

1 James L. Davidson (*pro hac vice*)
2 Florida Bar No. 723371
3 GREENWALD DAVIDSON RADBIL PLLC
4 5550 Glades Road, Suite 500
5 Boca Raton, FL 33431
6 Telephone: 561-826-5477
7 Fax: 561-961-5684
8 jldavidson@gdrlawfirm.com

9 Attorneys for Plaintiff and the class

10 UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 Pedro Gonzalez, on behalf of himself and) Case No. 2:15-cv-01427-ROS
13 others similarly situated,)
14)
15 Plaintiff,)
16)
17 vs.)
18)
19 Germaine Law Office, PLC,)
20)
21 Defendant.)
22)
23)
24)
25)
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27)
28)

29 **PLAINTIFF'S UNOPPOSED MOTION FOR AN AWARD**
30 **OF ATTORNEYS' FEES AND EXPENSES**

Introduction

This matter stemmed from Plaintiff's claim that Defendant Germaine Law Office, PLC ("Defendant") violated § 1692g of the Fair Debt Collection Practices Act ("FDCPA") by allegedly failing to provide proper disclosures regarding how consumers can obtain verification of the debts Defendant sought to collect from them. As a result of the settlement secured by Pedro Gonzalez ("Plaintiff"), not only will class members receive a cash benefit that exceeds the statutory damages available to the class under the FDCPA based on a net worth calculation pursuant to *Sanders v. Jackson*, 209 F.3d 998 (7th Cir. 2000), but they are also assured that Defendant has agreed to address Plaintiff's allegations as set forth in the Complaint and make its best efforts to ensure that all correspondence sent from Defendant to debtors for the collection of a "consumer debt," as defined by 15 U.S.C. § 1692a, adheres to the requirements set forth in the FDCPA.

In accordance with this Court's preliminary approval order, Dkt. No. 33, on June 29, 2016, the claims administrator distributed notice of the settlement to each of the 461 members of the settlement class via U.S. Mail.¹ Significantly, to date, not a single class member has lodged any objection to any aspect of the settlement, including the fee and expense request.²

¹ The notice disclosed to class members that class counsel would seek an award of up to \$45,000 in attorneys' fees and up to \$2,500 for the reimbursement of litigation expenses. Dkt. No. 30-1 at 37.

² Plaintiff will provide the Court with an update regarding objections and exclusions in his final approval papers, to be filed on or before September 13, 2016.

1 Plaintiff further alleged that the least sophisticated consumer, upon receiving
2 Defendant's May 15, 2015 letter, would be confused as to whether he needed to comply
3 with the ten-day time period set forth in the body of the letter to vindicate his rights under
4 the FDCPA, or the thirty-day time period set forth in the bottom of the letter. *Id.* at ¶ 39.
5 In addition, Plaintiff alleged that the language in the body of the May 15, 2015
6 communication requiring Plaintiff to take action within ten days of receipt of the notice
7 directly contradicted 15 U.S.C. § 1692g, which provides consumers with thirty days from
8 receipt of the notice to trigger their validation rights. *Id.* at ¶ 41. Furthermore, Plaintiff
9 alleged that by advising Plaintiff that Defendant was authorized to commence legal action
10 if Plaintiff did not make, or arrange for, payment of the debt within ten days of the date of
11 the letter, the May 15, 2015 communication overshadowed the disclosures required by 15
12 U.S.C. § 1692g. *Id.* at ¶ 42.

13 On August 18, 2015, Defendant filed its Answer and Affirmative Defenses,
14 largely denying Plaintiff's allegations. Dkt. No. 8. Then on September 14, 2015, the
15 parties exchanged initial disclosures. Dkt. No. 12. Thereafter, on October 5, 2015,
16 Plaintiff served his First Set of Interrogatories and First Requests for Production of
17 Documents. Dkt. No. 19.

18 On October 9, 2015, following several telephonic conferences between counsel,
19 the parties submitted an extensive nineteen-page Proposed Case Management Plan,
20 detailing significant disagreement regarding the proposed limitations on discovery and
21 how the case should proceed. Dkt. No. 20. On October 20, 2015, the Court held a Rule 16
22 scheduling conference, Dkt. No. 21, and subsequently set a settlement conference before
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1 Magistrate Judge Fine for March 22, 2016. Dkt. No. 22. Thereafter, following the Court's
2 issuance of its scheduling order, Dkt. No. 24, the parties negotiated and filed a protective
3 order to govern documents and information exchanged during discovery. Dkt. No. 25.
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5 On January 7, 2016, Defendant provided net worth and class size information to
6 Plaintiff. The parties subsequently engaged in settlement negotiations, which culminated
7 in a class action settlement in principle on January 29, 2016. Thereafter, the parties spent
8 approximately a month negotiating the terms of a written settlement agreement.
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10 On March 4, 2016, Plaintiff filed his unopposed motion for preliminary approval
11 of the class action settlement, Dkt. No. 30, which the Court granted on June 1, 2016. Dkt.
12 No. 33.
13

14 **Summary of the Settlement**

15 As more specifically set forth in the settlement agreement, the settlement here
16 calls for a non-reversionary settlement fund of \$7,837 for the benefit of the class, to be
17 distributed pro-rata to each participating class member. As a result of there being, at
18 most, 461 participating class members, each participating class member will receive at
19 least \$17. Any monies remaining in the settlement fund from uncashed checks or
20 otherwise will be distributed to The Arizona Foundation for Legal Services and
21 Education as the parties' chosen *cy pres* recipient. In addition, Defendant will pay \$750
22 to Plaintiff as statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i). As well,
23 Defendant has agreed to address Plaintiff's allegations as set forth in the Complaint and
24 make its best efforts to ensure that all correspondence sent from Defendant to debtors for
25 the collection of a "consumer debt," as defined by 15 U.S.C. § 1692a, adheres to the
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requirements set forth in the FDCPA. Thus, through this settlement, Plaintiff and class counsel have not only secured an excellent result for the class in light of the cap on statutory damages under the FDCPA, but also assurance from Defendant that Defendant will make its best effort to ensure that future debtors receive correspondence regarding debt collection that adheres to the requirements under the FDCPA.³

Separately, Defendant has agreed to pay class counsel's reasonable attorneys' fees and litigation expenses in the amount of \$33,650, which the parties negotiated after this Court preliminarily approved the settlement. Of course, any award to class counsel "for attorneys' fees, costs, and expenses will be paid by [Defendant] separate and apart from the Settlement Fund, costs of Settlement Administration, and the payment to Plaintiff." Dkt. No. 30-1 at 15.

Argument⁴

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

The FDCPA at 15 U.S.C. § 1692k(a) provides that any debt collector who fails to comply with its provisions is liable for, among other things, the costs of the action,

³ The FDCPA caps statutory damages at \$500,000, or 1% of the debt collector's net worth, whichever is less. *See* 15 U.S.C. § 1692k.

⁴ The arguments set forth in this herein are unopposed by Defendant for the purposes of settlement only. The parties' counsel have negotiated an agreed upon amount of fees and costs that are believed to be fair under the circumstances of this case. However, to the extent that settlement is not effectuated or the Court does not grant this motion, Defendant reserves the right to raise all available arguments regarding the reasonableness of Plaintiff's counsel's purported fees and costs—*e.g.* whether Plaintiff is the "successful party," whether proportionality may be a factor in determining reasonableness, and whether the time spent and rates charged by Plaintiff's counsel are reasonable in the Phoenix community. If the Court declines to grant this motion, nothing in this motion should be construed as an admission by Defendant that Plaintiff's purported fees and costs are reasonable under the applicable law

1 together with a reasonable attorney's fee as determined by the court. 15 U.S.C. §
 2 1692k(a)(3). Every circuit court of appeals to consider the FDCPA's fee-shifting
 3 provision has held that an award of attorneys' fees to a successful consumer-plaintiff is
 4 mandatory. *See Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008)
 5 ("The FDCPA's statutory language makes an award of fees mandatory."); *French v.*
 6 *Corporate Receivables, Inc.*, 489 F.3d 402, 403 (1st Cir. 2007) ("An award of attorney's
 7 fees to successful plaintiffs under the FDCPA is obligatory."); *Tolentino v. Friedman*, 46
 8 F.3d 645, 651 (7th Cir. 1995) ("The [FDCPA's] statutory language makes an award of
 9 fees mandatory."); *Carroll v. Wolpoff & Abramson*, 53 F.3d 626, 628 (4th Cir. 1995)
 10 ("[T]he fee award under § 1692k is mandatory in all but the most unusual
 11 circumstances."); *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991) ("Given the
 12 structure of [the FDCPA], attorney's fees should not be construed as a special or
 13 discretionary remedy; rather, the Act mandates an award of attorney's fees as a means of
 14 fulfilling Congress's intent that the Act should be enforced by debtors acting as private
 15 attorneys general."); *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22, 28 (2d Cir.
 16 1989) ("Because the FDCPA was violated, however, the statute requires the award of
 17 costs and a reasonable attorney's fee.").⁵

18 Specifically, the Ninth Circuit has explained:

19 "Generally, litigants in the United States pay their own attorneys'
 20 fees, regardless of the outcome of the proceedings." *Staton v. Boeing*
 21 *Co.*, 327 F.3d 938, 965 (9th Cir. 2003). However, "[i]n order to

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 28 ⁵ Internal citations and quotations are omitted, and emphasis is added, unless noted otherwise.

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. *Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995). "The reason for mandatory fees is that congress chose a 'private attorney general' approach to assume enforcement of the FDCPA." *Id.*; *see also Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991) (noting that the FDCPA "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"). Here, pursuant to the Settlement Agreement, Bridgeport Financial agreed to pay reasonable and necessary attorneys' fees and costs.

Camacho, 523 F.3d at 978.

Accordingly, federal district courts in the Ninth Circuit have recognized the mandatory nature of an award of attorneys' fees award under section 1692k. *See, e.g., Brown v. Mandarich Law Grp., LLC*, No. 13-04703, 2014 WL 1340211, at *1 (N.D. Cal. Apr. 2, 2014) ("Under the FDCPA, a successful plaintiff is entitled to receive reasonable attorneys' fees and costs as part of the damages from the liable debt collector."); *Davis v. Hollins Law*, 25 F. Supp. 3d 1292, 1297 (E.D. Cal. 2014) ("The FDCPA's statutory language makes an award of fees mandatory. The purpose of the fee-shifting provision is to ensure private enforcement of the statute.").

II. An award of attorneys' fees under the FDCPA is not conditioned upon, and need not be proportionate to, the amount of damages recovered.

Awards of reasonable attorneys' fees under federal statutes that include fee-shifting provisions "are not conditioned upon and need not be proportionate to an award

1 of money damages.” *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986); *see also*
2 *Lewis v. Kendrick*, 944 F.2d 949, 957 (1st Cir. 1991) (“We believe we made it clear that
3 we were not departing from the recognized principle that the fee is not limited by the size
4 of the recovery, but may, in appropriate instances, greatly exceed it.”). Indeed, a rule
5 limiting an award of attorneys’ fees to an amount proportionate to damages recovered
6 would seriously undermine the mechanism that Congress chose to enforce the FDCPA.
7 Congress included a mandatory fee-shifting provision in the FDCPA because it “chose a
8 ‘private attorney general’ approach to assume enforcement of the FDCPA.” *Tolentino*, 46
9 F.3d at 651; *Camacho*, 523 F.3d at 978 (“In order to encourage private enforcement of
10 the law . . . Congress has legislated that in certain cases prevailing parties may recover
11 their attorneys’ fees from the opposing side. . . . The FDCPA is one such statute.”).

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16 The purpose of the FDCPA’s statutory fee-shifting provision is to benefit a
17 consumer-plaintiff by allowing him to obtain counsel in order to pursue redress for
18 relatively small claims. Noteworthy, by providing the private bar with incentive to
19 involve itself in consumer litigation through fee-shifting, the federal government is
20 relieved of the costs of protecting consumers while ensuring that consumers may still
21 avail themselves of their statutory rights. “In order to encourage able counsel to
22 undertake FDCPA cases, as Congress intended, it is necessary that counsel be awarded
23 fees commensurate with those which they could obtain by taking other types of cases.”
24 *Tolentino*, 46 F.3d at 653. That “commensurate” fee is best measured by “what that
25 attorney could earn from paying clients” at a “standard hourly rate.” *Id.* Paying counsel
26 less—or, in other words, tying an award of attorneys’ fees to the amount of damages
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1 awarded—"is inconsistent with the Congressional desire to enforce the FDCPA through
 2 private actions, and therefore misapplies the law." *Id.*

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 4 **III. Counsel's requested attorneys' fees and expenses are reasonable,**
 5 **unopposed by Defendant, and should be approved.**

6 As Plaintiff seeks attorneys' fees and expenses separate from the settlement fund,
 7 the lodestar method is the appropriate means of determining whether class counsel's fee
 8 request is reasonable. *See Camacho*, 523 F.3d at 978; *see also, e.g., Hunt v. Imperial*
 9 *Mercht. Servs.*, No. C-05-04993 DMR, 2010 WL 3958726, at *3 (N.D. Cal. Oct. 7,
 10 2010) (using the lodestar method to determine reasonable attorneys' fees to successful
 11 plaintiffs in a FDCPA class action settlement). The lodestar is calculated by multiplying
 12 the number of hours reasonably expended by a reasonable hourly rate. *Hensley v.*
 13 *Eckerhart*, 461 U.S. 424, 433 (1983); *Camacho*, 523 F.3d at 978. The lodestar usually is
 14 strongly presumed to yield a reasonable fee. *See Pennsylvania v. Delaware Valley*
 15 *Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986) ("A strong presumption that
 16 the lodestar figure-the product of reasonable hours times a reasonable rate-represents a
 17 'reasonable' fee is wholly consistent with the rationale behind the usual fee-shifting
 18 statute, including the one in the present case.").

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 22 **A. Class counsel expended 77.9 hours prosecuting this action to date.**

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 24 Class counsel expended 77.9 total hours performing legal services reasonably
 25 necessary to litigate this matter to date, resulting in a total lodestar of \$30,915. *See Ex.*
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1 A, ¶ 18.⁶ This time included researching and preparing the class action complaint,
2 negotiating the case management report, preparing and serving written discovery,
3 negotiating a the terms of a protective order, conducting an analysis of Defendant's net
4 worth, negotiating the settlement, including drafting the written settlement agreement,
5 preparing the preliminary approval papers, including the preliminary and final approval
6 orders, conferencing with Plaintiff, coordinating with the claims administrator, and
7 preparing this fee petition, among other things.
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10 Class counsel estimates that it will spend an additional approximately 25-35 hours
11 on this matter, including communicating with class members, preparing a final approval
12 motion and supporting documentation, preparing for, traveling to, and attending the final
13 approval hearing in Arizona, preparing any necessary reply papers, and coordinating with
14 the class administrator. As a result, class counsel estimates its total lodestar, including the
15 additional estimated time necessary to conclude this matter, will be between \$40,915 and
16 \$44,915. As such, the fees and expenses incurred by class counsel in this case will likely
17 exceed the attorneys' fee and expense award sought, further underscoring its
18 reasonableness. *See Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 690
19 (N.D. Cal. 2016) ("Specifically, while the lodestar is \$76,725, class counsel have
20 requested an award of \$52,500. This represents a significant reduction compared to class
21 counsel's lodestar number, and courts view self-reduced fees favorably."); *Catala v.*
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26 ⁶ Courts may properly rely on summaries of the total number of hours spent by counsel.
27 *See Lobatz v. U.S. W. Cellular of Cal., Inc.*, 222 F.3d 1142, 1148-49 (9th Cir. 2000); *Norman v.*
28 *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.")..

1 *Resurgent Capital Servs. L.P.*, No. 08cv2401 NLS, 2010 WL 2524158, at *8 (S.D. Cal.
2 June 22, 2010) (concluding that a self-reduction from the lodestar amount of \$38,208.43
3 to \$35,000 supported finding that plaintiff's counsel's fee request was reasonable);
4 *Reade-Alvarez v. Eltman, Eltman, & Cooper, P.C.*, No. CV-04-2195 (CPS), 2006 WL
5 3681138, at *8 (E.D.N.Y. Dec. 11, 2006) ("Because the proposed fee of \$50,000 is
6 actually lower than the lodestar, that proposed amount is justifiable."). And importantly,
7 any fee and expense award is to be paid by Defendant separately from the settlement fund
8 for class members and thus will not diminish the monies class members receive. *See*
9 *Good v. Nationwide Credit, Inc.*, Civil Action No. 14-4295, 2016 WL 929368, at *16
10 (E.D. Penn. Mar. 14, 2016) ("Even if the Court were to approve less than the \$125,000
11 negotiated amount, the class would not gain a greater recovery; rather, Defendant would
12 simply keep the money.").

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17 **B. Class counsel's hourly rates are reasonable.**

18 A party seeking attorneys' fees has the burden of demonstrating that the rates
19 requested are "in line with the prevailing market rate of the relevant community." *Carson*
20 *v. Billings Police Dep't*, 470 F.3d 889, 891 (9th Cir. 2006). Generally, "the relevant
21 community is the forum in which the district court sits." *Camacho*, 523 F.3d at 979.

22
23 Here, Michael L. Greenwald, James L. Davidson and Aaron D. Radbil—all
24 partners at Greenwald Davidson Radbil PLLC—bill at a rate of \$400 per hour. The firm's
25 Senior Associate, Jesse S. Johnson, bills at a rate of \$350 per hour. Class counsel's
26 hourly rates have previously been approved by district courts in FDCPA class actions.
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1 *See Schuchardt*, 314 F.R.D. at 689; *Gonzalez v. Dynamic Recovery Solutions, LLC*, Nos.
2 14–24502, 14–20933, 2015 WL 738329, at *4 (S.D. Fla. Feb. 23, 2015).

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4 Moreover, class counsel’s rates are consistent with prevailing rates previously
5 found to be reasonable by courts in this district. *See, e.g., Alliance Labs, LLC v. Stratus*
6 *Pharmaceuticals*, No. 2:12–cv–00927 JWS, 2013 WL 3298162, at *3 (D. Ariz. July 1,
7 2013) (“The court concludes that Lewis and Roca’s median partner rate of \$520 per hour
8 and median associate rate of \$330 per hour better reflect the prevailing rates in Phoenix
9 for work of the sort performed on the motion to compel.”); *Glendale & 27th Investments*
10 *LLC v. Delos Ins. Co.*, No. CV-10-00673-PHX-SRB, 2013 WL 11311227, at *4 (D. Ariz.
11 May 6, 2013) (finding that an hourly rate of \$400 for a partner “would be reasonable”);
12 *LimoStars, Inc. v. N.J. Car and Limo, Inc.*, CV10–2179–PHX–LOA, 2011 WL 3471092,
13 at *18 (D. Ariz. Aug. 8, 2011) (“Plaintiff’s attorney Mark L. Brown’s hourly rates of
14 \$391.00 per hour until October 2010 and \$400.00 per hour after October 2010 are
15 reasonable, considering his experience, his expertise in a specialized, complex area of
16 federal law (trademark infringement), and several other factors based on his verified
17 information and background.”); *Shelago v. Marshall & Ziolkowski Enter, LLC*, No. CV
18 07–0279–PHX–JAT, 2009 WL 1097534, at *2 (D. Ariz. 2009) (finding hourly rates of
19 \$300 and \$400 reasonable in FDCPA litigation); *Agster v. Maricopa Cty.*, 486 F. Supp.
20 2d 1005, 1014-15 (D. Ariz. 2007) (reasonable hourly rate for plaintiffs’ lead attorney was
21 \$400).

C. Counsel's requested litigation expenses, which are subsumed in the \$33,650 award herein requested, are reasonable.

The requested fee and expense award includes the reimbursement of the type of expenses routinely charged to paying clients in the marketplace and, therefore, which are properly reimbursed under Rule 23. *See 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.").

In total, class counsel have incurred reimbursable expenses in the amount of \$515.30, as of today's date. *See* Ex. A at ¶ 21. These expenses include the filing fee for the complaint, the fee for service of process, and charges for using Pacer. *Id.* Class counsel will incur additional expenses associated with travel between Florida and Arizona for the final approval hearing, including airfare and hotel, airport parking in Fort Lauderdale, transportation to and from the Phoenix airport, and meals. *Id.* Class counsel estimates that these additional expenses could total approximately \$1,000, resulting in total expenses of approximately \$1,515.30. *Id.*

As well, class counsel have incurred additional reimbursable expenses, such as for photocopies, long distance telephone calls, postage, and computerized legal research.

1 Those expenses are not separately itemized, and are subsumed within class counsel's
2 unopposed request for a fee and expense award of \$33,650.

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4 **D. The requested fee and expense award is in line with awards in
5 similar cases.**

6 The fee requested by class counsel here is well in line with fee awards in other
7 consumer class action litigation under fee-shifting statutes. *See, e.g., Good*, 2016 WL
8 929368, at *15 (awarding attorneys' fees and expenses of \$125,000 in FDCPA class
9 action); *Schuchardt*, 314 F.R.D. at 690 (awarding attorneys' fees and expenses of
10 \$52,500 in an FDCPA class action); *Roundtree v. Bush Ross, P.A.*, Case No.: 8:14-cv-
11 00357-JDW-AEP, 2016 WL 360721, at *2 (M.D. Fla. 2016) (awarding attorneys' fees
12 and expenses of \$170,000 in FDCPA class action); *Whitford v. Weber & Olcese, P.L.C.*,
13 Civil Action No. 1:15-cv-400, 2016 WL 122393 at *2 (W.D. Mich. Jan. 11, 2016)
14 (awarding attorneys' fees and expenses of \$30,000 in FDCPA class action); *Gonzalez*,
15 2015 WL 738329, at *5 (awarding attorneys' fees and expenses of \$65,000 in FDCPA
16 class action); *Reade-Alvarez*, 2006 WL 3681138, at *8 (awarding attorneys' fees and
17 expenses of \$50,000 in FDCPA class action).
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21 **Conclusion**

22 Defendant has agreed to pay the reasonable attorneys' fees and expenses incurred
23 by Plaintiff's counsel in connection with this litigation, in the total amount of \$33,650.
24 Significantly, to date, no class members have objected to this request, and because the
25 fees and expenses requested are reasonable in this certified class action, this Court should
26 approve class counsel's request in its entirety.
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2 Dated: August 1, 2016

By: s/ James L. Davidson
James L. Davidson (pro hac vice)
GREENWALD DAVIDSON RADBIL
PLLC

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5 Attorneys for Plaintiff and the Class
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13 **CERTIFICATE OF SERVICE**

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15 I certify that on August 1, 2016, I filed the foregoing using the Court's CM/ECF
16 system, which will provide notice to:

17 Cassandra V. Meyer, SBN 021124
18 cmeyer@cavanaghlaw.com
19 Karen Stafford, SBN 030308
20 kstafford@cavanaghlaw.com
21 THE CAVANAGH LAW FIRM
22 1850 North Central Avenue, Suite 2400
23 Phoenix, Arizona 85004-4527

24 Attorneys for Defendant Germaine Law Office, PLC

25 By: s/ James L. Davidson
26 James L. Davidson (pro hac vice)
27 GREENWALD DAVIDSON RADBIL
28 PLLC