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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Daniel J. Rodriguez, on behalf of himself and others similarly situated, Plaintiff, vs. QS Next Chapter LLC f/k/a Express Interlock LLC d/b/a QuickStart Ignition Interlock, Defendant.	Case No. CV-20-00897-PHX-DJH **PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND LITIGATION EXPENSES AND INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES**

Introduction

Daniel J. Rodriguez ("Plaintiff") set out to rectify QS Next Chapter LLC's ("Defendant") use of confusing ignition interlock lease agreements that contained insufficient payment disclosures, in violation of the Consumer Leasing Act ("CLA"). Through a class action settlement benefitting more than 6,100 consumers statewide, he has done just that—securing over $21,000 in cash relief for class members, plus a change in Defendant's leasing practices that strikes at the heart of this litigation.

Participating class members should recover between $17 and $35 each, based on historical claims rates—an amount that falls well in line with similar consumer protection class settlements premised on allegedly faulty disclosures. Additionally, Defendant separately will pay $1,500 to Plaintiff for his service to the class, all class notice and administration costs, and Plaintiff's attorneys' fees, costs, and litigation expenses, as approved by this Court. As these payments are separate and apart from the settlement fund, they will not diminish class members' recoveries in any way, regardless of what this Court ultimately awards.

Following preliminary settlement approval, First Class, Inc.—the settlement administrator selected by the parties and approved by this Court—distributed class notice by direct mailings to potential class members. Among other things, that notice describes Plaintiff's intention to seek attorneys' fees, costs, and litigation expenses of up to $55,000 in total. To date, no one has objected to any portion of the settlement—including the fees request—or sought to be excluded.[1] No objections have resulted from the notice provided to governmental agencies under the Class Action Fairness Act ("CAFA"), either.

Given this support, and his counsel's efficient efforts in obtaining such meaningful class relief, Plaintiff now seeks an award of attorneys' fees of $48,560 and reimbursement of costs and litigation expenses of $584.40. As detailed below and in the

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[1] The deadline for objections is January 18, 2021. Plaintiff therefore will address future objections, if any, in his motion for final approval of the class settlement, due March 2, 2021.

accompanying Declaration of Jesse S. Johnson ("Johnson Decl."), these requests are reasonable, fully supported by the record and applicable Ninth Circuit law, and thus should be approved.

Settlement Summary

On November 18, 2020, this Court certified a Rule 23(b)(3) settlement class composed of consumers in Arizona to whom Defendant leased an ignition interlock device for personal use between May 8, 2019 and December 31, 2019. *Rodriguez v. QS Next Chapter LLC*, No. 20-897, 2020 WL 6882844, at *8 (D. Ariz. Nov. 18, 2020) (Humetewa, J.). Defendant will establish a $21,490 non-reversionary class settlement fund for the benefit of 6,111 potential class members, allowing $17 to $35 per participant, based on historical claims rates.

The class fund is notable for exceeding the statutory damages cap of one percent of Defendant's balance sheet net worth. *See* 15 U.S.C. § 1640(a)(2)(B); *accord Sanders v. Jackson*, 209 F.3d 998, 1004 (7th Cir. 2000) (holding that "net worth" for purposes of statutorily limited class damages under the Fair Debt Collection Practices Act ("FDCPA")—a sister consumer protection statute—means "balance sheet or book value net worth").[2] And any residual settlement funds will be redirected to Special Olympics of Arizona as the designated *cy pres* recipient, rather than revert to Defendant.

Separately, subject to this Court's approval, and at no cost to class members, Defendant will pay Plaintiff $1,500 in recognition of his service to the class; all remaining administration costs (after having already paid for the class notice campaign); and attorneys' fees, costs, and litigations expenses to Plaintiff's counsel, as awarded by this Court. The parties have reached no agreement on the amount of such fees and costs but will continue to negotiate in advance of the final fairness hearing scheduled for March 30, 2021.

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

Also important, Defendant no longer uses the form ignition interlock lease agreement underlying Plaintiff's claims—a significant public benefit.

Argument

I. Plaintiff's fee request of $48,560 is reasonable and should be approved.

A. Plaintiff is eligible for, and entitled to, recoupment of his attorneys' fees pursuant to the parties' settlement agreement, and because the CLA mandates awards of attorneys' fees to prevailing plaintiffs.

In this action under the CLA, Plaintiff contends that Defendant provided insufficient and misleading disclosures in the form ignition interlock lease agreement that Defendant entered in to with him and thousands of others. Having obtained a class settlement on behalf of the 6,100-plus individuals who signed similar lease agreements, Plaintiff here seeks an award of attorneys' fees pursuant to the parties' settlement agreement and the CLA's fee-shifting provision at 15 U.S.C. § 1640(a)(3).

The parties' settlement agreement at paragraph 10(D) confirms that Defendant "will not object to an award of attorneys' fees, costs and expenses" but "reserves its right to contest the amount of such an award." ECF No. 14-1 at 18. What's more, Defendant must pay Plaintiff his attorneys' fees, costs, and expenses, as this Court determines, entirely separate from class monies. *See id.* ("Any amount awarded to Class Counsel for attorneys' fees, costs, and expenses will be paid by Defendant separate and apart from the Settlement Fund, costs of Settlement administration, and any payment to Plaintiff.").

This aligns with statutory fee shifting mandated by the CLA, as codified within the Truth in Lending Act ("TILA"), which "provides that the prevailing plaintiff *shall* be awarded a reasonable attorney's fee as determined by the court." *Kessler v. Assocs. Fin. Servs. Co. of Haw., Inc.*, 639 F.2d 498, 499 (9th Cir. 1981). An award of attorneys' fees and costs under TILA, or the CLA, thus is mandatory for any successful consumer-plaintiff. *Palmer v. Statewide Grp.*, 134 F.3d 378, 378 (9th Cir. 1998) ("TILA provides that a prevailing plaintiff shall be awarded a reasonable attorney's fee as determined by

the court. The statute is both remedial and penal. An award of fees, where the plaintiff succeeds, is generally mandatory.").

By including mandatory fee shifting in TILA,[3] Congress indicated that society has a significant stake in assisting consumers who may not otherwise have the means to pursue these types of cases, and in rewarding those attorneys who assist in that pursuit. The Fourth Circuit recognized:

> 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 [] 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 [the plaintiff'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.

Nigh v. Koons Buick Pontiac GMC, Inc., 478 F.3d 183, 188 (4th Cir. 2007).

The Ninth Circuit agrees: "The purpose behind granting attorney's fees is to make a litigant whole and to facilitate private enforcement of the Truth in Lending Act." *Hannon v. Sec. Nat'l Bank*, 537 F.2d 327, 328 (9th Cir. 1976); *accord Camacho v. Bridgepoint Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (noting for the FDCPA: "Generally, litigants in the United States pay their own attorneys' fees, regardless of the outcome of the proceedings. However, in order to encourage private enforcement of the law[,] Congress has legislated that in certain cases prevailing parties may recover their

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[3] Because the CLA shares TILA's liability and fee-shifting provisions, *see* 15 U.S.C. § 1667d(a), case law addressing TILA fee awards is equally applicable here.

attorneys' fees from the opposing side. When a statute provides for such fees, it is termed a 'fee shifting' statute.").[4]

B. In light of statutory fee shifting, the lodestar method is the proper means for determining a fee award.

To help facilitate the CLA's important protectionary goals and encourage competent counsel to take up consumers' causes, "[a]n award of attorneys' fees under § 1640(a)(3) is properly calculated through a lodestar analysis, in which the court determines a reasonable rate and multiplies it by the number of attorney hours reasonably expended on the case." *Lyon v. Chase Bank USA, N.A.*, 656 F.3d 877, 891 (9th Cir. 2011) (evaluating fee award under the Fair Credit Billing Act, which shares the same liability provisions with the CLA and TILA). Numerous courts in this circuit have so applied TILA fee shifting. *E.g.*, *Mendoza v. Sidney Auto Sales, Inc.*, No. 17-7293, 2018 WL 3830133 (C.D. Cal. July 20, 2018); *Guadarrama v. Chadorbaff*, No. 17-645, 2018 WL 5816198 (C.D. Cal. June 25, 2018).

This is particularly true when, as here, the litigation produces prospective relief for consumers nationwide: Defendant's commitment to no longer use the form lease agreement that Plaintiff challenged as confusing and misleading. The inherent difficulty in quantifying this intangible benefit for consumers further supports application of the lodestar method in awarding Plaintiff's attorneys' fees. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) ("The 'lodestar method' is appropriate in class actions brought under fee-shifting statutes (such as federal civil rights, securities, antitrust, copyright, and patent acts), where the relief sought—and obtained—is often primarily injunctive in nature and thus not easily monetized, but

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[4] Also important, "[a] party that obtains a judicially enforceable settlement agreement that provides some of the relief sought is a 'prevailing party' for purposes of fee-shifting statutes." *Nevarez v. Forty Niners Football Co., LLC*, No. 16-7013, 2020 WL 4226517, at *5 (N.D. Cal. July 23, 2020). Settlement approval here thus triggers statutory fee shifting in Plaintiff's favor. *See Carbonell v. I.N.S.*, 429 F.3d 894, 901 (9th Cir. 2005) (When "the district court [has] placed its stamp of approval on the relief obtained, that relief has the necessary judicial imprimatur to qualify a plaintiff as a prevailing party.").

where the legislature has authorized the award of fees to ensure compensation for counsel undertaking socially beneficial litigation.").

As the Western District of Washington recognized in *Johnson v. Metro-Goldwyn-Mayer Studios, Inc.*:

> [T]he lodestar method is appropriate in this case for numerous reasons. First, the action was brought, at least in part, under Washington's Consumer Protection Act, which provides for an award of statutory attorneys' fees. Second, the settlement did not create a true common fund as it did not establish a single sum for both class compensation and attorneys' fees. Plaintiff also indicates that class compensation was negotiated first, with attorneys' fees being negotiated only after settlement of the class claims. Third, at least part of the relief obtained under the settlement agreement was injunctive relief and the lodestar method is often used where the relief sought and obtained is not easily monetized. Fourth, Plaintiff has considered only the lodestar method in her Motion for Fees.

No. 17-541, 2018 WL 5013764, at *6 (W.D. Wash. Oct. 16, 2018); *see also Relente v. Viator, Inc.*, No. 12-5868, 2015 WL 3613713, at *2 (N.D. Cal. June 9, 2015) ("[T]he Court's attorney's fees analysis will use the lodestar method. That method is particularly suited to this case because part of the relief the class obtained is an injunction, whose value will not be reflected in the monetary award that is going to the class.").

C. Plaintiff's counsel will amass a lodestar of $48,560 by the time this matter concludes, based upon 120 hours of diligent effort.

Using the lodestar method, this Court must determine a reasonable attorneys' fee "by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Camacho*, 523 F.3d at 978. The Court also may consider a multiplier to that lodestar:

> [T]he Court divides the total fees sought by the lodestar to arrive at the multiplier. The purpose of this multiplier is to account for the risk Class Counsel assumes when they take on a contingent-fee case. If the multiplier falls within an acceptable range, it further supports the conclusion that the fees sought are, in fact, reasonable. In determining whether a multiplier is appropriate, courts consider the following factors:

> (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (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) whether the fee is fixed or contingent, (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.

Schuchardt v. Law Office of Rory W. Clark, 314 F.R.D. 673, 690 (N.D. Cal. 2016). Consideration of these 12 factors—often described as the *Kerr* factors, *see Kerr v. Screen Guild Extras, Inc.*, 526 F.2d 67 (9th Cir. 1975)—also comports with the reasonableness analysis guided by this Court's Local Rules. *See* LRCiv 54.2(c)(3).

But first, turning to the number of hours reasonably expended, the attorneys at Greenwald Davidson Radbil PLLC ("GDR") invested a significant amount of time for the class's benefit, which included: (a) conducting an investigation into the underlying facts regarding Plaintiff's and the class's claims; (b) preparing a class action complaint; (c) researching the law pertinent to class members' claims and Defendant's defenses; (d) assessing class damages and negotiating the parameters of the class settlement now before this Court, which included several demands and counteroffers and corresponding telephone conferences among counsel to work through details of the same; (e) conferring repeatedly with Plaintiff and defense counsel throughout the litigation, beyond the aforementioned settlement discussions; (f) preparing the parties' class settlement agreement, along with the proposed direct mail and long-form class notices; (g) coordinating with First Class and defense counsel to devise a class notice and settlement administration program to best serve class members; (h) preparing Plaintiff's motion for preliminary approval of the class settlement, the proposed order accompanying the same, and counsel's supporting declaration; (i) upon the Court's preliminary approval of the settlement, coordinating with First Class and defense counsel to finalize the class notice

program; (j) responding to class member inquiries regarding the settlement; (k) preparing the instant motion for attorneys' fees, costs, and litigation expenses, and the proposed order accompanying the same;[5] and (l) preparing counsel's detailed declaration supporting Plaintiff's fee and expense request. Johnson Decl. at ¶ 40.

In doing so, GDR's attorneys collectively have billed 80 hours thus far, performing legal services reasonably necessary to litigate this matter. *Id.* at ¶¶ 43-46. The undersigned served as lead attorney and performed most of this work himself, while two additional partners assisted with legal and briefing strategy. *Id.* at ¶ 46. Worth noting, this tally does *not* include several more hours of attorney time that GDR voluntarily zeroed out as non-billable in an exercise of billing discretion. *See id.* at ¶ 43.

And GDR anticipates spending approximately 40 more hours of billable time to prepare Plaintiff's final approval motion and corresponding final approval order; prepare for and attend the final fairness hearing in Phoenix in March 2021; continue coordinating class notice and settlement administration efforts with First Class and Defendant's counsel; respond to class member inquiries; and otherwise bring this matter to an orderly conclusion. *See id.* at ¶¶ 41, 47. As a result, GDR will have spent 120 hours litigating this case by the time it concludes.

In completing this work, the undersigned billed at $400 per hour, and senior partners Michael L. Greenwald and James L. Davidson each billed at $450 per hour. Significantly, in connection with similar class action settlements over the past 12 months, the Central District of California, the Southern District of Florida (twice), and the Southern District of West Virginia all specifically approved as reasonable GDR's partner rates of $400 and $450. *See Lloyd v. James E. Albertelli, P.A.*, No. 20-60300, 2020 WL 7295767, at *2 (S.D. Fla. Dec. 10, 2020); *Newman v. Edoardo Meloni, P.A.*, No. 20-60027, 2020 WL 5269442, at *2 (S.D. Fla. Sept. 4, 2020); *Riddle v. Atkins & Ogle Law*

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[5] "In statutory fee cases, federal courts, including our own, have uniformly held that time spent in establishing the entitlement to and amount of the fee is compensable." *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-660 (9th Cir. 1985).

Offices, LC, No. 19-249, 2020 WL 3496470, at *2 (S.D. W. Va. June 29, 2020); *Aikens v. Malcolm Cisneros, A Law Corp.*, No. 17-2462, ECF No. 76 at 16 (C.D. Cal. Jan. 2, 2020).

And over four years ago, Judge Silver similarly approved GDR's $400 partner rate for comparable FDCPA class litigation. *Gonzalez v. Germaine Law Office PLC*, No. 15-1427, 2016 WL 5844605, at *1, n.1 (D. Ariz. Oct. 3, 2016) (noting that GDR's "hourly rates are in line with others recently approved in FDCPA cases in this District").[6] GDR's rates accordingly fit within prevailing market rates in this district, particularly for complex matters like this. *See, e.g.*, *Alliance Labs, LLC v. Stratus Pharms.*, No. 12-927, 2013 WL 3298162, at *3 (D. Ariz. July 1, 2013) (Sedwick, J.) ("The court concludes that Lewis and Roca's median partner rate of $520 per hour and median associate rate of $330 per hour better reflect the prevailing rates in Phoenix for work of the sort performed on the motion to compel."); *Glendale & 27th Invs. LLC v. Delos Ins. Co.*, No. 10-673, 2013 WL 11311227, at *4 (D. Ariz. May 6, 2013) (Bolton, J.) (finding partner hourly rate of $400 "would be reasonable"); *LimoStars, Inc. v. N.J. Car and Limo, Inc.*, 10-2179, 2011 WL 3471092, at *18 (D. Ariz. Aug. 8, 2011) (Anderson, J.) ("Plaintiff's attorney Mark L. Brown's hourly rates of $391.00 per hour until October 2010 and $400.00 per hour after October 2010 are reasonable, considering his experience, his expertise in a specialized, complex area of federal law (trademark infringement), and several other factors based on

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[6] *See also Dickens v. GC Servs. Ltd. P'ship*, No. 16-803, 2019 WL 1771524, at *1 (M.D. Fla. Apr. 10, 2019) ("[GDR] charged associate and partner rates ranging from $350 to $450 per hour. The Court agrees that for this type of litigation and the market rate in Tampa, the rates are reasonable."); *Marcoux v. Susan J. Szwed, P.A.*, No. 15-93, 2017 WL 679150, at *5 (D. Me. Feb. 21, 2017) (approving GDR's partner rate of $400); *McWilliams v. Advanced Recovery Sys., Inc.*, No. 15-70, 2017 WL 2625118, at *3 (S.D. Miss. June 16, 2017) (same); *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*, 314 F.R.D. at 689 ("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.").

his verified information and background."); *Bogner v. Masari Invs., LLC*, No. 08-1511, 2010 WL 2595273, at *2-3 (D. Ariz. June 24, 2010) (Campbell, J.) (in FDCPA class litigation over 10 years ago, finding that rates of $465 and $350 per hour "approach the high end of [local] rates, [but] the Court cannot conclude that they are unreasonable"); *Shelago v. Marshall & Ziolkowski Enter., LLC*, No. 07-279, 2009 WL 1097534, at *2 (D. Ariz. 2009) (Teilborg, J.) (finding rates of $300 and $400 reasonable, in 2009, in *individual* FDCPA litigation).[7]

Multiplying each attorney's hourly rate by the number of hours he committed to this case yields a lodestar to date of $32,560. *See* Johnson Decl. at ¶ 50. And tallying Mr. Johnson's additional anticipated time of 40 hours, multiplied by his rate of $400 per hour, adds $16,000 more in expected lodestar. *Id.* at ¶ 47. So, combining the time incurred with the additional time anticipated thus results in a total anticipated lodestar of $48,560. *Id.* at ¶ 50.[8] Plaintiff submits that this estimation is perfectly reasonable for the significant work performed by GDR to obtain the great results of this settlement for over 6,100 potential class members statewide. This is particularly true considering that GDR voluntarily

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[7] Noteworthy, GDR's rates sit just below the median hourly rate of $475 for attorneys handling class action cases in Arizona, as set forth in the most recent version of the United States Consumer Law Attorney Fee Survey Report. *See* United States Consumer Law Attorney Fee Survey Report, 2017-2018, p. 53, available at https://burdgelaw.com/wp-content/uploads/2019/10/US-Consumer-Law-Attorney-Fee-Survey-Report-2017-2018.pdf (last visited December 16, 2020); *accord Shelago*, 2009 WL 1097534, at *2 (considering fee survey in addressing fee request under the FDCPA).

[8] Plaintiff is filing this motion, prior to the objection deadline, seeking a total fee award that includes estimations for work remaining to be done so that class members may evaluate his fee petition in its entirety when assessing their potential courses of action. *Accord In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-94 (9th Cir. 2010) ("The plain text of [Rule 23] requires that any class member be allowed an opportunity to object to the fee 'motion' itself, not merely to the preliminary notice that such a motion will be filed."). If at the conclusion of this case GDR ultimately incurs attorneys' fees in some lesser amount than its estimations, Plaintiff will seek a fee award of only whatever amount the record supports. Conversely, if GDR ultimately incurs more time than is estimated, Plaintiff will not seek recompense above the $48,560 total provided herein.

reduced its lodestar by zeroing out several time entries, including two timekeepers, prior to Plaintiff making this request. *See id.* at ¶¶ 8 n.1, 43; *see also Reade-Alvarez v. Eltman, Eltman, & Cooper, P.C.*, No. 04-2195, 2006 WL 3681138, at *8 (E.D.N.Y. Dec. 11, 2006) ("Because the proposed fee of $50,000 is actually lower than the lodestar, that proposed amount is justifiable.").

D. Several *Kerr* factors support the reasonableness of Plaintiff's fee request.

While Plaintiff seeks no multiplier on his counsel's lodestar—instead, a reduction—the *Kerr* factors further demonstrate the reasonableness of his request here.

1. The novelty and difficulty of Plaintiff's CLA class claims support approval of his fee request, as the ultimate questions of certifiability and liability remained in dispute.

Absent settlement, there was no guarantee of victory for Plaintiff or the class, nor a maximum damages award. The parties reached their settlement here with a good view towards the strengths and weaknesses of the class claims. Defendant likely would have presented several defenses to liability, some of which have been accepted by other courts. *See, e.g.*, *Cottle v. Monitech, Inc.*, No. 17-137, 2017 WL 6519024 (E.D.N.C. Dec. 20, 2017) (dismissing CLA disclosure claims on jurisdictional grounds), *aff'd* 733 F. App'x 136 (4th Cir. 2018); *but see also Danger v. Nextep Funding, LLC*, 355 F. Supp. 3d 796 (D. Minn. 2019) (sustaining CLA and TILA claims).

Regardless, even assuming the class *had* prevailed on the merits, the CLA guarantees no *minimum* statutory damages. 15 U.S.C. § 1640(a)(2)(B). Courts must instead balance considerations like the frequency and persistence of the creditor's compliance failures, the number of persons adversely affected, and the extent to which noncompliance was intentional. *Id.* at § 1640(a). Consequently, the jury here could have awarded class members little in the way of statutory damages—or even none whatsoever. *See Schuchardt*, 314 F.R.D. at 683 (considering a similar provision in the FDCPA and 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"). These risks balanced against the meaningful financial compensation

obtained for the class—under GDR's guidance—support the reasonableness of the requested fee award.

2. GDR's skill, experience, and reputation all favor approval of their fees.

Counsel's significant experience litigating, and resolving, consumer protection class actions has earned the firm a solid reputation in this field. To be sure, GDR has been appointed class counsel dozens of times, *see* Johnson Decl. at ¶ 20 (collecting examples), with many district courts complimenting GDR's attorneys along the way. *Id* at ¶¶ 22-26. Class counsel relied upon their extensive experience and specialized skill set to navigate this case efficiently to settlement, resulting in meaningful cash relief beyond applicable statutory damages limits, plus a change in Defendant's leasing practices. This success strongly favors class counsel's request. *See In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 14-2541, 2017 WL 6040065, at *10 (N.D. Cal. Dec. 6, 2017) ("class counsel's efficiency should be considered favorably in evaluating the reasonableness of the fee request").

3. GDR assumed great risk pursuing this case on a contingent fee basis.

Plaintiff entered into a contingent attorneys' fee agreement with GDR, as is customary in consumer protection class litigation. Class counsel thus would only receive payment in this case if they obtained a recovery for Plaintiff and the class. Such a fee arrangement "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 Clark v. City of L.A.*, 803 F.2d 987, 991 (9th Cir. 1986) ("The risk and delay involved in contingent fee arrangements have long been seen as justifications for the relatively large fees often resulting in contingency cases.").[9]

[9] And accepting this matter undoubtedly precluded class counsel from taking on other employment, as GDR is a relatively small firm with only five full-time attorneys.

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

"The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award." *Graham v. Capital One Bank (USA), N.A.*, No. 13-743, 2014 WL 12579806, at *5 (C.D. Cal. Dec. 8, 2014). The settlement provides benefits to Plaintiff and absent class members—and even the public at large—that could not necessarily have been achieved, even assuming trial victory. The $21,490 settlement fund exceeds the statutory damages allowed under the CLA, which are capped by law at one percent of Defendant's balance sheet net worth. Class members accordingly will do *better* by this settlement, in terms of statutory damages, than had they prevailed at trial. Plus, the settlement provides *immediate* cash relief, whereas any hypothetical trial recovery would likely take years to collect given the inevitable appeals that would follow.

Also significant is the change in Defendant's leasing practices resulting from the parties' agreement, which serves to benefit *all* consumers who may do business with Defendant in the future. *See McLaughlin v. Wells Fargo Bank, N.A.*, No. 15-2904, 2017 WL 994969, at *2 (N.D. Cal. Mar. 15, 2017) ("Additionally, the proposed class settlement requires defendant to implement a 'practice change' that reforms its payoff statements to comply with TILA, resulting in further and prospective benefit to class members."). The success from the settlement strongly supports the requested fees.

5. Awards in similar TILA class cases well support the amount requested.

The attorneys' fees sought here are well in line with—or even considerably lower than—other recent fee awards in CLA/TILA class actions nationwide, confirming the reasonableness of Plaintiff's request. *See, e.g., Spencer v. #1 A LifeSafer of Ariz., LLC*, No. 18-2225, ECF No. 60 at 4 (D. Ariz. Aug. 9, 2019) (Willett, M.J.) (awarding $67,500 in fees and costs); *McLaughlin*, 2017 WL 994969, at *5 (awarding $911,349.43 in fees and $43,063.76 in costs); *Graham*, 2014 WL 12579806, at *6-7 ($318,973.72 in fees and $11,206.28 in costs); *Salvagne v. Fairfield Ford, Inc.*, No. 09-324, 2011 WL 13248504, at *4-5 (S.D. Ohio Sept. 21, 2011) ($75,000 in fees and $11,466.36 in costs and

expenses); *Rubinstein v. Dept. Stores Nat'l Bank*, No. 08-1596, 2011 WL 147721, at *1 (S.D.N.Y. Jan. 11, 2011) ($240,000 in fees and costs); *Andrews v. Chevy Chase Bank FSB*, 706 F. Supp. 2d 916, 925 (E.D. Wisc. 2010) (awarding $162,046.50 in fees and $867.21 in costs); *Abel v. Keybank, U.S.A., N.A.*, No. 03-524, 2005 WL 2216938, at *4 (N.D. Ohio Sept. 12, 2005) ($196,941.25 in fees and $14,458.49 in costs); *Daenzer v. Wayland Ford, Inc.*, No. 01-133, 2003 WL 22414966, at *6 (W.D. Mich. Sept. 25, 2003) (approving $167,375.10 in fees specific to successful prosecution of TILA class claim, plus $13,335.01 in expenses).

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

The lack of objections from class members or governmental agencies weighs heavily in favor of Plaintiff's fee request. The class notice specifically apprised absent class members that GDR would seek an award of attorneys' fees of up to $52,000, plus reimbursement of costs and expenses of up to $3,000. Meanwhile, Plaintiff here seeks significantly less—only $48,560 in fees and, as described below, just $584.40 in costs and expenses. To date, not a single class member has objected to any portion of the settlement, and "[t]he absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable." *Koyle v. Level 3 Commnc'ns, Inc.*, No. 01-286, 2011 WL 13227841, at *3 (D. Idaho June 23, 2011).

7. Awards pursuant to fee-shifting statutes need not be proportional to—and thus may greatly exceed—plaintiffs' damages recoveries.

Finally, the size of the fee request in relation to the settlement fund does not bear on its reasonableness. In keeping with congressional intent, awards of attorneys' fees under federal fee-shifting statutes "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 Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1033 (9th Cir. 2012) ("The same is true in consumer protection cases: where the monetary recovery is generally small, requiring direct proportionality for attorney's fees would discourage vigorous enforcement of the consumer protection statutes."); *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 attorneys' fee award in proportion to the damages recovered would seriously undermine the mechanism that Congress chose to enforce the CLA, particularly in light of its consumer protection goals. *See Purtle v. Eldridge Auto Sales, Inc.*, 91 F.3d 797, 802 (6th Cir. 1996) (upholding a TILA fee award and noting that "[t]he attorney's fees are not limited by the amount of Purtle's recovery"); *accord Durham v. Cont'l Cent. Credit*, No. 07-1763, 2011 WL 6783193, at *3 (S.D. Cal. Dec. 27, 2011) ("A requirement of proportionality between attorney's fees and damages would discourage attorneys from accepting representation of FDCPA plaintiffs and would be inconsistent with the FDCPA's statutory scheme.").

The very purpose of CLA fee shifting is to benefit consumers by allowing them to obtain competent counsel to pursue redress under the statute, even for relatively small claims. *See Nigh*, 478 F.3d at 188 ("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."). By incentivizing the private bar to involve itself in consumer protection litigation by way of fee-shifting provisions, the federal government has relieved itself of the costs of protecting consumers while ensuring that they may still be vindicated under the law.

FDCPA jurisprudence is particularly enlightening because, like the CLA, that statute encourages private enforcement through fee shifting while also instituting class damages limits in proportion to the defendant's net worth—thus capping available remedies, even for potentially egregious violations. *See* 15 U.S.C. § 1692k(a). The Seventh Circuit thus found 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 v. Friedman, 46 F.3d 645, 653 (7th Cir. 1995). This "commensurate" fee is best measured not by damages obtained but by "what that attorney could earn from paying clients" at a "standard hourly rate." *Id.*

Paying counsel less—by fashioning a fee award in proportion 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.*; *see also Davis v. Hollins Law*, 25 F. Supp. 3d 1292, 1302 (E.D. Cal. 2014) ("Wronged debtors would [] be less likely to find counsel absent the guarantee of fee-shifting, as the damages involved are often too low to support contingency-based representation."); *Kottle v. Unifund CCR, LLC*, 992 F. Supp. 2d 982, 985 (C.D. Cal. 2014) ("As there rarely will be extensive damages, a rule of proportionality would discourage vigorous enforcement of [the] FDCPA."); *De Amaral v. Goldsmith & Hull*, No. 12-3580, 2014 WL 1309954, at *6, *8 (N.D. Cal. Apr. 1, 2014) (awarding $118,978.30 in fees and costs in FDCPA action because the $1,000 damages recovery did "not reflect a lack of success. [The plaintiffs'] purpose was to establish that the defendants violated the FDCPA, and they won.").

Of course, this same reasoning applies with equal force to CLA fee awards as well. *See Purtle*, 91 F.3d at 802.

II. Plaintiff is entitled to reimbursement of reasonable costs and litigation expenses under the CLA, Rule 23, and the settlement agreement.

Plaintiff also seeks reimbursement of costs and litigation expenses routinely charged to paying clients in the marketplace and, therefore, properly reimbursable under the CLA and Rule 23. 15 U.S.C. § 1640(a)(3); *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."); ECF No. 14-1 at 18 (Defendant has committed to paying Plaintiff's attorneys' fees, costs, and litigation expenses here).

GDR thus far has incurred reimbursable costs and litigation expenses in the amount of $584.40. Johnson Decl. at ¶ 53. This includes the filing fee for the complaint ($400), the cost for service of process on Defendant ($65), costs for counsel's *pro hac vice* admission ($119), and PACER charges for case documents ($0.40). *Id.* Counsel additionally anticipates reimbursable expenses associated with travel to Phoenix for the final fairness hearing in March 2021, including airport parking, airfare, hotel lodging, meals, and local transportation in Phoenix. GDR estimates that these additional expenses will total approximately $700, but Plaintiff will supplement this request at a later date to confirm the total of expenses actually incurred. *Id.* at ¶¶ 53-55. All such expenses are properly compensable and deserving of reimbursement upon Plaintiff's confirmation of their actual costs at the final fairness hearing.[10]

Conclusion

Defendant has agreed to create a substantial class settlement fund, discontinue use of its form lease agreement, and separately pay a reasonable attorneys' fee and expense award to Plaintiff's counsel. The proposed fee and expense award will not diminish class members' recoveries in any way, as Defendant will pay this amount in addition to, and not *from*, the class settlement fund. *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."). Because Plaintiff's attorneys' fees and expenses are fair and reasonable, unopposed by class members to date, and well supported by both the record and applicable Ninth Circuit law, they should be approved under the CLA and Rule 23.

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[10] Worth noting, GDR also incurred other reimbursable expenses not itemized herein such as for printing, photocopies, long distance telephone calls, and computerized legal research. But Plaintiff does not seek reimbursement for these expenses, underscoring the reasonableness of the request at hand.

Respectfully submitted this 18th day of December, 2020.

GREENWALD DAVIDSON RADBIL PLLC

By: *s/ Jesse S. Johnson*
Jesse S. Johnson (*pro hac vice*)
Class counsel

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, I filed a copy of the foregoing electronically 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