UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PAMELA LLOYD, on behalf of herself and others similarly situated, Plaintiff, v. JAMES E. ALBERTELLI, P.A. d/b/a ALBERTELLI LAW, Defendant.	:	**Civil Action No.: 0:20-cv-60300-RS**

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

Introduction

Through the Parties' class action settlement, James E. Albertelli, P.A. ("Defendant") will create a non-reversionary settlement fund that exceeds 1% of its book value net worth, and thus is more than Pamela Lloyd ("Plaintiff") could have recovered for the class in statutory damages had she 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 or 1% of the net worth of the debt collector).

In addition, Defendant will separately pay the costs of settlement administration and a statutory damages award to Plaintiff. Defendant also will pay—separate from the above amounts—Plaintiff's reasonable attorneys' fees and expenses in the amount of $28,450, subject to this Court's approval. Finally, Defendant has ceased using the form of debt collection letter at issue—a change that will benefit consumers who receive a debt collection letter from Defendant in the future.

In accordance with the Court's preliminary approval order, ECF No. 22, 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 up to $45,000—well more than Plaintiff seeks here.

No class member has objected to any aspect of the settlement, including the requested attorneys' fees and expenses.[1] Separately, Defendant provided notice of the settlement to the requisite government agencies pursuant to the Class Action Fairness Act ("CAFA"). *See* ECF No. 19. No objections resulted from the CAFA notice, either.

Given the meaningful results 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 the reimbursement of litigation expenses for her counsel—Greenwald Davidson Radbil PLLC ("GDR")—in the total amount of $28,450. As detailed herein and in the Declaration of James L. Davidson ("Davidson Decl."), attached as Exhibit A, Plaintiff's request is reasonable and supported by applicable law. Defendant does not oppose Plaintiff's request.

Legal Standard

A lodestar analysis is the appropriate means for determining attorneys' fees awards under the Fair Debt Collection Practices Act ("FDCPA."). *Newman v. Eduardo Meloni, P.A.*, No. 0:20-cv-60027-UU, 2020 WL 5269442, at *1 (S.D. Fla. Sept. 4, 2020) (Ungaro, J.). Once the lodestar is calculated, this lodestar amount may be adjusted by using the factors originally set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974): (1) the time and

[1] The deadline to object to the settlement is October 5, 2020. ECF No. 22 at 8. Plaintiff is filing her fee petition at this early date given the Eleventh Circuit's recent pronouncement in *Johnson v. NPAS Solutions, LLC* that Rule 23(h) requires a district court to sequence filings such that class counsel file their fee motion before any objection pertaining to fees is due. No. 18-12344, 2020 WL 5553312, at *4 (11th Cir. Sept. 17, 2020).

labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of any professional relationship with the client; and (12) awards in similar cases. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) (King, J.); *Bragg v. Bill Heard Chevrolet, Inc.*, No. 1:11–cv–666, 2007 WL 2781105, at *5 (M.D. Fla. Aug, 28, 2007) (considering reasonableness of attorneys' fees in light of *Johnson* factors); *Roundtree v. Bush Ross, P.A.*, No. 14-cv-00357-JDW-AEP, 2016 WL 360721, at *2 (M.D. Fla. Jan. 28, 2016) (same).[2] However, such an adjustment is "rare" because "the lodestar method yields a fee that is presumptively sufficient to achieve this objective." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010).

Moreover, these twelve factors are not exclusive, but instead are merely guidelines, and the Eleventh Circuit has encouraged district courts to consider additional factors unique to the particular case. *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1359. "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) (Middlebrooks, J.).

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

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[2] Internal citations, quotations, and footnotes are omitted.

Argument

I. Plaintiff's request for $28,450 in attorneys' fees, costs and expenses is reasonable.

A. An award of attorneys' fees in a successful FDCPA action is mandated by statute and need not be proportionate to the recoveries for the class and named plaintiff.

It is noteworthy that to encourage private action and enforcement, the FDCPA mandates an award of attorneys' fees to a successful consumer-plaintiff. *See* 15 U.S.C. § 1692k(a); *Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995) ("The [FDCPA's] statutory language makes an award of fees mandatory."); *Dauval v. Preferred Collection & Mgmt. Servs., Inc.*, No. 8:11–CV–2269–JDW–TGW, 2013 WL 12159442, at *1 (M.D. Fla. April 15, 2003) ("Subsection 1692k(a)(3) of the FDCPA mandates an award of costs and reasonable attorneys' fees in the case of any successful action to enforce the foregoing liability."). By its inclusion of a mandatory fee-shifting provision in the FDCPA, Congress has indicated that society has a significant stake in assisting consumers who may not otherwise have the means to pursue these cases, and in rewarding attorneys who pursue these actions. *See 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.").

"In 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. That "commensurate" fee is best measured by "what that attorney could earn from paying clients" at a "standard hourly rate." *Id*. Paying counsel less "is inconsistent with the Congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law." *Id*. As the Northern District of Ohio opined:

[O]ne of the fundamental principles of class action litigation is that it provides an

> incentive to pursue recovery for tortious conduct that would otherwise go unchecked because the individual harm to a potential plaintiff is too small to justify the cost of litigation. Collective action is the best, and, in many cases, the only feasible, way to redress the harm on an individual basis and discourage similar conduct in the future.

Lonardo v. Travelers Indem. Co., 706 F. Supp. 2d 766, 791 (N.D. Ohio 2010); *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.").

Correspondingly, 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."); *Newman*, 2020 WL 5269442, at *1 ("Therefore, courts routinely award reasonable attorneys' fees to a prevailing party in FDCPA cases that greatly exceed damage awards."); *accord Renninger v. Phillips & Cohen Assocs.*, No. 8:10–cv–5–T–33EAJ, 2010 WL 3259417, at *3 (M.D. Fla. Aug. 18, 2010) (noting that in consumer protection cases, attorneys' fees need not be awarded in proportion to the damages recovered).[3] As the District

[3] *See also Alhassid v. Bank of Am.*, 688 F. App'x 753, 760 (11th Cir. 2017) ("And, a reduction was not needed to make the fees and costs proportional to the damages since there is no express requirement of proportionality between the amount of the FDUTPA judgment and the attorney's fees and costs incurred in obtaining that judgment."); *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); *Dowling v. Litton Loan Servicing LP*, 320 F. App'x 442, 449 (6th Cir. 2009) (affirming award of $52,419.56 in attorneys' fees and expenses where plaintiff recovered $26,000).

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-cv-00104-JAW, 2016 WL 6208395, at *5 (D. Me. Oct. 24, 2016).

B. A lodestar analysis supports a finding that the fee request is reasonable.

"To arrive at a lodestar figure . . . the district court must first determine the number of hours reasonably spent by the plaintiffs' counsel on the matter, then multiply those hours by an hourly rate the court deems reasonable for similarly complex non-contingent work." *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 772 (11th Cir. 1991). The lodestar is typically presumed to yield a reasonable fee. *See 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, including the one in the present case."); *Zambrano v. Dom & Dom Pizza Inc.*, No. 11–20207–CIV, 2012 WL 2921513, at *2 (S.D. Fla. July 17, 2012) (O'Sullivan, J.) ("[T]he Supreme Court has found that there is a strong presumption that the lodestar product is the reasonable fee to which counsel is entitled.").

1. GDR expended a total of 63.4 hours in prosecuting this action to date.

To date, GDR has expended 63.4 hours performing legal services reasonably necessary to

litigate this matter, resulting in a total lodestar to date of $28,150. *See* Davidson Decl. at ¶¶ 15, 19.[4] This time included researching and preparing the class action complaint, working with defense counsel to prepare the joint scheduling report (and an amended joint scheduling report), negotiating the terms of a confidentiality agreement, negotiating the settlement, including participating in drafting the terms of the written settlement agreement and the class notice, preparing the preliminary approval papers, coordinating with the settlement administrator, conferencing with Plaintiff, and preparing this fee petition, among other tasks. *Id*. at ¶ 13.

GDR estimates that it will spend an additional approximately 10-20 hours on this matter, including researching and drafting the final approval motion; 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 ¶ 20. As a result, GDR will have spent between 73.4 and 83.4 hours litigating this case, resulting in a total expected lodestar of between $32,650 and $37,150, based on its hourly rates described below.

2. GDR's hourly rates are reasonable.

The prevailing market rate for similar services by similarly trained and experienced lawyers in the relevant legal community is the established basis for determining a reasonable hourly rate. *Duckworth v. Whisenant*, 97 F.3d 1393, 1396 (11th Cir. 1996).

Here, Michael L. Greenwald and James L. Davidson—partners at GDR—bill at a rate of $450 per hour. Davidson Decl. at ¶ 18. Jesse Johnson bills at a rate of $400 per hour. *Id*. Notably, Judge Ungaro recently approved these rates in an FDCPA class action. *See Newman*, 2020 WL 5269442, at *2 (finding GDR's rates to be "within the range of reasonableness for this District.").

[4] Courts may properly rely on summaries of the total number of hours spent by counsel. *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988) ("It is perfectly proper to award attorney's fees based solely on affidavits in the record.").

As did the Middle District of Florida, the Central District of California and the Southern District of West Virginia. *See Dickens v. G.C. Servs. Ltd. P'ship*, No: 8:16-cv-803-T-30TGW, 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."); *Aikens v. Malcolm Cisneros*, No. 5:17-cv-02462-JLS-SP, ECF No. 76 at 16 (C.D. Cal. Jan. 2, 2020) (approving GDR's partners' hourly rates ranging from $400 to $450); *Riddle v. Atkins & Ogle Law Offices, LC*, No. 19-249, 2020 WL 3496470, at *2 (S.D. W.Va. Jun. 29, 2020) (same).

Moreover, several years ago, Magistrate Judge Goodman and Judge Bloom both found an hourly rate of $400 to be reasonable for GDR's partners in FDCPA class action litigation. *See Kemper v. Andreu, Palma & Andreu, PL*, No. 15-21226, ECF No. 54 at 8 (S.D. Fla. Nov. 30, 2016) (Goodman, M.J.); *Gonzalez v. Dynamic Recovery Solutions, LLC*, Nos. 14–24502, 14–20933, 2015 WL 738329, at *4 (S.D. Fla. Feb. 23, 2015) (Bloom, J.). As have district courts outside this Circuit. *See McWilliams v. Advanced Recovery Sys., Inc.*, No. 15-70, 2017 WL 2625118, at *3 (S.D. Miss. June 16, 2017) ("The Court approves a $400 hourly rate for Michael L. Greenwald, Aaron D. Radbil, and James L. Davidson, as well as a $350 hourly rate for Jesse S. Johnson."); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 689 (N.D. Cal. 2016) ("Given that Class Counsel has been appointed in numerous class actions, including FDCPA cases; courts have awarded them exactly the same rates requested here in previous cases; and courts in this District found similar rates appropriate in FDCPA cases, Class Counsel's requested rates are reasonable.").

Furthermore, GDR's rates are consistent with prevailing rates previously found to be reasonable by courts both within, and outside, this district. *See, e.g., Parrot, Inc. v. Nicestuff Distrib. Int'l, Inc.*, No. 06-61231-CIV, 2010 WL 680948, at *8 (S.D. Fla. Feb. 24, 2010)

(Dimitrouleas, J.) ("For the year, 2007, an hourly rate of $440.00 for a partner with 19 years of experience, and $290.00 for a fourth-year associate, fall well within rates charged by law firms in the local market."); *Fresco v. Auto. Dirs.*, No. 03–CIV–61063, 2009 WL 9054828, at *7-8 (S.D. Fla. Jan. 20, 2009) (Martinez, J.) (rates ranging from $400 for associates to $600 for a senior partner were reasonable in a fee-shifting case under the Driver's Privacy Protection Act); *CC-Aventura, Inc. v. Weitz Co., LLC*, No. 06-21598-CIV, 2008 WL 276057, at *2 (S.D. Fla. Jan. 31, 2008) (Simonton, M.J.) (holding as reasonable eighth-year associate hourly rate of $400).[5]

3. GDR also incurred reimbursable costs and expenses.

In addition, to date, GDR has incurred $450 in reimbursable litigation costs and expenses for the filing fee of the complaint and the fee for service of process. Davidson Decl. at ¶ 23. The

[5] *See also Van Horn v. Nationwide Prop. and Cas. Ins. Co.*, 436 F. App'x 496, 498 (6th Cir. 2011) (district court did not abuse its discretion in approving rates ranging from $250 to $450 per hour); *Salazar v. Midwest Servicing Grp., Inc.*, No. CV 17-0137 PSG (KSX), 2018 WL 4802139, at *6 (C.D. Cal. Oct. 2, 2018) (finding reasonable hourly rates ranging from $450 to $495 in FDCPA case); *De Amaral v. Goldsmith & Hull*, No. 12-3580, 2014 WL 1309954, at *3 (N.D. Cal. Apr. 1, 2014) (finding rates of $450 per hour for a partner and $350 for an associate to be reasonable in FDCPA case); *Hull v. Owen County State Bank*, No. 1:11-cv-01303-SEB-MJD, 2014 WL 1328142, at *5 (S.D. Ind. Mar. 31, 2014) ("As a result, the Court awards Mr. Calhoun a total of $54,152.00 for fees (98 hours at $550.00 per hour plus 1.8 hours at $140.00 per hour) and $2,178.04 in costs."); *Briggins v. Elwood TRI, Inc.*, 3 F. Supp. 3d 1277, 1296 (N.D. Ala. Mar. 11, 2014) (finding reasonable hourly rates of between $200 and $625 for attorneys in Fair Labor Standards Act action); *Indyne, Inc. v. Abacus Tech. Corp.*, No. 6:11–CV–137–ORL–22DAB, 2013 WL 11312471, at *16 (M.D. Fla. Dec. 6, 2013), *report and recommendation adopted as modified*, No. 6:11–CV–137–ORL–22, 2014 WL 1400658 (M.D. Fla. Feb. 25, 2014) *aff'd*, 587 F. App'x 552 (11th Cir. 2014) ("For litigation related work performed in 2011, rates ranging up to $400 per hour for senior counsel or partner level work and $175 to $225 for junior attorneys were prevailing in the Middle District."); *Edmunds v. Levine*, No. 05–21215–CIV, 2009 WL 1012193, at *3 (S.D. Fla. Apr. 15, 2009) (Torres, M.J.) (reasonable rates between $375 and $400); *Rodriguez v. Pressler & Pressler, L.L.P.*, CV–06–5103, 2009 WL 689056, at *1 (E.D.N.Y. Mar. 16, 2009) (approving hourly rate of $450 and $300 in FDCPA case); *Topp, Inc. v. Uniden Am. Corp.*, No. 05-21698-CIV, 2007 WL 2155604, at *2-3 (S.D. Fla. July 25, 2007) (Simonton, M.J.) (holding as reasonable attorney hourly rate of $551); *Reade–Alvarez v. Eltman, Eltman & Cooper, P.C.*, No. CV–04–2195, 2006 WL 3681138, at *9 (E.D.N.Y. Dec. 11, 2006) (approving hourly rate of $420 in FDCPA case).

categories of expenses for which GDR seeks reimbursement are the type of expenses routinely charged to paying clients in the marketplace; therefore, the full requested amount should be reimbursed under Rule 23. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988) (King, J.), *aff'd,* 899 F.2d 21 (11th Cir. 1990) (awarding as reasonable and necessary, reimbursement for "travel, depositions, filing fees, postage, telephone, and copying").[6]

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

Turning to the *Johnson* factors, GDR has significant experience in litigating, and resolving, consumer protection class actions. *See* Davidson Decl. at ¶ 7. Indeed, multiple district courts have commented on GDR's useful knowledge and experience in connection with class action litigation. For example, in awarding attorneys' fees in an FDCPA class case, Judge Ungaro recently wrote: "GDR is an experienced firm that has successfully litigated many complex consumer class actions. Because of its experience, GDR has been appointed class counsel in many class actions throughout the country, including several in this District." *Newman*, 2020 WL 5269442, at *3.

In *Leboeuf v. Forster & Garbus LLP*, Judge Wendy B. Vitter of the Eastern District of Louisiana characterized GDR's work in an FDCPA class action as follows:

> Then the other two factors that the Court is required to take into consideration are the adequacy of the class representation and, as I stated on the record, I think Ms. Leboeuf and the class have been very ably represented. The briefing in this case has been superior. Again, I think it could be textbook material on how to handle a class action from all counsel in this matter. It's been enlightening for me as a Court, especially as a first-year judge, and I appreciated it very much.

No. 19-845 (E.D. La. July 2, 2020).

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 of a class action settlement

[6] Of note, GDR does not seek reimbursement for photocopies, telephone, fax, or online legal research fees.

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. 2:15-cv-1175-JEO (N.D. Ala. Mar. 15, 2017).

And 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 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 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).

GDR utilized its skill and experience to revolve this case in an efficient manner, resulting in a settlement that will provide meaningful cash relief to participating class members, and a change in Defendant's debt collection practices. This success strongly favors GDR's fee request. *See Newman,* 2020 WL 5269442, at *3 ("GDR employed that experience here in negotiating a favorable result that avoids protracted litigation, trial, and appeals."); *Singleton v. Domino's Pizza,*

LLC, 976 F. Supp. 2d 665, 683 (D. Md. 2013) ("As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.").

D. GDR assumed substantial risk to pursue the litigation on a contingent fee basis.

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 such small claimants to pool their claims and resources."); *Gross v. Washington Mut. Bank*, No. 02–CV–4135, 2006 WL 318814, at *6 (E.D.N.Y. Feb. 9, 2006) ("The type of litigation undertaken by class counsel here, which addresses important consumer concerns that would likely be ignored without such class action lawsuits, must be encouraged.").

In *Johnson*, the Fifth Circuit recognized that fees should be adequate "to enable litigants to obtain competent counsel worthy of a contest with the caliber of counsel available to their opposition . . . ." 488 F.2d at 719-20. The Court observed that "[a]dequate compensation [for successful counsel in contingent cases] is necessary . . . to enable an attorney to serve his client effectively and to preserve the integrity and independence of the profession." *Id.* The Second Circuit has voiced the same concern in the analogous context of antitrust class actions. *See Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir. 1973) ("In the absence of adequate attorneys' fee awards, many antitrust actions would not be commenced, since the claims of individual litigants, when taken separately, often hardly justify the expense of litigation.").

Here, GDR undertook this litigation on a contingent fee basis. As Judge King observed:

> Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer.... A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Behrens, 118 F.R.D. at 548; *see also Ressler v. Jacobson*, 149 F.R.D. 651, 654-55 (M.D. Fla. 1992) ("Here, of course, the fee was entirely contingent, which meant that, had Petitioners recovered nothing for the Class, they would not have been entitled to any fee at all. The substantial risks of this litigation abundantly justify the fee requested herein.").

Further, during the duration of the litigation, GDR employed only five full-time litigators. As a result, GDR focused meaningful resources on obtaining the results here, thus limiting its ability to focus on additional matters. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1365 ("It is uncontroverted that the time spent on the Action was time that could not be spent on other matters. This factor too supports the requested fee.").

E. The results obtained favor approval of the fee and expense request.

The eighth *Johnson* factor also compels approval of the requested fee award. "The Fair Debt Collection Practices Act is a set of complex laws with many components. The instant case would be very expensive to fully litigate, and might take years to finally resolve through the course of trial and appeal, creating additional attorney's fees and reducing any potential payout to the class." *Midland Funding, LLC v. Brent*, No. 3:08 CV 1434, 2011 WL 3557020, at *16 (N.D. Ohio Aug. 12, 2011).

Notwithstanding the foregoing, Defendant will create a settlement fund of $20,000 for the benefit of the members of the class. The class damages here exceed the statutory damages Plaintiff

could have recovered for the class had she prevailed at trial. *See* 15 U.S.C. § 1692k(A)(2)(B) (limiting class statutory class damages to the lesser of $500,000 or 1% of the debt collector's net worth). In addition, Plaintiff will receive $1,000, which is the maximum "additional" damages available to her under the statute. *Id.* at § 1692k(A)(2)(A).

And there was no guarantee of full statutory damages at trial because the FDCPA's damages provision is permissive rather than mandatory. That is, the law provides for awards *up to* certain amounts—$1,000 for Plaintiff, and the lesser of $500,000 or 1% of the debt collector's net worth for the class—after balancing such factors as the nature of Defendant's noncompliance, the number of persons adversely affected, and the extent to which Defendant's noncompliance was intentional. *See id.*, § 1692k(b)(2).

Accordingly, even had Plaintiff prevailed at trial, the jury may have awarded little in the way of statutory damages, or even none at all. *See Schuchardt*, 314 F.R.D. at 683 ("Because damages are not mandatory, continued litigation presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for the Class. In light of the risks and costs of continued litigation, the immediate reward to Class Members is preferable."). And the risk of a minimal damages award was not merely hypothetical. *See 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. 1:06 CV 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).

The settlement also resulted in an agreement that Defendant will no longer use the form of debt collection letter at issue, which will benefit all consumers who encounter Defendant's debt collection efforts in the future. This relief may not have been available to the class even had Plaintiff prevailed at trial. *See Claxton v. Alliance CAS, LLC*, N0. 19-61002, 2020 WL 2759826, at *2 (S.D. Fla. May 27, 2020) (Altman, J.) ("Here, the Settlement provides that the lead Plaintiff will receive $1,000, the Class will receive $5,532, which is above 1% of the combined net worth of the Defendants, and the Defendants have agreed to stop using the form letter at issue—a form of injunctive relief not available under the statute."); *Hicks v. Client Servs., Inc.*, No. 07–61822–CIV, 2008 WL 5479111, *10 (S.D. Fla. Dec. 11, 2008) (Dimitrouleas, J.) ("As this Court has previously found, the FDCPA 'specifically provide[s] for money damages as the appropriate relief,' but does not specifically provide for injunctive relief.").

Thus, the settlement—against the backdrop of the limitations imposed by the FDCPA—constitutes an excellent result for Plaintiff and the members of the class. This successful resolution supports the requested fee and expense award. *See, e.g.*, *Shoemaker v. Bass & Moglowsky*, No. 19-cv-316-wmc, 2020 WL 1671561, at *2 (W.D. Wis. Apr. 3, 2020) ("More critically, the monetary award each class member will receive likely exceeds that available under the remedies provision of the FDCPA, and the settlement requires defendant to alter its business practices, rendering this an exceptional settlement and entitling class counsel to an award of fees that represents three-quarters of the total settlement.").

F. Awards in similar cases favor approval of the fee request.

Courts also analyze whether the requested fee award "comports with customary fee awards in similar cases." *Gevaerts v. T.D. Bank*, No. 11:14-cv-20744-RLR, 2015 WL 6751061, at *13 (S.D. Fla. Nov. 11, 2015) (Rosenberg, J.). The fee requested by GDR here is in line with, if not

significantly less than, fee awards in other consumer class actions under fee-shifting statutes. *See, e.g., Newman*, 2020 WL 5269442, at *1 (awarding $50,000 in attorneys' fees and expenses in FDCPA class action); *Claxton*, 2020 WL 2759826, at *3 (awarding $38,500 in attorneys' fees and expenses in FDCPA class action); *Sullivan v. Marinosci Law Group, P.C, P.A.*, No. 9:18-cv-81368-DMM-DLB, 2019 WL 6709575, at *3 (S.D. Fla. Nov. 22, 2019) (Middlebrooks, J.) (awarding $33,000 in attorneys' fees and expenses in FDCPA class action); *Dickens*, 2019 WL 1771524, at *1 (awarding $270,000 in attorneys' fees and expenses in FDCPA class action); *Grant v. Ocwen Loan Servicing*, No.: 3:15-cv-01376-J-34-PDB, 2019 WL 367648, at *9 (M.D. Fla. Jan. 30, 2019) (awarding $150,000 in attorneys' fees and expenses in FDCPA class action); *Globus v. Pioneer Credit Recovery, Inc.*, 15-CV-152V, 2016 WL 4069285, at *3 (W.D.N.Y. July 27, 2017) (awarding $172,500 in attorneys' fees and expenses in class action under the FDCPA and Electronic Funds Transfer Act).[7]

G. That no class members objected to the requested fee and expense award supports its approval.

While not a recognized *Johnson* factor, courts also look to the class's response in considering the reasonableness of a proposed fee and expense award. Class members here were

[7] *See also Johnston v. Kass Shuler, P.A.*, No. 8:16–cv–3390–T–23AEP, 2017 WL 3113448, at * 1 (M.D. Fla. July 20, 2017) (awarding $32,000 in attorneys' fees and expenses in FDCPA class action); *McWilliams*, 2017 WL 2625118, at *3 (awarding attorneys' fees of $116,562.50 and expenses in the amount of $1,782.55 in FDCPA class action); *Blandina v. Midland Funding, LLC*, No. 13-11792, 016 WL 3101270, at *8 (E.D. Pa. June 1, 2016) (awarding $245,000 in attorneys' fees and expenses in FDCPA class action); *Alexander v. Coast Prof'l Inc.*, No. 12-1461, 2016 WL 861329, at *8 (E.D. Pa. Mar. 7, 2016) (awarding $185,000 in attorneys' fees and expenses in FDCPA class action); *Good v. Nationwide Credit, Inc.*, No. 14–4295, 2016 WL 929368, at *15 (E.D. Pa. Mar. 14, 2016) (awarding attorneys' $125,000 in attorneys' fees and expenses in FDCPA class action); *Roundtree*, 2016 WL 360721, at *2 (awarding attorneys' fees and expenses of $170,000 in FDCPA class action); *Donnelly v. EquityExperts.org, LLC*, No. 4:13–CV–10017–TGB, 2015 WL 249522, at *2 (E.D. Mich. Jan. 14, 2015) (awarding attorneys' fees of $90,000 and expenses in the amount of $5,947.58 in FDCPA class action).

provided direct mail notice of the settlement and advised that Plaintiff would seek up to $45,000 in combined attorneys' fees and litigation costs and expenses. To date, no class members have objected to any part of the settlement, including the requested fees and expenses. The absence of any objections strongly indicates that the requested attorneys' fee and expense award is fair and reasonable and should be approved. *See, e.g., Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1343 (S.D. Fla. 2007) (Altonaga, J.) ("Here, none of the over 18,000 Class members has objected to Class Counsel's fee request. That this sizeable class did not give rise to a single objection on the fees request further justifies the full award."); *Ressler*, 149 F.R.D. at 656 ("The fact that there are no objections to either the Settlement or to Petitioners' request for attorney's fees is strong evidence of the propriety and acceptability of that request."); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006) (Gold, J.) ("The lack of significant objection from the Class supports the reasonableness of the fee request.").

Moreover, Defendant will pay any fee and expense award separately from the fund for class members, and thus the fees requested 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 numerous Florida 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 $28,450, which is unopposed by Defendant or any class members.

Rule 7.1(a)(3) Certification

Pursuant to Local Rule 7.3, counsel for Plaintiff and counsel for Defendant conferred regarding this motion, and Defendant does not oppose the requested relief.

Dated: September 29, 2020

Respectfully submitted,

/s/ James L. Davidson
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Additional counsel for Plaintiff and the class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically filed on September 29, 2020 via the Court Clerk's CM/ECF system, which will provide notice to all counsel of record.

/s/ James L. Davidson
James L. Davidson