys' fees under federal 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 limiting an award of attorneys' fees in such a manner 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").

So, "[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. 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.*; *see also Moton*, 297 F. App'x at 931-32 (vacating $500 flat-fee award based on damages recovered in FDCPA action because it was an abuse of discretion not to perform a lodestar analysis for purposes of determining 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 Renninger v. Phillips & Cohen Assocs. Ltd.*, No. 10-5, 2010 WL 3259417, at *3 (M.D. Fla. Aug. 18, 2010) (refusing to proportion attorneys' fees to FDCPA damages and collecting cases in support).

II. Plaintiff's counsel are entitled to a reasonable attorneys' fee and expense award of $37,000 for their work in securing excellent monetary and injunctive recoveries for the class.

A. Plaintiff's counsel reasonably will have amassed a lodestar of more than $43,000 by the time this matter concludes.

To begin, the accompanying declarations from Plaintiff's counsel outline the work undertaken by both Greenwald Davidson Radbil PLLC ("GDR") and Loan Lawyers to obtain the excellent results achieved here. For example, GDR's 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) conducting a net worth analysis for Defendant and negotiating the parameters of the class settlement; (e) conferring repeatedly with Plaintiff and defense counsel throughout the litigation; (f) preparing the parties' class action settlement agreement, along with the proposed class notice; (g) obtaining an administration proposal 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; (h) researching and preparing Plaintiff's unopposed motion for preliminary approval of the class settlement, and the proposed order

accompanying the same; (i) researching and preparing the instant motion for approval of an award of attorneys' fees, costs, and litigation expenses, and the proposed order accompanying it; (j) preparing counsel's declaration in support of Plaintiff's fee and expense request; and (k) conferring with Class-Settlement.com to oversee notice mailing. *See* Ex. A at ¶ 45.

In doing so, GDR's attorneys collectively have billed 57.4 hours thus far, performing legal services reasonably necessary to litigate this matter. *Id.* at ¶¶ 45-49.[4] The undersigned served as lead attorney and performed most of this work himself, while two additional attorneys assisted with legal and briefing strategy. *Id.* at ¶¶ 26, 49. Worth noting, this tally does *not* include several more hours of attorney time that GDR voluntarily zeroed out as non-billable in an exercise of billing discretion. *See id.* at ¶ 50.

And GDR anticipates spending approximately 20 more hours of billable time to prepare Plaintiff's final approval motion and reply in support; prepare for and attend the final fairness hearing in Ft. Lauderdale in January; continue coordinating class notice and settlement administration efforts with Class-Settlement.com and Defendant's counsel; respond to class member inquiries; and otherwise bring this matter to an orderly conclusion. *See id.* at ¶¶ 46, 51. As a result, GDR will have spent 77.4 hours litigating this case by the time it concludes.

In completing this work, the undersigned billed at $500 per hour, and senior partners James Davidson and Michael L. Greenwald each billed at $550 per hour. Significantly, this Court recently approved GDR's hourly rates of $450 and $500—just $50 less for partners and senior partners, respectively, two and a half years ago—in similar FDCPA class litigation. *Acuna v. Medical Com.*

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

Audit, Inc., No. 21-81256, 2022 WL 1597814, at *2 (S.D. Fla. May 20, 2022) (Dimitrouleas, J.). As well, other courts in this District have found GDR's rates to be reasonable in connection with FDCPA fee awards. *See Sinkfield v. Persolve Recoveries, LLC*, No. 21-80338, 2022 WL 17835799, at *3 (S.D. Fla. Dec. 21, 2022) (Reinhart, M.J.) (approving rates of between $400/hour and $500/hour nearly two years ago), *report and recommendation adopted*, No. 21-80338, 2023 WL 2891237 (S.D. Fla. Jan. 5, 2023) (Altman, J.); *Lloyd v. James E. Albertelli, P.A.*, No. 20-60300, 2020 WL 7295767, at *2 (S.D. Fla. Dec. 10, 2020) (approving GDR rates of $400/hour and $450/hour nearly four years ago) (Smith, J.); *Newman v. Eduardo Meloni, P.A.*, No. 20-60027, 2020 WL 5269442, at *2 (S.D. Fla. Sept. 4, 2020) (Ungaro, J.) (approving GDR rates between $350/hour and $450/hour over four years ago).[5]

Worth noting, GDR's rates are consistent with prevailing market rates previously found to be reasonable by this Court and others nationwide. *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. 03-61063, 2009 WL 9054828, at *7-8 (S.D. Fla. Jan. 20, 2009) (Martinez, J.)

[5] District courts throughout the country likewise find GDR's rates reasonable for similar class litigation. *See, e.g.*, *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); *Brockman v. Mankin Law Group, 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); *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.").

(rates ranging from $400 for associates to $600 for a senior partner were reasonable, 15 years ago, in a fee-shifting case under the Driver's Privacy Protection Act).[6]

Furthermore, Matthew D. Bavaro of Loan Lawyers provided valuable contributions here on behalf of Plaintiff and the settlement class. *See* Ex. B at ¶¶ 15-16. His efforts yielded an additional 4.5 hours of attorney time so far, at an hourly rate of $625. Like GDR's rates, Mr. Bavaro's hourly rate is reasonable for FDCPA class litigation in this circuit considering his experience and expertise. *See, e.g., Briggins v. Elwood TRI, Inc.*, 3 F. Supp. 3d 1277, 1296 (N.D. Ala. Mar. 11, 2014) (over 10 years ago, finding reasonable hourly rates of between $200 and $625 for attorneys in FLSA action).

Multiplying each attorney's hourly rate by the number of hours he committed to this case yields a lodestar to date of $31,907.50. *See* Ex. A at ¶ 53; Ex. B at ¶ 18. And tallying Mr. Johnson's additional anticipated time of 20 hours, multiplied by his rate of $500 per hour, adds $10,000 more in expected lodestar. *Id.* at ¶¶ 51-53. Plus, another two expected hours from Mr. Bavaro, at a rate

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[6] *See also Topp, Inc. v. Uniden Am. Corp.*, No. 05-21698, 2007 WL 2155604, at *2-3 (S.D. Fla. July 25, 2007) (Simonton, M.J.) (holding as reasonable attorney hourly rate of $551); *accord Salazar v. Midwest Servicing Grp., Inc.*, No. 17-137, 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. 10-1899, 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 to be reasonable in FDCPA case); *Hull v. Owen Cnty. State Bank*, No. 11-1303, 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."); *Lowther v. A.K. Steel Corp.*, No. 11-877, 2012 WL 6676131, at *5 (S.D. Ohio Dec. 21, 2012) (employing a lodestar cross-check over a decade ago, 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.*, 06-5103, 2009 WL 689056, at *1 (E.D.N.Y. Mar. 16, 2009) (approving hourly rate of $450 and $300 in FDCPA case, over 15 years ago).

of $625, adds another $1,250. Ex. B at ¶ 17. So, combining the time incurred with the additional time anticipated thus results in a total anticipated lodestar of $43,157.50 for Plaintiff's counsel.[7]

Plaintiff submits that this estimation is perfectly reasonable for the significant work performed by counsel to obtain the great results of this settlement for 65 potential class members. This is particularly true considering that GDR voluntarily reduced its lodestar by zeroing out several time entries, including one timekeeper, prior to Plaintiff making this request. *See id.* at ¶ 50; *see also Reade-Alvarez v. Eltman, Eltman, & Cooper, P.C.*, No. 04-2195, 2006 WL 3681138, at *8 (E.D.N.Y. Dec. 11, 2006) ("Because the proposed fee of $50,000 is actually lower than the lodestar, that proposed amount is justifiable.").

Supporting the reasonableness of Plaintiff's $37,000 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; *see also infra* Argument, Section II.B. 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).

[7] Plaintiff is filing this motion, prior to the objection deadline, seeking a total fee award that includes estimations for work remaining to be done, so that class members may evaluate her fee petition in its entirety when assessing their potential courses of action. *See Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1252 (11th Cir. 2020) ("We hold 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.") (emphasis in original).

But here, Plaintiff's counsel do not seek any enhancement to their lodestar but rather a *discount*, of more than 14%, not including the voluntary reductions in attorney billables prior to undertaking GDR's lodestar calculation. *See* Ex. A at ¶ 54.

B. Several *Johnson* factors further support the reasonable of Plaintiff's fee request.

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

A review of many of the *Johnson* factors confirms the reasonableness of the attorneys' fees requested here. For example, as to 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. 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.").

Here, the parties disagreed about the merits of the claims, 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, then prevail at summary judgment, or at 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 permissive rather than 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 the Class. In light of the risks and costs of continued litigation, the immediate reward to Class Members is preferable.").

These risks balanced against the meaningful financial compensation and prospective relief obtained for the class—under GDR's guidance—support the reasonableness of the requested fee award.

2. Counsel's skill, experience, and reputation all favor approval of the fee award.

Turning to the third and ninth *Johnson* factors, counsel's significant experience litigating, and resolving, consumer protection class actions has earned them a solid reputation in this field. To be sure, GDR has been appointed class counsel dozens of times, with many district courts complimenting GDR's efforts on behalf of classes nationwide. *See* Ex. A at ¶¶ 13-25. And Mr. Bavaro brings 25 years of consumer protection and debtors' rights experience, having participated in over 200 trials. Ex. B. at ¶¶ 12-13. Counsel relied upon their extensive experience and specialized skill set to navigate this case efficiently to settlement, resulting in meaningful cash relief beyond applicable statutory damages limits, plus a change in Defendant's collections practices. This success strongly favors the fee request. *See In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 14-2541, 2017 WL 6040065, at *10 (N.D. Cal. Dec. 6, 2017) ("class counsel's efficiency should be considered favorably in evaluating the reasonableness of the fee request"); *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. 02-4135, 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.").

3. Counsel assumed substantial risk to pursue this litigation on a contingent fee.

Per the sixth *Johnson* factor, rewarding attorneys in class actions is important because without 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, Plaintiff's counsel undertook this litigation on a contingent fee. 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.").[8]

4. Under GDR's direction, Plaintiff obtained more for the class than applicable statutory damages limits would have allowed at trial.

The eighth *Johnson* factor also compels approval of the requested fee award. "The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award." *Graham v. Capital One Bank (USA), N.A.*, No. 13-743, 2014 WL 12579806, at *5 (C.D. Cal. Dec. 8, 2014). Here, the settlement provides benefits to Plaintiff and absent class members—and even the public at large—that could not necessarily have been achieved, even assuming trial victory.

Defendant will create a non-reversionary settlement fund of $6,500 for the benefit of the 65 members of the class, providing each class member $100, assuming full participation. This fund exceeds the statutory damages allowed under the FDCPA, which are capped by law at one percent of Defendant's balance sheet net worth. *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); *Sanders v. Jackson*, 209 F.3d 998, 1004 (7th Cir. 2000) ("net worth" within meaning of § 1692k means "balance sheet or book value net worth" of assets minus liabilities). The class accordingly will do better by this settlement, in terms of statutory damages, than had they prevailed at trial. Plus, the settlement provides immediate cash relief, whereas any hypothetical trial recovery would likely

[8] Worth noting, as GDR employs only four litigators, class counsel 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 as well. *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.").

take years to collect given the inevitable appeals that would follow.

Of course, had Plaintiff pressed forward to trial, class damages were never guaranteed in the first place. In other words, the risk of a minimal damages award here 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). Instead, through settlement, Plaintiff has secured $100 per class member as well as a change in the very collection practices she targeted through this lawsuit—prospective relief for class members and Florida consumers alike.

Also significant is the change in Defendant's business practices resulting from the parties' agreement, which serves to benefit all Florida consumers in the future. *See Berg v. Merchs. Ass'n Collection Div., Inc.*, 586 F. Supp. 2d 1336, 1346 (S.D. Fla. 2008) (Dimitrouleas, J.) ("Count III of the Plaintiff's Complaint seeks injunctive relief under both the FCCPA and the FDCPA. Defendant is correct that the FDCPA does not authorize injunctive relief to private litigants.").

Accordingly, the settlement at bar—against the backdrop of the limitations imposed by the FDCPA—constitutes an excellent result for Plaintiff and all class members. This success supports the requested fee 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.").[9]

5. Awards in similar cases support the reasonableness of Plaintiff's fee 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) (Rosenberg, J.). Plaintiff's request here comports with the fee and expense award of $35,000 this Court approved in *Acuna* two years ago in connection with an FDCPA settlement. 2022 WL 1597814, at *3. And in *Sinkfield*, 2023 WL 2891237, at *1, Judge Altman approved an FDCPA class fee and expense award of $70,000 in total.

What's more, other courts in this district and around the country have approved FDCPA class fee awards well in line with the amount Plaintiff seeks here. *See, e.g.*, *Denning v. Mankin L. Grp., P.A.*, No. 21-2822, 2023 WL 2655187, at *9 (M.D. Fla. Feb. 15, 2023) (awarding $85,000 in fees and expenses), *report and recommendation adopted*, No. 21-2822, 2023 WL 2655189 (M.D. Fla. Mar. 22, 2023), and *report and recommendation adopted*, No. 21-2822, 2023 WL 11877831 (M.D. Fla. Apr. 24, 2023); *Newman*, 2020 WL 5269442, at *4 (approving $50,000 in fees and expenses); *Claxton v. Alliance CAS, LLC*, No. 19-61002, 2020 WL 2759826, at *3 (S.D. Fla. May 27, 2020) (Altman, J.) (awarding $38,500 in attorneys' fees and expenses); *Dickens*, 2019 WL 1771524, at *1 (awarding $270,000 in fees and expenses); *Fenderson v. Frederick J. Hanna & Assocs., P.C.*, No. 15-964, ECF No. 57 at 5 (N.D. Ga. Jan. 17, 2017) (awarding fees and expenses of $45,000); *Schuchardt*, 314 F.R.D. at 689-90 (awarding $52,500 in fees and expenses);

[9] Importantly, Defendant will pay the fee and expense award separately from the settlement fund for class members, so the requested fees will not diminish class members' recoveries in any way. *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.").

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); *Gonzalez v. Dynamic Recovery Sols., LLC*, Nos. 14-24502, 14-20933, 2015 WL 738329, at *5 (S.D. Fla. Feb. 23, 2015) (Bloom, J.) (awarding $65,000).

6. The absence of objections confirms the reasonableness of the award.

The lack of objections from Defendant, class members, or governmental agencies also weighs heavily in favor of Plaintiff's fee request. The class notice specifically apprised absent class members that Plaintiff's counsel would seek an award of attorneys' fees, costs, and litigation expenses of up to $45,000 in total. Meanwhile, Plaintiff here seeks much less—only $37,000 in total, and with agreement from Defendant. To date, no class member has objected to any portion of the settlement, and "[t]he absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable." *Koyle v. Level 3 Commnc'ns, Inc.*, No. 01-286, 2011 WL 13227841, at *3 (D. Idaho June 23, 2011).

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

Finally, subsumed within Plaintiff's agreed request is reimbursement of the type of reasonable costs and litigation expenses routinely charged to paying clients in the marketplace and, therefore, properly reimbursable under the FDCPA and Rule 23. *See* 15 U.S.C. § 1692k(a)(3); *see also 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 copying"); 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 litigation expenses in the amount of $464.20. Ex. A at ¶ 57. This includes the filing fee for the complaint ($405) and the fee for service of process on Defendant ($59.20). *Id.* Each expense is properly compensable and deserving of reimbursement.

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) ("Where 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 dozens of aggrieved consumers, along with a written commitment to change Defendant's business practices, GDR filled exactly this role. As such, Plaintiff respectfully requests—and Defendant does not oppose—that this Court approve as reasonable an agreed award of attorneys' fees and expenses in the total amount of $37,000. Importantly, no class member to date opposes this relief, and 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 settlement fund.

Because it 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 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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