UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LuANN DANGER, on behalf of herself and others similarly situated, Plaintiff, v. NEXTEP FUNDING, LLC and MONTEREY FINANCIAL SERVICES, LLC, Defendants.	Civil Action No. 0:18-cv-00567-SRN-LIB

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER UNOPPOSED MOTION FOR APPROVAL OF AN INCENTIVE AWARD AND AN AWARD OF ATTORNEYS' FEES, COSTS, AND EXPENSES

Introduction

After more than two years of contentious litigation, after the close of discovery, and on the eve of dispositive motion practice, the parties reached a settlement of LuAnn Danger's class claims under the Consumer Leasing Act ("CLA"), Truth in Lending Act ("TILA"), and Minnesota usury laws. Their settlement provides substantial benefits—both monetary and prospective—for approximately 2,500 potential class members who signed materially identical consumer pet lease agreements.

Ms. Danger alleged that those lease agreements failed to provide adequate disclosures under both the CLA and TILA and, for Minnesota lessees in particular, also constituted usurious financing arrangements. For its part, Nextep Holdings, LLC f/k/a Nextep Funding, LLC ("Nextep") denies these allegations and maintains that its lease

agreements are, and have been, valid and enforceable and fully compliant with applicable state and federal law. But to avoid the continued costs and risks of further litigation, Nextep has committed to (i) creating a settlement fund of $33,500 for potential class members nationwide, allowing individual payouts of approximately $50 to $100 per participant; (ii) creating a separate $13,700 Minnesota settlement fund that will provide local class members with over $475 each in recognition of their additional state law usury claims; and (iii) discontinuing its use of the form consumer pet lease agreement that prompted this lawsuit.

Ms. Danger is proud of these results and directed notice to potential class members by way of direct mailings and dedicated webpages on class counsel's website. The class notices additionally advised class members that Ms. Danger would seek—to be paid separate and apart from the class settlement funds—(i) an incentive award of $3,000 in recognition of her significant service to class members, and (ii) an award of attorneys' fees, costs, and expenses of up to $199,800 in total for her counsel for their efforts in achieving such great results for class members. To date, no class member has lodged an objection to any aspect of the settlement, including to the proposed incentive and fee and expense awards, nor has any governmental agency objected as a result of Nextep's distribution of notice required under the Class Action Fairness Act.

Given the classes' support and the excellent results obtained here, Ms. Danger now seeks an incentive award of $3,000 for her service to the class members, plus an award of fees and costs for her counsel of $199,800 in total. Significantly, these awards—which are subject to this Court's approval independently of its approval of the

class settlement as a whole—are unopposed by Nextep and will be paid entirely separately from the class settlement funds. As detailed below and in the accompanying Declaration of Jesse S. Johnson ("Johnson Decl."), both of Ms. Danger's requests are reasonable and well supported by the record and applicable Eighth Circuit law. Ms. Danger respectfully submits that the awards thus should be approved in their entirety.

Class Settlement Summary

Ms. Danger previously submitted the parties' Class Action Settlement Agreement ("Agreement") in connection with her unopposed motion for preliminary approval. *See* ECF No. 130-1.[1] The parties have identified nearly 2,500 potential Nationwide Class members and 28 potential Minnesota Class members. All Nationwide Class members share the same CLA and TILA claims, while Minnesota Class members additionally share state law usury claims. Nextep will create a $33,500 settlement fund to resolve Nationwide Class members' federal CLA and TILA claims, plus a separate $13,700 settlement fund for Minnesota Class members to recognize those individuals' additional usury claims.[2]

Each Nationwide Class member who submits a timely, valid claim will share equally in the $33,500 nationwide fund, after deducting related administration expenses. This figure is significant, as it likely represents more than one percent of Nextep's class period net worth—the cap on class-wide statutory damages imposed by the CLA and

[1] Capitalized terms not defined herein have the same meanings set forth in that Agreement.

[2] Because Minnesota Class members share in their own separate settlement fund, they will not also participate in the nationwide settlement fund.

TILA on Nationwide Class members' claims. Ms. Danger anticipates individual recoveries of between $50 and $100 based on historical participation rates in consumer protection class cases like this one. For the Minnesota Class members, Ms. Danger expects individual recoveries exceeding $475, even after deducting administration costs. There is no requirement for the Minnesota Class members to submit claim forms.

Instead of reverting to Nextep, any settlement monies ultimately unclaimed by class members will be distributed to the Animal Allies Humane Society in Duluth, Minnesota—an organization dedicated to animal welfare and approved by this Court as the *cy pres* recipient. And as a further benefit for the public at large, Nextep has confirmed that it no longer uses the same form of consumer pet lease agreement that Ms. Danger and the other class members signed.

In addition to her share of the Minnesota settlement fund, Ms. Danger seeks—and Nextep does not oppose—an incentive award of $3,000, plus an award of attorneys' fees, costs, and expenses for her counsel of $199,800 in total, both subject to this Court's approval. Importantly, if approved, Nextep will pay these awards separate and apart from the two class settlement funds.

Argument

I. An unopposed incentive award of $3,000 for Ms. Danger, to be paid separately from the settlement funds, is reasonable and should be approved.

Courts in this Circuit recognize that incentive awards are "fairly typical" in class action litigation, "serv[ing] to compensate named plaintiffs for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,

and to recognize a willingness to act as a private attorney general." *Sauby v. City of Fargo*, No. 07-10, 2009 WL 2168942, at *2 (D.N.D. July 16, 2009).[3] "Small incentive awards, which serve as premiums to any claims-based recovery from the Settlement, promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits." *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1068 (D. Minn. 2010) (Kyle, J.).

"Relevant considerations in determining whether to grant [such awards] include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015) (Nelson, J.). Here, Ms. Danger respectfully requests that this Court approve a relatively modest incentive award of $3,000 in recognition of her dedication and time-intensive contributions toward the successful prosecution of this litigation. Without Ms. Danger's efforts, there would have been no lawsuit or class recoveries to begin with. Her goal from the outset was to pursue this matter on a class-wide basis to seek redress for all consumers harmed by Nextep's pet leasing practices, and also to compel Nextep to change those practices. Ms. Danger firmly believes that she succeeded on both fronts.

But the road to class members' recoveries was not easy. Over the past two-and-a-half years, Ms. Danger invested a substantial amount of time to this case, including (i)

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

reviewing and approving her class action complaint and amended complaint; (ii) participating in countless strategy conferences with her counsel throughout the litigation, related to everything from motion practice to discovery to settlement discussions; (iii) assisting with the preparation of her initial disclosures; (iv) responding to Nextep's written discovery and searching for and producing responsive documents; (v) sitting for a full-day deposition in Minneapolis (plus the four-hour roundtrip drive from her home to get there); (vi) attending a full-day settlement conference with Judge Brisbois in Duluth; and (vii) participating in protracted, months-long settlement negotiations with Nextep—before, during, and after the settlement conference—for the good of the settlement classes. *See Krueger*, 2015 WL 4246879, at *3 ("The record suggests that the Named Plaintiffs initiated the action, took on substantial risk, and remained in contact with Class Counsel. They devoted substantial amounts of their own time to benefit the Class by responding to document requests, reviewing pleadings, assisting with discovery, submitting to lengthy depositions, and attending mediation.").

What's more, Ms. Danger repeatedly resisted any settlement efforts that would have excluded the approximately 2,500 absent class members. She remained steadfastly committed to protecting class members' interests. Recognizing this resolve, Nextep does not oppose the $3,000 incentive award she requests—which will be paid separately from the class settlement funds. *Accord Berry v. Schulman*, 807 F.3d 600, 614 (4th Cir. 2015) (approving incentive awards that were not conditioned on the class representatives' support for the agreement).

Moreover, after direct mail notice to class members that clearly disclosed the proposed incentive award, not one person has objected to it. This lends further support to the award's reasonableness. *See Thorkelson v. Publ'g House of the Evangelical Lutheran Church in Am.*, No. 10-1712, 2013 WL 12149693, at *3 (D. Minn. Apr. 8, 2013) (Davis, C.J.) ("The requested payments are reasonable. No Class member has objected to the proposed awards.").

Further, the amount requested here is well in line with—or even significantly smaller than—other class representative incentive awards approved by this Court and others within this circuit. *See, e.g.*, *Taylor v. Merchants Credit Adjustors, Inc.*, No. 16-452, 2018 WL 2197775, at *2 (D. Neb. May 14, 2018) ($4,000); *Reynolds v. Credit Bureau Servs., Inc.*, No. 15-168, 2016 WL 2864411, at *4 (D. Neb. May 16, 2016) ($2,000); *Jenkins v. Pech*, No. 14-41, 2016 WL 715780, at *3 (D. Neb. Feb. 22, 2016) ($2,500); *Krueger*, 2015 WL 4246879, at *3 (several $25,000 incentive awards); *Thorkelson*, 2013 WL 12149693, at *3 (awards of $5,000 and $2,500); *Yarrington*, 697 F. Supp. 2d at 1068 ($5,000).

Thus, Ms. Danger respectfully submits that the proposed incentive award of $3,000—to be paid entirely separately from the settlement funds—should be approved as fair and reasonable.

II. Ms. Danger's request for an award of attorneys' fees, costs, and expenses of $199,800 in total, which is unopposed by Nextep and represents considerably less than class counsel's total lodestar, is reasonable and should be approved.

A. The CLA and TILA mandate fee awards to prevailing plaintiffs.

"Under TILA, the prevailing plaintiff has the right to an award of a reasonable attorney fee to facilitate the private enforcement of the Act." *Rapp v. #1 A LifeSafer of Mo., Inc.*, No. 19-2796, 2020 WL 3077144, at *1 (E.D. Mo. June 10, 2020); *see also Coleman v. Crossroads Lending Grp., Inc.*, No. 09-221, 2010 WL 4676984, at *10 (D. Minn. Nov. 9, 2010) (Schiltz, J.) ("TILA provides for an award of attorney's fees and costs to a victim of a TILA violation who brings a successful lawsuit."). "Upon the finding of a TILA violation, an award of fees is mandatory, though the amount of the award lies in the discretion of the court." *Rapp*, 2020 WL 3077144, at *1.

By including a mandatory fee-shifting provision in TILA, Congress has indicated that society has a significant stake both in assisting consumers who may not otherwise have the means to pursue these types of cases against creditors, and in rewarding those attorneys who assist in that pursuit. The Fourth Circuit recognized in *Nigh v. Koons Buick Pontiac GMC, Inc.*:

> A fee-shifting provision like § 1640(a)(3) subsidizes the lawsuits of meritorious plaintiffs. Such subsidies appear frequently in civil rights and consumer protection laws, presumably because Congress is (or was) particularly interested in seeing those laws prosecuted. The members of Congress who approved the TILA may have assumed either that the victims of TILA violations could not afford to bring TILA claims or that they would choose not to after considering the low returns those claims yield relative to the high costs of litigation. Even if lawyers take TILA cases on contingency, as Nigh's lawyers did, such assumptions remain reasonable under the law as it is now written. TILA awards will rarely be enough to cover the costs of representation; in most cases, they scarcely will cover the

> costs of filing a claim. Only with fee shifting does the prosecution of a typical individual TILA claim become an economically sensible possibility.

478 F.3d 183, 188 (4th Cir. 2007).

Further, in keeping with congressional intent, awards of reasonable attorneys' fees under federal statutes that include fee-shifting provisions, like the CLA and TILA, "are not conditioned upon and need not be proportionate to an award of money damages." *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986); *see also Lewis v. Kendrick*, 944 F.2d 949, 957 (1st Cir. 1991) ("We believe we made it clear that we were not departing from the recognized principle that the fee is not limited by the size of the recovery, but may, in appropriate instances, greatly exceed it."). This is because a rule so limiting an award of attorneys' fees to an amount proportionate to the damages recovered would seriously undermine the mechanism that Congress chose to enforce the statutes. *Accord Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995) (recognizing mandatory fee shifting in the Fair Debt Collection Practices Act ("FDCPA") because Congress "chose a 'private attorney general' approach to assume enforcement of the FDCPA").

The very purpose of TILA's fee-shifting provision is to benefit a consumer-plaintiff by allowing him to obtain competent counsel to pursue redress under the statute, even for relatively small claims. *Nigh*, 478 F.3d at 188. And by so incentivizing the private bar to involve itself in consumer protection litigation, the federal government has relieved itself of the costs of protecting consumers while ensuring that those same consumers may still be vindicated under the law. With respect to fee shifting under the FDCPA—a sister consumer protection statute—the Seventh Circuit has stated that, "[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." *Tolentino*, 46 F.3d at 653.

This "commensurate" fee is best measured by "what that attorney could earn from paying clients" at a "standard hourly rate." *Id*. Paying counsel less—for example, by proportioning an award of attorneys' fees to the amount of damages recovered—"is inconsistent with the Congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law." *Id*. Of course, this reasoning applies with equal force to other consumer protection statutes like the CLA and TILA. *Accord Armstrong v. Rose Law Firm, P.A.*, No. 00-2287, 2002 WL 31050583, at *1 (D. Minn. Sept. 5, 2002) (Nelson, J.) (noting in the context of the FDCPA that "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").

B. Having secured significant class recoveries, Ms. Danger is entitled to a reasonable attorneys' fee for her counsel's time investment in this case.

In considering fee requests pursuant to federal fee-shifting statutes like the CLA and TILA, "[t]he appropriate starting point for calculating a fee award is the lodestar—the number of hours reasonably expended multiplied by a reasonable hourly rate." *Coleman*, 2010 WL 4676984, at *12. "The lodestar approach is easy to administer, objective, and produces an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was

billed by the hour in a comparable case.'" *Roeser v. Best Buy Co., Inc.*, No 13-1968, 2015 WL 4094052, at *11 (D. Minn. July 7, 2015) (Bowbeer, M.J.) (utilizing lodestar method to determine reasonable attorneys' fees in connection with consumer protection class action settlement); *accord Pa. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986) ("A strong presumption that the lodestar figure-the product of reasonable hours times a reasonable rate-represents a 'reasonable' fee is wholly consistent with the rationale behind the usual fee-shifting statute . . . .").

Here, as demonstrated below, class counsel's lodestar far exceeds the $199,800 fee and expense award requested, rendering Ms. Danger's request all the more reasonable under the circumstances. This is particularly true because Nextep already has agreed to pay the requested fee and expense award *separately* from the class settlement funds. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee."). Thus, the proposed award—whether approved or not—would have no effect on the settlement recoveries for Ms. Danger and absent class members. *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.").

1. Class counsel will have reasonably accumulated a lodestar exceeding $359,000 by the conclusion of this case.

The accompanying declaration from counsel outlines the significant efforts undertaken by class counsel, Greenwald Davidson Radbil PLLC ("GDR"), to obtain the

excellent results achieved here. Those efforts include: (a) conducting an investigation into the underlying facts regarding Ms. Danger and the classes' claims; (b) preparing a class action complaint and amended class action complaint; (c) researching the law pertinent to class members' claims and Nextep's defenses; (d) researching and preparing Ms. Danger's opposition to Nextep's motion to dismiss, and related travel and argument at this Court's hearing on Nextep's motion; (e) preparing several sets of written discovery requests to Nextep, and conferring over Nextep's responses and objections to those requests; (f) reviewing and analyzing Nextep's documents productions, and conferring with defense counsel over supplementation of the same; (g) coordinating and preparing Ms. Danger's responses and objections to Nextep's written discovery directed to her, including coordinating related document productions; (h) defending Ms. Danger's full-day deposition, and all necessary preparations in advance of her deposition; (i) preparing for and taking two depositions of Nextep's corporate executives; (j) addressing third-party discovery directed to Ms. Danger's banking institution and the retail outlet from which she obtained her pet dog, including analyzing related document productions and participating in two related depositions; (k) researching and preparing Ms. Danger's motion to reopen discovery for purposes of obtaining additional net worth discovery from Nextep; (l) preparing for, traveling to, and participating in the parties' full-day settlement conference with Judge Brisbois in Duluth, and continuing the parties' settlement negotiations in the weeks following the conference; (m) researching and preparing Ms. Danger's motion for class certification and summary judgment motion—which were due to be filed the same week that the parties ultimately reached a settlement; (n) negotiating

the parameters of the class settlement presented to this Court, which included the exchange of several settlement demands and counteroffers, and myriad related telephone conferences before and after the parties' settlement conference; (o) preparing the parties' settlement agreement, along with the direct mail and website class notices; (p) coordinating with First Class, Inc.—the Court-approved settlement administrator—and defense counsel to devise and implement a class notice and settlement administration program to best serve class members; (q) preparing Ms. Danger's unopposed motion for preliminary approval of the class settlement, the proposed order accompanying the same, and counsel's supporting declaration; (r) preparing for and attending the Court's hearing on Ms. Danger's preliminary approval motion; (s) researching and preparing the instant unopposed motion for approval of an incentive award and an award of attorneys' fees, costs, and expenses; (t) preparing counsel's declaration in support of that motion; and (u) conferring with Ms. Danger and defense counsel on countless issues throughout the entirety of this litigation. Johnson Decl. at ¶ 38.

All told, GDR's attorneys have billed a total of 864.6 hours litigating this case to date,[4] and they anticipate spending 30 to 40 more hours by the time it concludes. *See id.* at ¶¶ 41-44. That additional time will be necessary to prepare Ms. Danger's final approval motion, prepare for and attend the final fairness hearing in December, continue to communicate with class members regarding the settlement terms and anticipated

[4] It bears noting that, in an exercise of billing discretion, GDR voluntarily zeroed out several additional hours spent by its attorneys on this matter. Class counsel thus have devoted more time here than is reflected in GDR's lodestar. Johnson Decl. at ¶ 41 n.1.

recoveries, and confer with First Class and defense counsel over class members' responses to the class notice and other settlement administration concerns.

Regarding rates, "[t]he reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of comparable skills, experience and reputation." *Price v. Midland Funding LLC*, No. 18-509, 2018 WL 5259291, at *4 (D. Minn. Oct. 22, 2018) (Nelson, J.). "In determining the reasonable hourly rate, district courts may rely on their own experience and knowledge of prevailing market rates." *Id.*

Jesse S. Johnson served as the lead attorney in this matter for GDR, has 11 years of class action litigation experience, and bills at a rate of $400 per hour. Senior partner James L. Davidson (16 years of experience) and associate Alexander D. Kruzyk (six years of experience) billed at the rates of $450 and $350, respectively.

Within the past five years, several courts nationwide have specifically approved GDR's hourly rates in connection with its attorneys' efforts in other consumer protection class cases. *See Newman v. Edoardo Meloni, P.A.*, No. 20-60027, 2020 WL 5269442, at *2 (S.D. Fla. Sept. 4, 2020) (approving GDR's rates of $350 to $450 as "within the range of reasonableness for" the Southern District of Florida); *Riddle v. Atkins & Ogle Law Offices, LC*, No. 19-249, 2020 WL 3496470, at *2 (S.D. W. Va. June 29, 2020) ("Lead attorney Jesse S. Johnson has more than ten years of class action litigation experience and billed at $400 per hour. Senior partner James L. Davidson has sixteen years of experience and billed at $450 per hour. The defendant does not dispute these rates or the attorneys' experience and skill, and the rates are within the range of reasonableness for this district."); *Aikens v. Malcolm Cisneros*, No. 17-2462, ECF No. 76 at 16 (C.D. Cal. Jan. 2,

2020) (approving GDR's partners' hourly rates ranging from $400 to $450); *Dickens v. GC Servs. Ltd. P'ship*, No. 16-803, 2019 WL 1771524, at * 1 (M.D. Fla. Apr. 10, 2019) ("As for the billing rates, Class Counsel charged associate and partner rates ranging from $350 to $450 per hour. The Court agrees that for this type of litigation and the market rate in Tampa, the rates are reasonable.").[5]

Locally, this Court has approved similar rates for consumer protection litigation of the kind litigated here. *E.g.*, *Price*, 2018 WL 5259291, at *5 (finding $400 per hour reasonable, over defendant's objection, in individual FDCPA action); *Haibeck v. Bradstreet & Assocs. LLC*, No. 11-2724, ECF No. 34 (D. Minn. May 2, 2013) (Nelson, J.) (approving $400 per hour in individual FDCPA case, over seven years ago).

GDR's rates also fall well within the range of reasonableness for similar consumer protection litigation in this district and elsewhere within the Eighth Circuit, particularly in light of this being a class case. *See, e.g.*, *Jenkins*, 2016 WL 715780, at *3 (in FDCPA class settlement, awarding over $176,000 in attorneys' fees based on hourly rates of $300 to $350, which the court found to be "reasonable in this community for professionals with the experience and expertise of the plaintiff's counsel"); *Roeser*, 2015 WL 4094052, at *12 (approving attorneys' rates ranging from $250 to $880 per hour); *Morrow v. Weinerman & Assocs., LLC*, No. 11-104, 2012 WL 1593301, at *2 (D. Minn. May 7,

[5] *See also McWilliams v. Advanced Recovery Sys., Inc.*, No. 15-70, 2017 WL 2625118, at *3 (S.D. Miss. June 16, 2017) (approving GDR partner and associate rates of $400 and $350, respectively); *Bellum v. Law Offices of Frederic I. Weinberg & Assocs., P.C.*, No. 15-2460, 2016 WL 4766079, at *10 (E.D. Pa. Sept. 13, 2016) (same); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 689 (N.D. Cal. 2016) (same); *Gonzalez v. Dynamic Recovery Solutions, LLC*, Nos. 14-24502, 14-20933, 2015 WL 738329, at *4 (S.D. Fla. Feb. 23, 2015) (approving $400 partner rate).

2012) (Kyle, J.) (approving $350 per hour in individual FDCPA action over eight years ago); *Phenow v. Johnson, Rodenberg & Lauinger, PLLP*, 766 F. Supp. 2d 955, 957 (D. Minn. 2011) (Keyes, J.) (approving $350 per hour for lead attorney in individual FDCPA action nine years ago, and collecting cases supporting same); *Gorton v. Debt Equities, LLC*, No. 08-4817, 2009 WL 9073861, at *3 (D. Minn. July 13, 2009) (Keyes, J.) (approving $350 an hour for "first chair" in individual FDCPA case over 11 years ago); *Hixon v. City of Golden Valley*, No. 06-1548, ECF No. 170 (D. Minn. Dec. 13, 2007) (Kyle, J.) (approving $400 rate as reasonable and consistent with prevailing market rates in a § 1988 case, nearly 13 years ago).

Applying GDR's rates to the hours described above, the result is a total expected lodestar of between $359,915 and $363,915, which far exceeds the amount of attorneys' fees and expenses requested here. Johnson Decl. at ¶ 46.[6] GDR's lodestar is eminently reasonable in this nationwide class action that required early motion practice and extensive written and oral discovery, and resulted in meaningful benefits for thousands of consumers. And this tally does not even include the time separately incurred by liaison counsel, Mark L. Vavreck.

Further underscoring the reasonableness of Ms. Danger's steeply discounted fee request is that courts in this circuit may apply a multiplier to class counsel's lodestar to determine a proper fee award. *See, e.g., In re Xcel Energy,Inc., Sec., Derivative &*

[6] 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).

"ERISA" Litig., 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (Doty, J.) (approving fees resulting in lodestar multiplier of 4.7, and collecting cases applying multipliers in excess of four). But here, rather than seek an enhancement to the fees incurred, Ms. Danger seeks a significant *negative* multiplier to GDR's lodestar—a result of negotiation between the parties in finalizing their Agreement.

Lastly, the reasonableness of Ms. Danger's fee request is not undermined by the size of the award relative to the classes' recoveries. *See Armstrong*, 2002 WL 3384592, at *5 (awarding fees and costs in excess of $43,000, over the defendant's objection, when the plaintiff had recovered only $1,000 in statutory damages). In addressing the defendant's proportionality argument, this Court in *Armstrong* noted: "The Court finds that Plaintiff's attorneys' fees and costs are reasonably proportional. While they far exceed the statutory damage award in the present case, Plaintiff did not choose to create this disparity." *Id*. The same is true here as a result of the CLA and TILA's cap on class-wide statutory damages and the fact that Nextep vigorously defended this case for two years before the parties were able to reach a settlement. Plus, unlike in *Armstrong*, Nextep does not oppose Ms. Danger's fee request.

2. The significant results obtained for Ms. Danger and the class members further support approval of the requested fee and expense award.

Beyond counsel's lodestar, this Court and numerous others have recognized that the degree of a plaintiff's success is an important consideration in determining a reasonable attorneys' fee for her counsel. *Armstrong*, 2002 WL 31050583, at *4 ("Under *Jenkins*, the Court should consider Plaintiff's overall success.") (referring to *Jenkins ex.*

Rel. Jenkins v. Mo., 127 F.3d 709 (8th Cir. 1997)); s*ee also Roeser*, 2015 WL 4094052, at *12 ("In determining a reasonable fee, the Court may also account for the plaintiff's overall success; the necessity and usefulness of the plaintiff's activity in the particular matter for which fees are requested; and the efficiency with which the plaintiff's attorneys conducted that activity."); *Erickson v. Credit Bureau Servs., Inc.*, No. 11-215, 2013 WL 672281, at *4 (D. Neb. Feb. 22, 2013) (describing the results obtained as an "important factor" in a fee determination). Several aspects of Ms. Danger's success bear mention.

a. Thanks to GDR's efforts, class members will receive substantial recoveries, likely beyond what would have been available at trial.

Here, through the parties' settlement, Ms. Danger and her counsel are proud to have secured significant benefits for the class—both monetary and prospective—above and beyond what likely would have been possible at trial, even assuming complete victory for the classes. The Nationwide Class members' aggregate recovery of $33,500—expected to provide between $50 and $100 per claimant—likely surpasses the cap on statutory damages of one percent of Nextep's net worth, per *Sanders v. Jackson*, 209 F.3d 998 (7th Cir. 2000) (holding in the context of the FDCPA's class damages cap that net worth is determined by reference to the defendant's balance sheet, subtracting its liabilities from its assets).[7]

[7] Nextep's balance sheets fluctuated during the relevant time period but nonetheless indicated a net worth likely below $3.35 million, though the parties disagreed on the precise figures to be used for that calculation.

Of course, no matter which financial figures ultimately apply, there never was any guarantee of a *full* statutory damages award for the Nationwide Class members to begin with, even presuming victory at trial. This is because the damages provision shared by the CLA and TILA is permissive rather than mandatory; class members could be awarded "such amount as the court may allow," after considering several factors like "the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional." 15 U.S.C. § 1640(a). A jury thus could have awarded class members a damages award far less than the one-percent cap, or even nothing at all, if it determined that the relevant factors here do not support a maximum award. *See Schuchardt*, 314 F.R.D. at 683 (in an FDCPA class action, noting that "[b]ecause 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.").[8]

For Minnesota Class members, who additionally release state law claims, Ms. Danger anticipates individual recoveries of over $475 each—an outstanding result by any

[8] And such a risk of a minimal damages award was not merely hypothetical, given limited damage awards obtained in analogous consumer protection litigation. *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 FDCPA damages provision and awarding no statutory damages to members of the class).

measure, and significantly higher than that provided in a comparable settlement approved earlier this year. *See Taylor v. TimePayment Corp.*, No. 18-378, 2020 WL 906319 (E.D. Va. Feb. 24, 2020) (in class settlement under the CLA, TILA, and state usury law related to disclosures in equipment leases, approving recoveries for local class members of approximately $240 each, plus nationwide recoveries of approximately $26 each).

Moreover, Ms. Danger obtained confirmation from Nextep that it no longer uses the form pet lease agreement that she had signed—significant prospective relief.

b. GDR navigated considerable risk in obtaining class relief.

Taking a step back, without a settlement, Ms. Danger would be required to certify her proposed classes and establish liability on their behalf. Nextep assuredly would have objected to certification of litigation classes—as opposed to settlement classes—likely arguing that Ms. Danger and the class members could not satisfy certain (or all) elements of Rules 23(a) and 23(b)(3), including commonality, typicality, adequacy, and superiority. The parties' settlement, with Nextep's consent to nationwide and Minnesota settlement classes, avoids those certification risks.

On the merits, while Ms. Danger believes that her path to victory under the CLA was relatively straightforward given the nature of the challenged lease agreements, establishing liability under TILA and Minnesota usury law, on the other hand, would be more complicated. Obtaining judgment under TILA and Minnesota law would require several additional steps, each with its own risks. Those several risks may be distilled into one question: Are Nextep's consumer pet lease agreements truly leases as the company

claims, or are the agreements instead "credit sales" in disguise? On this point, the parties vehemently disagree.

Ms. Danger also anticipated that Nextep would argue that TILA (and Minnesota usury law) liability could not attach to the lease agreements. Nextep previewed certain of its arguments in its motion to dismiss. *See, e.g.*, ECF No. 48 at 22-25. If any of those arguments were to prevail at summary judgment or trial, neither TILA nor Minnesota usury law would provide an avenue for class members' recoveries, and their claims under those statutes necessarily would fail. But instead, here, class members are guaranteed immediate monetary recoveries.

c. GDR has significant class action experience and a sterling reputation.

The benefits obtained here are the result of collective decades of experience among GDR's class action practitioners. Johnson Decl. at ¶¶ 7-18. GDR has been appointed class counsel in over four dozen class actions throughout the country in the past five years brought under consumer protection statutes like the CLA, TILA, FDCPA, and Telephone Consumer Protection Act. GDR's attorneys have earned a solid reputation in their field:

> 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 the Fourth Circuit. GDR employed that experience here in negotiating a favorable result that avoids protracted litigation, trial, and appeals.

Riddle, 2020 WL 3496470, at *3.

d. That GDR litigated this case on a contingency fee further supports the reasonableness of the award.

During the entirety of the litigation, GDR represented Ms. Danger and the absent class members on a contingency fee basis, advancing all necessary litigation costs and expenses on their behalf. Johnson Decl. at ¶ 27. That the fee arrangement is contingent further "weighs in favor of the requested attorneys' fees award, because [s]uch a large investment of money [and time] place[s] incredible burdens upon . . . law practices and should be appropriately considered." *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1256 (D.N.M. 2012); *see also Roeser*, 2015 WL 4094052, at *12 ("Here, class counsel accepted representation with no promise of payment and litigated the case vigorously on behalf of the class. Counsel expeditiously negotiated a settlement for a class with more than [200] members . . . . The negotiated resolution of the action was favorable and fair. These additional considerations support the reasonableness of [the] fee award.").

In sum, "[t]he 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." *Gross v. Washington Mut. Bank*, No. 02-4135, 2006 WL 318814, at *6 (E.D.N.Y. Feb. 9, 2006). This Court accordingly should approve Ms. Danger's fee and expense request in its entirety.

III. The requested award also includes the reimbursement of GDR's reasonable costs and litigation expenses.

Finally, the requested fee and expense award includes the reimbursement of costs and litigation expenses of the type routinely charged to paying clients in the marketplace

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

GDR thus far has incurred reimbursable costs and litigation expenses in the amount of $9,215.60. Johnson Decl. at ¶ 49. These expenses include filing and serving the complaint ($315), costs for counsel's *pro hac vice* admissions ($150), delivery fees for courtesy copies ($87.50), travel and related lodging and meal expenses for the hearing on Nextep's motion to dismiss ($414.24), subpoena service costs ($41), travel and related lodging and meal expenses in connection with Ms. Danger's deposition in Minneapolis ($1,920.64), deposition appearance and transcript expenses ($3,713.60), and travel and related lodging and meal expenses in connection with the parties' settlement conference in Duluth ($2,573.62). *Id.*

Additionally, counsel's travel to St. Paul for the final fairness hearing in December will require additional expenditures for airfare, hotel lodging, home airport parking, local transportation to and from the airport and the courthouse, and related meals during travel. Plus, GDR has incurred additional reimbursable expenses, such as for printing, photocopies, long distance telephone calls, and computerized legal research. *Id*. at ¶¶ 50-

51. But none of these expenses is separately itemized herein, as all are subsumed within GDR's request for an agreed fee and expense award of $199,800 in total.

Conclusion

The parties reached a class-wide resolution here after years of litigation during which Ms. Danger overcame Nextep's early dismissal efforts and developed a substantial factual record concerning the settlement classes, Nextep's leasing practices, and class members' potential damages vis-à-vis Nextep's net worth. The Agreement provides excellent benefits to the classes, including a settlement fund likely exceeding Nationwide Class members' maximum potential CLA/TILA statutory damages, and Minnesota Class members receiving close to $500 in individual payouts. Nextep consents to Ms. Danger receiving a $3,000 incentive award, and it similarly does not oppose a reasonable fee and expense award of up to $199,800 in total to GDR for its own efforts here.

Both awards will be paid separately from class members' awards. Moreover, the requested fee—$199,800—falls far short of the total lodestar GDR has invested in this matter and includes over $9,000 in reasonable costs and litigation expenses reimbursable under Rule 23 and federal law. Class members are on notice of Ms. Danger's requested incentive award and fee and expense award, and to date, none has lodged any objection to either award. Accordingly, Ms. Danger respectfully requests that the Court fully approve the unopposed incentive and fee and expense awards as requested.

DATED: September 8, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2020, I filed the foregoing with the Clerk of Court using the Court's CM/ECF system, which will provide electronic notice to all counsel of record.

/s/ Jesse S. Johnson
Jesse S. Johnson