UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEFFERY D. STADTLER, ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED, Plaintiff v. **DUGAN, MCKISSICK & LONGMORE, LLC,** Defendant	**Case No. 8:19-cv-2634**

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

Introduction

Jeffery Stadtler ("Plaintiff") reached a settlement with Dugan, McKissick & Longmore, LLC ("Defendant") that will provide $28,000 to class members, nearing the maximum statutory damages award the class could have recovered under the Fair Debt Collection Practices Act ("FDCPA") had Plaintiff prevailed at trial. *See* 15 U.S.C. § 1692k(a)(2)(B) (limiting statutory damages in a class action to the lesser of $500,000 of 1% of the net worth of the debt collector). As a result, each participating class member will receive a cash recovery of approximately $80, immediately, without the risk and delay inherent in further motion practice or a jury trial.

In accordance with the Court's preliminary approval order, ECF No. 21, the settlement administrator distributed notice of the settlement—via direct mailings—to each potential class member. The notice detailed the terms of the settlement, including that Plaintiff would seek an award of attorneys' fees and litigation costs and expenses of up to $31,000 in total.

To date, no class member has objected to any aspect of the settlement, including the requested attorneys' fees, costs, and expenses.[1] Separately, Defendant provided notice of the settlement to the requisite government agencies pursuant to the Class Action Fairness Act ("CAFA"). No objections resulted from the CAFA notice, either.

Given the excellent result reached for the class, as well as the lack of objections from class members to date, Plaintiff now seeks an award of attorneys' fees and reimbursement of litigation costs and expenses for his counsel—Greenwald Davidson Radbil PLLC ("GDR")—in the amount of $31,000. As detailed herein and in the accompanying Declaration of Jesse S. Johnson ("Johnson Decl."), Plaintiff's request is reasonable, supported by applicable law, and unopposed by Defendant. This Court should therefore approve the award in its entirety.

Summary of Settlement

Defendant will create a class settlement fund of $28,000 for the benefit of 349 persons[2] to whom it mailed, between September 10, 2018 and September 10, 2019, an initial debt collection communication, in connection with the collection of a consumer debt, which included the following language: (1) "[i]n the event that the delinquent balance is not paid within five (5) business days of this letter, it is Cedar Point's policy to declare the entire loan balance due and file suit against you in the District Court for St. Mary's County, Maryland"; or (2) "if payment is not received within five (5) business days of receipt of this letter, a suit may be filed in the District Court of Maryland for St. Mary's County." Of note, this settlement fund falls just short of one percent of Defendant's net worth, and is thus near the maximum the class could have recovered in statutory damages even if Plaintiff had succeeded at trial. Should any settlement

[1] The deadline to object to the settlement is August 10, 2020. *See* ECF No. 21 at 9.

[2] The parties initially estimated a class size of 384, but after de-duplication efforts in connection with class notice mailing, they learned there are only 349 unique class members.

checks remain uncashed after their void date, the remaining settlement funds will be distributed to the Homeless Persons Representative Project, Inc., the Court-approved *cy pres* recipient.

Plus, separately from the settlement fund, Defendant also will pay Plaintiff the maximum individual statutory damages award of $1,000, an incentive award of $1,000, up to $4,500 in costs for distributing class notice and administering the settlement,[3] and an award of attorneys' fees, costs, and expenses to class counsel in the amount of $31,000, subject to this Court's approval. Defendant has also ceased using the form of debt collection letter at issue.

Legal Standard

In determining fee awards under the FDCPA, courts in this Circuit utilize the twelve factors pronounced in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), to assess the awards' reasonableness. The *Johnson* factors, as adopted in this Circuit in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978), focus on:

> (1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee—this is helpful but not determinative; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

488 F.2d at 717-19.[4]

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[3] The parties have worked closely with First Class, Inc., a highly experienced third-party claims administrator, to devise a direct mail class notice campaign and administration program within the allotted $4,500 budget. In the unlikely event that notice and administration costs exceed the amount budgeted, then any excess costs will be deducted from the class settlement fund prior to its distribution to class members. Conversely, should the notice and administration program ultimately cost less than $4,500—as expected—the excess funds will be deposited into the class settlement fund so that class members reap the benefits of any such surplus.

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

These twelve factors are not exclusive, but instead are merely guidelines, so circuit courts have encouraged the lower courts to consider additional factors unique to the particular case. *See, e.g.*, *In re Laines*, No. 04-10020, 2007 WL 2287905, at *13 (Bankr. E.D. Va. Aug. 6, 2007) (noting that the Johnson factors are a non-exclusive list of factors); *see also In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) ("These twelve factors are guidelines; they are not exclusive."). "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001).

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

Argument

I. Plaintiff's fee request is reasonable.

A. Attorneys' fee awards for prevailing plaintiffs are mandatory under the FDCPA and need not be proportional to the money damages recovered.

To encourage private action and enforcement, the FDCPA mandates awards of attorneys' fees to successful consumer-plaintiffs. 15 U.S.C. § 1692k(a)(3); *see also Carroll v. Wolpoff & Abramson*, 53 F.3d 626, 628 (4th Cir. 1995) ("[T]he fee award under § 1692k is mandatory in all but the most unusual circumstances."); *Bicking v. Mitchell Rubenstein & Assocs., P.C.*, No. 11-78, 2011 WL 5325674, at *2 n.7 (E.D. Va. Nov. 3, 2011) ("The parties correctly point out that 15 U.S.C. § 1692k(a)(3) awards costs and attorneys' fees as a matter of right to a plaintiff who prevails in an action arising under the FDCPA."). By including a mandatory fee-shifting provision 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 such pursuit. *See Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995) (fee shifting is mandatory under the FDCPA because Congress "chose a 'private attorney general' approach to assume enforcement of the [statute]"); *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."). The Ninth Circuit explained in *Camacho v. Bridgepoint Fin., Inc.*:

> 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.

523 F.3d 973, 978 (9th Cir. 2008).

Noteworthy, 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 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 limiting an award of attorneys' fees to an amount proportionate to damages recovered would seriously undermine the mechanism that Congress chose to enforce consumer protections statutes like the FDCPA. *Accord Yohay v. City of Alexandria Employees Credit Union, Inc.*, 827 F.2d 967, 974 (4th Cir.

1987) ("Requiring that attorney's fees be proportionate to the amount recovered would discourage vigorous enforcement of the [Fair Credit Reporting Act].").[5] 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 Turner v. Oxford Mgmt. Servs., Inc.*, 552 F. Supp. 2d 648, 656 (S.D. Tex. 2008) ("The disparity between the final award of damages and the attorneys' fees and expenses sought in this case is not unusual and is necessary to enable individuals wronged by debt collectors to obtain competent counsel to prosecute claims.").

B. Application of the *Johnson* factors to this case supports the requested fee award.

1. The time and labor required to resolve this matter favor approval of the requested attorneys' fees.

Turning to the *Johnson* factors, the first factor to consider is the time and labor required of counsel—often referred to as counsel's "lodestar." "In calculating an award of attorney's fees, a court must first determine a lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate," as guided by the *Johnson* factors. *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 243 (4th Cir. 2009). "A strong presumption that the lodestar figure-

[5] *See also Randle v. H & P Capital, Inc.*, 513 F. App'x 282, 283 (4th Cir. 2013) (affirming award of $76,876.59 in attorneys' fees and expenses where plaintiff recovered $6,000).

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, including the one in the present case." *Pa. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986).

a. GDR has expended a total of 62 hours prosecuting this action to date.

To date, GDR has expended 62 hours performing legal services reasonably necessary to litigate this matter, resulting in a total lodestar to date of $25,595. *See* Johnson Decl. ¶¶ 18, 22. This time included (a) conducting an investigation into the underlying facts regarding Plaintiff's and the class's claims; (b) preparing a class action complaint; (c) negotiating a confidentiality agreement; (d) drafting and negotiating the parties' class action settlement agreement, including the proposed preliminary and final approval orders and the class notice; (e) preparing Plaintiff's motion for preliminary approval of the settlement; (f) coordinating with the settlement administrator; (g) conferring with counsel for Defendant and with Plaintiff; and (h) preparing this fee and expense petition, among other tasks. *Id.* at ¶ 16. Undersigned counsel's supporting declaration provides a litigation phase breakdown for GDR's time records for this matter, consistent with this Court's Local Rules. *See id.* at ¶ 20. Worth noting, the above tally does not include the time separately incurred by liaison counsel, Eric Stravitz.

GDR estimates that it will spend an additional approximately 20 to 30 hours on this matter, including preparing Plaintiff's motion for final approval of settlement; preparing for, and attending, the final fairness hearing; communicating with class members; conferring with the settlement administrator; and any other related matters necessary to conclude this case. *Id.* at ¶ 23. As a result, GDR will have spent between 82 and 92 hours litigating this case during the time it has been pending, resulting in a total expected lodestar of between $33,595 and $37,595. *Id.* at ¶ 24.

Thus, the attorneys' fees incurred by GDR in this case will exceed the award sought, underscoring its reasonableness. *See 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.").

b. GDR's hourly rates are reasonable.

Jesse S. Johnson served as the lead attorney in this matter for GDR. Mr. Johnson has nearly 11 years of experience and bills at a rate of $400 per hour. His partner, James L. Davidson (16 years of experience), also contributed work on this matter, at the hourly rate of $450. These rates are within the range of reasonableness for class action litigation in this Circuit. *See, e.g.*, *Durm v. Am. Honda Fin. Corp.*, No. 13-223, 2015 WL 6756040, at *7 (D. Md. Nov. 4, 2015) (Quarles, Jr., J.) (awarding $540 average hourly rate for two attorneys with significant skill and experience in complex class action suits.); *Randle v. H & P Capital, Inc.*, No. 09-608, 2010 WL 2944907, at *8-9 (E.D. Va. July 21, 2010) (finding rates of $425 and $450 per hour to be reasonable for attorneys with specialized expertise in consumer law).[6]

It also bears mention that, within the past four years, several courts have specifically approved hourly rates ranging from $400 to $450 in connection with GDR's partners' efforts in materially similar FDCPA class cases, which includes a district court within this Circuit approving such rates less than one month ago. *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

[6] *See also McDaniels v. Westlake Servs., LLC*, No. 11-1837, 2014 WL 556288, at *14 (D. Md. Feb. 7, 2014) (Hollander, J.) ($350 per hour met with approval in consumer protection class action litigation); *Stewart v. VCU Health Sys. Auth.*, No. 09-738, 2012 WL 1120755 (E.D. Va. Apr. 3, 2012) (approving hourly rates ranging from $180 per hour to $470 per hour). *But see Garza v. Mitchell Rubenstein & Associates, P.C.*, No. 15-1572, 2016 WL 7468039, at *3-4 (Dec. 27, 2016) (Hazel, J.) (downward adjustment of counsel's hourly rate from $400 and $350 to $350 and $275 in FDCPA class case).

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."); *see also 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.").[7]

Given the nature of this class action suit, the risk assumed by GDR in its contingency fee arrangement with Plaintiff, and, of course, the excellent results obtained for Plaintiff and the class, Plaintiff submits that GDR's hourly rates of $400 and $450 are reasonable.[8] *See Durm*, 2015 WL 6756040, at *7 ("Although the hourly rate [of $540] is more than the presumptively reasonable rates in the Local Rules, Class Counsel have significant skill and experience in complex class action suits. Further, the attorney fee requested was the result of an arms-length negotiation between experienced national counsel. Accordingly, the hourly rate is reasonable.").[9]

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[7] *See also McWilliams v. Advanced Recovery Sys., Inc.*, No. 15-70, 2017 WL 2625118, at *3 (S.D. Miss. June 16, 2017); *Kemper v. Andreu, Palma & Andreu, PL*, No. 15-21226, ECF No. 54 at 8 (S.D. Fla. Nov. 30, 2016); *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); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 689 (N.D. Cal. 2016); *Gonzalez v. Dynamic Recovery Solutions, LLC*, Nos. 14–24502, 14–20933, 2015 WL 738329, at *4 (S.D. Fla. Feb. 23, 2015).

[8] Plaintiff recognizes that this District's Local Rules provide guidelines for hourly rates for attorneys with varying experience levels, *see* Local R., App. B, and that GDR's rates here exceed those suggested in the guidelines. However, as Judge Hollander recognized, the guidelines "are intended solely to provide practical guidance, and thus are not binding" on this Court. *McDaniels*, 2014 WL 556288, at *14; *see also Stone v. Thompson*, 164 F. Supp. 2d 639, 640 (D. Md. 2001) (Davis, J.) (awarding fees based on hourly rates in excess of the guidelines because strict adherence to those guidelines would have been unfair given the circumstances).

[9] *Accord* United States Consumer Law Attorney Fee Survey Report, 2015-2016, pp. 83, 251, available at https://www.nclc.org/images/pdf/litigation/tools/atty-fee-survey-2015-2016.pdf (last accessed July 20, 2020) (noting that median rate for an attorney handling a class action in

Mroeover, when presented with a fee request, as here, undergirded by an agreement among the parties and/or well below the lodestar accumulated by counsel, courts in this district have readily deviated from the local guidelines' suggested rates. *See, e.g.*, *Stewart v. Bae Sys. Tech. Solutions & Servs.*, No. 15-1645, 2016 WL 738693, at *2 (D. Md. Feb. 23, 2016) (Hazel, J.) (approving fee award because it was a "significant reduction from the parties' lodestar calculation and . . . not inconsistent with totals approved by this Court in similar litigation," despite the fact that "[t]he parties fail[ed] to provide the Court with information as to the hours worked by specific attorneys and the years of service for those attorneys"); *Hernandez v. Avery Painting & Drywall, LLC*, No. 14-3490, 2015 WL 5559834, at *3 (D. Md. Sept. 18, 2015) (Hazel, J.) ("[w]hile some of the rates charged are slightly higher than the rates which have been designated as presumptively reasonable by our local rules, the Court notes that as part of the settlement the Plaintiffs' attorneys have significantly reduced their fees").[10] Plaintiff respectfully submits that, in light of the circumstances of these proceedings, there exists good cause to do so here as well.

2. The ultimate questions in this case were disputed and the outcome remained uncertain.

"The FDCPA is a complex statute, and its provisions are subject to different interpretations." *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 621

Maryland in 2015-16 was $463 per hour, and the median rate for an attorney handling a class action in Baltimore in 2015-16 was $450 per hour).

[10] *See also Astorga v. Castlewood Consulting, LLC*, No. 14-4006, 2015 WL 4249755, at *3 (D. Md. July 9, 2015) (Hazel, J.) (recognizing lodestar of $21,250 based on $425 hourly rate but awarding agreed fees of $8,600 because "it appears that as part of the negotiations in this case, the attorneys have agreed to a discounted rate"); *Fonseka v. Alfredhouse Eldercare, Inc.*, No. 14-3498, 2015 WL 3863068, at *4 (D. Md. June 19, 2015) (Hazel, J.) (despite lodestar of $53,137.50 based on $325 hourly rate, awarding agreed fees of $30,000 because "notwithstanding the hours expended, as part of the negotiations in this case, [counsel] has agreed to reduce his fee").

(2010) (Kennedy, J., dissenting). Indeed, "[t]he instant case would be very expensive to fully litigate, and might take years to finally resolve through the course of trial and appeal . . . ." *Midland Funding, LLC v. Brent*, No. 08-1434, 2011 WL 3557020, at *16 (N.D. Ohio Aug. 12, 2011).

At the time of settlement, the merits of Plaintiff's claim remained undecided, as did the propriety of class certification. And even assuming Plaintiff *had* obtained certification of the class and prevailed on the merits, it bears mention that the FDCPA provides no *minimum* amount of statutory damages because its damages provision is permissive rather than mandatory. Courts are to balance such factors as the nature of the debt collector's noncompliance, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional. *See* 15 U.S.C. § 1692k(b)(2). Consequently, the jury ultimately could have awarded Plaintiff and the class little in the way of statutory damages—or even none at all.

Moreover, the risk of minimal damages awards in FDCPA class action cases is 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). Thus, the foregoing risks support the reasonableness of GDR's requested fee and expense award, per the second *Johnson* factor.

3. The skill required to perform the legal services properly and the experience, reputation, and ability of GDR favor approval of the fee request.

As for the third *Johnson* factor, there may be no question that GDR's knowledge and experience in consumer protection litigation significantly contributed to the quick, fair, and reasonable settlement reached. To be sure, GDR has been appointed class counsel in over four dozen class actions throughout the country in the past three years, including many brought under consumer protection statutes such as the FDCPA.[11] Moreover, multiple district courts have commented on GDR's useful knowledge and experience in connection with class action litigation.

For example, in *Schwyhart v. AmSher Collection Servs., Inc.*, Judge John E. Ott, Chief Magistrate Judge of the Northern District of Alabama, stated upon granting final approval to a class action settlement in which he appointed GDR as class counsel:

> I cannot reiterate enough how impressed I am with both your handling of the case, both in the Court's presence as well as on the phone conferences, as well as in the written materials submitted. . . . I am very satisfied and I am very pleased with what I have seen in this case. As a judge, I don't get to say that every time, so that is quite a compliment to you all, and thank you for that.

No. 15-1175 (N.D. Ala. Mar. 15, 2017).

In *McWilliams*, Judge Carlton W. Reeves of the Southern District of Mississippi described GDR as follows:

> More important, frankly, is the skill with which plaintiff's counsel litigated this matter. On that point there is no disagreement. Defense counsel concedes that her opponent—a specialist in the field who has been class counsel in dozens of these matters across the country—'is to be commended for his work' for the class, 'was professional at all times' . . . , and used his 'excellent negotiation skills' to achieve a settlement fund greater than that required by the law. The undersigned concurs . . . Counsel's level of experience in handling cases brought under the

[11] *See* Johnson Decl., ¶ 8 (collecting representative cases); *see also* https://www.gdrlawfirm.com/settlements.

> FDCPA, other consumer protection statutes, and class actions generally cannot be overstated.

2017 WL 2625118, at *3.

Similarly, in *Roundtree v. Bush Ross, P.A.*, Judge James D. Whittemore of the Middle District of Florida wrote, in certifying three separate FDCPA classes and appointing GDR class counsel: "Greenwald [Davidson Radbil PLLC] has been appointed as class counsel in a number of actions and thus provides great experience in representing plaintiffs in consumer class actions." 304 F.R.D 644, 661 (M.D. Fla. 2015).

Here, GDR drew upon this experience in negotiating a class resolution early in this litigation that exceeds the best possible statutory damages outcome at trial, while avoiding the delay of protracted litigation, trial, and appeals. Counsel's effectiveness wholly supports the requested fee award. *See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 683 (D. Md. 2013) (Chasanow, J.) ("As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes."). As a result, the third *Johnson* factor supports approval of the requested fee and expense award.

4. Plaintiff and his counsel entered into a contingent attorneys' fee agreement.

Next, the fourth *Johnson* factor similarly supports the requested award. GDR undertook this litigation on a contingent fee basis. As the Southern District of Florida has 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 v. Wometco Enters., Inc., 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990); *see also Williams v. Old HB, Inc.*, No. 13-464, 2015 WL 127862, at *6 (W.D. Va.

Jan. 8, 2015) ("contingent fees must compensate not only for the attorneys' time and effort, but also for the risk of a small fee or no recovery and the uncertainty of when any fee award may be received").

Rewarding attorneys in class actions is important because absent class actions, most individual claimants would lack the resources to litigate, as individual recoveries are often too small to justify the burden and expense of litigation. *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001) ("Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling ... claimants to pool their claims and resources" to "achieve a result they could not obtain alone."). Moreover, "[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).

Also important, GDR is a relatively small firm that includes four partners, one associate, and one of-counsel attorney. *See* http://www.gdrlawfirm.com/attorneys. The amount of work that GDR can handle at any given time is accordingly limited, so the time GDR's attorneys devoted to this matter curtailed their ability to accept other work. Given the foregoing, these factors support approval.

5. With GDR's assistance, Plaintiff obtained an excellent result for himself and for the class—nearing the maximum statutory damages allowed under the statute.

The touchstone of an attorney's fee award "is the degree of success obtained." *See Farrar v. Hobby*, 506 U.S. 103, 103 (1992). "What the court must ask is whether the plaintiff achieved a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award." *Doe v. Kidd*, 656 F. App'x 643, 657 (4th Cir. 2016).

Here, the settlement provides benefits to Plaintiff, absent class members, and even the public at large that likely exceed what would have been available at trial. To be sure, the $28,000 class settlement fund represents nearly the height in statutory damages allowable under the FDCPA, which are capped by law at one percent of Defendant's net worth. *See* 15 U.S.C. § 1692k(a)(2)(B). Had Plaintiff spurned settlement in search of more at trial, class members each could have recovered just a few dollars more than what this settlement guarantees. And, of course, the settlement provides immediate cash relief, whereas any hypothetical recovery from trial would likely take years to collect in light of the inevitable appeals that would follow. The same is true for Plaintiff's individual damages recovery of $1,000, which represents the maximum allowable individual award under the FDCPA. *See id.*, § 1692k(a)(2)(A).

Further, the change in Defendant's business practices resulting from the settlement—disuse of the form collection letter mailed to Plaintiff and all class members—may not have been possible at trial since an injunction may not have been available. *See, e.g.*, *Betskoff v. Cosby*, No. 12-3757, 2013 WL 4587634, at *3 (D. Md. Aug. 27, 2013) (Quarles, Jr., J.) ("As a declaratory judgment and injunctive relief are unavailable in FDCPA cases, the Court will deny Betskoff's request for that relief."). What's more, this prospective relief serves to benefit *all* consumers who may become the subject of Defendant's collection efforts in the future, not simply class members.

Finally, the participating class member recovery of approximately $80 well exceeds that of many similar FDCPA class action settlements. *See, e.g.*, *Sullivan v. Marinosci Law Group, P.C., P.A.*, No. 18-81368, 2019 WL 6709575, at *2 (S.D. Fla. Nov. 22, 2019) ($27.51 per class member); *Durham v. Schlee & Stillman, LLC*, No. 15-1652, ECF No. 23 (D. Md. Oct. 3, 2016) (Hazel, J.) ($18.93 per class member); *Bellum v. Law Offices of Frederic I. Weinberg & Assocs.*,

P.C., No. 15-2460, 2016 WL 4766079, at *3 (E.D. Pa. Sept. 13, 2016) ($10.92 per class member); *Garza v. Mitchell Rubenstein & Associates, P.C.*, No. 15-1572, ECF No. 22 (D. Md. Apr. 25, 2016) (Hazel, J.) ($14.05 per class member); *Hall v. Frederick J. Hanna & Assocs., P.C.*, 2016 WL 2865081, at *3 (N.D. Ga. May 10, 2016) ($10 per class member).[12]

Thus, the significant recoveries obtained—particularly in light of statutorily-limited damages and the uncertainties in continued litigation highlighted above—strongly support GDR's requested fees. *See Garza*, 2016 WL 7468039, at *6 ("Finally, Plaintiffs' level of success warrants an award of the full lodestar amount.").

6. Fee and expense awards in similar FDCPA class settlements support the agreed amount sought here.

The twelfth *Johnson* factor looks to awards in similar cases in assessing class counsel's requested fees. To that end, the award requested here is well in line with—or even lower than—other recent fee awards in FDCPA class actions nationwide. *See, e.g.*, *Claxton v. Alliance CAS, LLC*, No. 19-61002, 2020 WL 2759826, at *3 (S.D. Fla. May 26, 2020) (awarding $38,500 in fees and expenses); *Dickens*, 2019 WL 1771524, at *1 (awarding $270,000 in fees and expenses); *Smith v. Cohn, Goldberg & Deutsch, LLC*, No. 17-2291, ECF No. 33 (D. Md. July 19, 2018) (Bennett, J.) (awarding $37,500 in fees and expenses); *Garza*, 2016 WL 7468039, at *6 (awarding $35,000 in fees and expenses).[13]

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[12] *See also Schell v. Frederick J. Hanna & Assocs., P.C.*, No. 15-418, 2016 WL 1273297, at *3 (S.D. Ohio Mar. 31, 2016) ($10 per class member); *Whitford v. Weber & Olcese, P.L.C.*, No. 15-400, 2016 WL 122393, at *2 (W.D. Mich. Jan. 11, 2016) (same); *Green v. Dressman Benzinger Lavelle, PSC*, No. 14-142, 2015 WL 223764, at *3 (S.D. Ohio Jan. 16, 2015) (approximately $31 per class member); *Little-King v. Hayt Hayt & Landau*, No. 11-5621, 2013 WL 4874349, at *14 (D.N.J. Sept. 10, 2013) ($7.87 per class member).

[13] *See also Kagno v. Bush Ross, P.A.*, No. 17-1468, ECF No. 49 (M.D. Fla. April 6, 2018) (awarding $55,000 in fees and expenses); *Beck v. Thomason Law Firm, LLC*, No. 16-570, ECF No. 24 (D.N.M. Oct. 10, 2017) (awarding $31,250 in combined fees and expenses); *Johnston v. Kass Shuler, P.A.*, No. 16-3390, ECF No. 30 (M.D. Fla. July 20, 2017) (approving $32,000 in

These awards further support the reasonableness of the attorneys' fees requested here.

7. The absence of any objections to date further supports the requested fee award.

Finally, while not specifically contemplated by the *Johnson* factors, the lack of any objections from class members or governmental agencies weighs heavily in favor of GDR's fee and expense request. Indeed, the class notice apprised absent class members that GDR would seek an award of attorneys' fees and reimbursement of expenses not to exceed $31,000 in total. Significantly, to date, not a single class member objected to any portion of the settlement, including the proposed attorneys' fees. "The absence of objections or disapproval by class members to Settlement Class Counsel's fee-and-expense request further supports finding it reasonable." *Hess v. Sprint Commc'ns Co. L.P.*, No. 11-35, 2012 WL 5921149, at *4 (N.D. W. Va. Nov. 26, 2012); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 594 (S.D.N.Y. 2008) ("That only one objection to the fee request was received is powerful evidence that the requested fee is fair and reasonable").

II. GDR also incurred reimbursable costs and expenses.

In addition, to date, GDR has incurred $567.20 in reimbursable litigation costs and expenses, which include the filing fee for the complaint, the fee for service of process on Defendant, costs for counsel's *pro hac vice* application, and Pacer charges. Johnson Decl., ¶ 26. The categories of expenses for which GDR seeks reimbursement are the type of expenses

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attorneys' fees, costs, and expenses); *Lehmeyer v. Messerli & Kramer, P.A.*, No. 15-2419, ECF No. 61 (D. Minn. Aug. 10, 2016) (awarding $30,000 in attorneys' fees, plus over $3,200 in expenses); *Kausch v. Berman & Rabin, P.A.*, No. 15-537, 2016 WL 3944685, at *2 (E.D. Mo. July 8, 2016) (approving fee and expense award of $33,250); *Schuchardt*, 314 F.R.D. at 689 ($52,500 in fees and expenses); *Baldwin v. Glasser & Glasser, P.L.C.*, No. 15-490, ECF No. 20 (E.D. Va. Mar. 24, 2016) (fees and expenses of $28,250); *Good v. Nationwide Credit, Inc.*, No. 14–4295, 2016 WL 929368, at *15 (E.D. Pa. Mar. 14, 2016) (fees and expenses of $125,000); *Whitford*, 2016 WL 122393, at *2 (fees and expenses of $30,000); *Green*, 2015 WL 223764, at *2 (fees and expenses totaling $30,000).

routinely charged to paying clients in the marketplace; therefore, the full requested amount should be reimbursed under Rule 23. *See Behrens*, 118 F.R.D. at 549 (awarding as reasonable and necessary, reimbursement for "travel, depositions, filing fees, postage, telephone, and copying"); *Garza*, 2016 WL 7468039, at *6 (awarding filing fee, *pro hac vice* admission fee, service of process fee, Pacer charges and travel expenses).

Moreover, Plaintiff is not seeking separate reimbursement for these costs and expenses; instead, they are subsumed within Plaintiff's $31,000 request. And importantly, Defendant will pay any fee and expense award separately from the fund for class members, and thus the fee and expense award will not diminish class members' recoveries. *See Good*, 2016 WL 929368, at *16 ("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.").

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) (observing that "[w]here 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 hundreds of Maryland consumers, as well as a change in Defendant's business practices, GDR filled exactly this role. As such, Plaintiff respectfully requests that this Court approve an award of attorneys' fees, litigation costs and expenses in the total amount of $31,000.

Dated: July 24, 2020

Respectfully submitted,

/s/ Jesse S. Johnson
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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I filed the foregoing with the Court using the Clerk of Court's CM/ECF system, which will provide notice to all counsel of record.

/s/ *Jesse S. Johnson*
Jesse S. Johnson