

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

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Alex Cooper, on behalf of himself and others	:	Civil Action No.: 1:21-cv-01562-TWP-DML
similarly situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
InvestiNet, LLC,	:	
	:	
Defendant.	:	

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**PLAINTIFF’S UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS’ FEES  
AND REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES**

As a result of the settlement now before this Court, class members will receive nearly the maximum statutory damages available under the Fair Debt Collection Practices Act (“FDCPA”). Alex Cooper (“Plaintiff”) obtained this relief while avoiding the risks and delays attendant to lengthy discovery, dispositive motion practice, and trial. Plaintiff accordingly seeks this Court’s approval of an agreed award of attorneys’ fees, costs, and litigation expenses of \$31,500 in total, to be paid entirely separate from the class fund. Notably, the parties negotiated the award of attorneys’ fees, costs, and litigation expenses only after establishing all other settlement terms and after this Court preliminarily approved the settlement.

On December 27, 2021, with the assistance of Class-settlement.com—the appointed settlement administrator—the parties distributed class notice by direct mail, using class members’ names and addresses from InvestiNet, LLC’s (“Defendant”) records. That notice describes the terms of the settlement, including that Plaintiff would seek an award of attorneys’ fees, costs, and expenses of up to \$40,000 in total—significantly more than Plaintiff seeks through this motion. Thus far, no one has objected to any aspect of the settlement, including the proposed fees and

expenses.<sup>1</sup> Defendant also issued notice to requisite government agencies pursuant to the Class Action Fairness Act (“CAFA”). *See* ECF No. 32-1. No government agencies have objected as a result of the CAFA notice, either.

Given Plaintiff’s success, as well as the lack of any objections to date, he now seeks an award of attorneys’ fees, costs, and litigation expenses in the agreed total amount of \$31,500. As detailed below and in counsel’s accompanying declaration, attached as Exhibit A (“Greenwald Decl.”), Plaintiff’s fee and expense request is reasonable and well supported by the record and applicable law.

Importantly, Defendant does not oppose this relief.

### **Summary of this Action and Settlement**

Defendant transmits information regarding consumers and their alleged debts to a print and mail vendor. In turn, Defendant’s vendor uses the information to fashion, print, and mail debt collection letters to Indiana consumers. Plaintiff alleges that this practice violates section 1692c(b) of the Fair Debt Collection Practices Act (“FDCPA”).<sup>2</sup> Defendant denies any liability.

Following more than a month of settlement discussions, the parties reached an agreement to resolve this matter whereby Defendant will create a non-reversionary settlement fund of \$18,800—a total that nears one percent of its book value net worth—to be distributed pro-rata to

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<sup>1</sup> The deadline to object is February 4, 2022. ECF No. 31 at 8.

<sup>2</sup> 15 U.S.C. § 1692c(b) provides:

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

each participating class member. This is significant because statutory damages under the FDCPA are capped at one percent of a defendant's net worth. *See* 15 U.S.C. § 1682k(A)(2)(B) (“in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector”). In fact, the settlement provides approximately 96 percent of the *upper limit* of potential class damages.

In addition, and separate from the settlement fund so as not to dilute class members' recoveries, Defendant also will pay: (1) all costs of class notice and settlement administration, which includes the mailing of notice and a short claim form to each potential class member; (2) full statutory damages of \$1,000 to Plaintiff; and (3) class counsel's reasonable attorneys' fees, costs, and litigation expenses in an amount to be awarded by this Court.

On December 6, 2021, this Court preliminarily approved the settlement and certified a Rule 23(b)(3) settlement class defined as: “All persons (a) with an Indiana address, (b) to which InvestiNet, LLC sent, or caused to be sent, a written debt collection communication, (c) in connection with the collection of a consumer debt, (d) from June 9, 2020 through June 8, 2021, (e) that was printed or mailed by CompuMail, Inc.” ECF No. 31.

### **Argument**

#### **I. The Court should approve an award of attorneys' fees and reimbursement of litigation expenses in the amount of \$31,500.**

##### **A. The FDCPA mandates an award of attorneys' fees to a prevailing plaintiff.**

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)(3). Specifically, the Seventh Circuit explained:

The reason for mandatory fees is that congress chose a “private attorney general” approach to assume enforcement of the FDCPA.

Given the structure of the section, 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.

*Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991).

\* \* \*

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. As we noted in *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir. 1993),

Our recent cases have stressed that the best measure of the cost of an attorney’s time is what that attorney could earn from paying clients. For a busy attorney, this is the standard hourly rate. If he were not representing this plaintiff in this case, the lawyer could sell the same time to someone else. That other person’s willingness to pay establishes the market’s valuation of the attorney’s services.

The Third Circuit has similarly stated:

Congress provided fee shifting to enhance enforcement of important civil rights, consumer-protection, and environmental policies. By providing competitive rates we assure that attorneys will take such cases, and hence increase the likelihood that the congressional policy of redressing public interest claims will be vindicated.

*Student Public Interest Research Group v. AT & T Bell Laboratories*, 842 F.2d 1436, 1449 (3d Cir. 1988).

Here, Tolentino prevailed on summary judgment, thereby protecting her rights under the statute, and has recovered the maximum statutory damages allowed to an individual plaintiff. Under *Farrar*, therefore, Tolentino has obtained a high degree of success.<sup>3</sup>

Paying counsel in FDCPA cases at rates lower than those they can obtain in the marketplace is inconsistent with the congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law. *Florin v. Nationsbank of*

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<sup>3</sup> Pursuant to Section 10.C. of the parties’ settlement agreement, “Plaintiff is the prevailing party under Fed. R. Civ. P. 23(h) and 15 U.S.C. § 1692k(a)(3).” ECF No. 29-1 at 16.

*Georgia, N.A.*, 34 F.3d 560, 562–63 (7th Cir. 1994).

*Tolentino v. Friedman*, 46 F.3d 645, 653 (7th Cir. 1995).

Correspondingly, awards of reasonable attorneys’ fees under federal statutes that include fee-shifting provisions, such as the FDCPA, “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.”); *accord Turner v. Oxford Mgmt. Services, 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.”).

The District of Maine perhaps summarized it best concerning the FDCPA’s fee-shifting provision:

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).

Given the success reached for Plaintiff and the class, in light of the restrictions on damages

imposed by the FDCPA, this Court should award attorneys' fees and expenses totaling \$31,500, a request that is unopposed by Defendant.

**B. The hours expended, and class counsel's hourly rates, are reasonable in this certified class action.**

"The lodestar starting point is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Walters v. Mayo Clinic Health System–Eau Claire Hospital, Inc.*, 91 F. Supp. 3d 1071, 1081 (W.D. Wis. 2015). "There is a strong presumption that the lodestar calculation yields a reasonable attorneys' fee award." *Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 639 (7th Cir. 2011); *see also Pennsylvania v. Delaware 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.").

To date, class counsel has expended 62.6 total hours performing legal services reasonably necessary to litigate this matter. *See Greenwald Decl.*, ¶ 33. This time included: (a) conducting an investigation into the underlying facts regarding Plaintiff's claims; (b) preparing the class action complaint; (c) researching the law pertinent to class members' claims and Defendant's defenses; (d) propounding requests for production, requests for admission, and interrogatories, and conducting an analysis of Defendant's net worth; (e) participating in a Rule 26 conference with Defendant's counsel; (f) negotiating a protective order to facilitate the exchange of information; (g) negotiating the parameters of the settlement; (h) preparing the parties' class action settlement agreement and the proposed notice to the class; (i) conferring routinely with Plaintiff and Defendant's counsel; (j) preparing Plaintiff's unopposed motion for preliminary approval of the class action settlement; (k) conferring with the class administrator regarding notice and the claims

process; and (l) preparing the instant motion and supporting declaration. *Id.*, ¶ 30.

In addition, this case will require an estimated 20 additional hours of work to complete. That time will be spent preparing a motion for final approval of the settlement and preparing for the final approval hearing, participating in the final approval hearing, finalizing the settlement, including conferring with class members and the class administrator, and any other related matters necessary to conclude this case. *Id.*, ¶¶ 31, 36.

Here, Michael L. Greenwald, James L. Davidson and Aaron D. Radbil—all partners at Greenwald Davidson Radbil PLLC—billed at a rate of \$500 per hour. *Id.*, ¶¶ 37-38. The firm’s Junior Partner, Jesse S. Johnson, billed at a rate of \$450 per hour. *Id.* Associate Alexander D. Kruzyk billed at a rate of 400 per hour. *Id.*, ¶ 37. Materially similar rates for class counsel have previously been found to be reasonable in FDCPA class action litigation. *See, e.g., Reeves v. Patenaude & Felix, P.A.*, No. 20-11034, 2021 WL 405820, at \*2 (E.D. Mich. Feb. 5, 2021) (“Class Counsel notes that GDR partner James L. Davidson bills at a rate of \$450 per hour and GDR junior partner Jesse S. Johnson bills at a rate of \$400 per hour. After reviewing counsel’s records, the Court determines that these requested billing amounts are reasonable.”); *Newman v. Edoardo Meloni, P.A.*, No. 20-60027, 2020 WL 5269442, at \*2 (S.D. Fla. Sept. 4, 2020) (“The Court therefore finds the attorneys’ hourly rates [of \$350 to \$450] are reasonable and appropriate for the lodestar calculation.”); *Riddle v. Atkins & Ogle Law Offices, LC*, No. 19-249, 2020 WL 3496470, at \*2 (S.D. W. Va. June 29, 2020) (“Lead attorney Jesse S. Johnson has more than ten years of class action litigation experience and billed at \$400 per hour. Senior partner James L. Davidson has sixteen years of experience and billed at \$450 per hour. The defendant does not dispute these rates or the attorneys’ experience and skill, and the rates are within the range of reasonableness for this district.”); *Aikens v. Malcolm Cisneros*, No. 17-2462, ECF No. 76 at 16 (C.D. Cal. Jan. 2,

2020) (approving GDR’s partners’ hourly rates ranging from \$400 to \$450); *Dickens v. G.C. 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.”).<sup>4</sup>

Moreover, class counsel’s rates are consistent with prevailing rates previously found to be reasonable by courts both within, and outside, this Circuit. *See, e.g., Castro v. Lloyd & McDaniel, PLC*, No. 1:15-cv-00559-TWP-DML, 2016 WL 5110046, at \*4 (S.D. Ind. Sept. 19, 2016) (Pratt, J.) (finding billing rates for partner-level work of \$575 and \$565 reasonable in FDCPA class action); *Kurgan v. Chiro One Wellness Centers LLC*, No. 10-cv-1899, 2015 WL 1850599, at \*4 (N.D. Ill. April 21, 2015) (finding reasonable hourly rates of \$500 and \$600 for partners in FLSA class action); *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.”); *Lowther v. A.K. Steel Corp.*, 2012 WL 6676131, at \*5 (S.D. Ohio Dec. 21, 2012) (employing a lodestar cross-check, the court concluded that \$500 per hour was a reasonable rate for the two senior attorneys and that rates between \$100 and \$450 per hour were reasonable for other attorneys and involved staff); *Reade–Alvarez v. Eltman, Eltman & Cooper, P.C.*, No. CV–04–2195, 2006

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<sup>4</sup> *Accord McWilliams v. Advanced Recovery Sys., Inc.*, No. 15-70, 2017 WL 2625118, at \*3 (S.D. Miss. June 16, 2017) (approving \$400 for GDR partner work); *Marcoux v. Susan J. Szwed, P.A.*, No. 15-93, 2017 WL 679150, at \*5 (D. Me. Feb. 21, 2017) (same); *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.”).



WL 3681138, at \*9 (E.D.N.Y. Dec. 11, 2006) (approving hourly rate of \$420 in FDCPA case); *Gross v. Washington Mut. Bank*, No. 02–CV–4135, 2006 WL 318814, at \*6 (E.D.N.Y. Feb. 9, 2006) (approving hourly rate of \$400 in FDCPA case).

Further, “[n]umerous district courts in the Seventh Circuit have considered the Consumer Law Attorney Fee Survey Report in analyzing the reasonableness of proposed hourly billing rates.” *Moore v. Midland Credit Mgmt., Inc.*, No. 3:12-CV-166-TLS, 2012 WL 6217597, at \*4 (N.D. Ind. 2012); see also, e.g., *Anderson v. Specified Credit Ass’n, Inc.*, No. 11–53–GPM, 2011 WL 2414867, at \*4 (S.D. Ill. June 10, 2011) (considering the 2010–2011 Consumer Law Attorney Fee Survey in determining the reasonableness of hourly billing rates); *Moreland v. Dorsey Thornton and Assocs. L.L.C.*, No. 10–cv–867, 2011 WL 1980282, at \*3 (E.D. Wis. May 20, 2011) (considering the 2008–2009 Consumer Law Attorney Fee Survey in determining the reasonableness of hourly billing rates); *Suleski v. Bryant Lafayette & Assocs.*, No. 09–C–960, 2010 WL 1904968, at \*3 (E.D. Wis. May 10, 2010) (“the United States Consumer Law Attorney Fee Survey for 2008–09 for the Midwest and California . . . supports the reasonableness of the hourly rates sought by counsel in light of their experience as described in their attorney profiles on the Krohn & Moss website.”).

The current edition of the United States Consumer Law Attorney Fee Survey Report was revised on March 13, 2018 (<https://www.nclc.org/images/pdf/litigation/tools/atty-fee-survey-2015-2016.pdf>) (last visited Jan. 3, 2022). According to the Report, the median hourly rate for attorneys in Indiana handling class action cases is \$463, and the average hourly rate in the Indianapolis region for consumer attorneys is \$450. These rates are in line with the rates sought here.

Multiplying class counsel’s hourly rates by the number of hours expected to be expended

by the end of this litigation gives an approximate lodestar of \$39,715. As a result, the fees and expenses requested likely will constitute a meaningful discount to class counsel's total lodestar. Of note, the fee requested here is in line with (and less than) awards in similar FDCPA class actions, further underscoring its reasonableness. *See, e.g., Reeves*, 2021 WL 405820, at \*3 (awarding \$36,000 in fees and expenses); *Newman*, 2020 WL 5269442, at \*4 (approving \$50,000); *Claxton v. Alliance CAS, LLC*, No. 19-61002, 2020 WL 2759826, at \*3 (S.D. Fla. May 27, 2020) (awarding \$38,500); *Good v. Nationwide Credit, Inc.*, No. 14-4295, 2016 WL 929368, at \*15 (E.D. Pa. Mar. 14, 2016) (awarding attorneys' fees and expenses of \$125,000 in FDCPA class action); *Blandina v. Midland Funding, LLC*, No. 13-11792, 2016 WL 3101270, at \*8 (E.D. Pa. June 1, 2016) (awarding \$245,000); *Roundtree v. Bush Ross, P.A.*, No. 14-357, 2016 WL 360721, at \*2 (M.D. Fla. Jan. 28, 2016) (awarding \$170,000); *Gonzalez v. Dynamic Recovery Sols., LLC*, Nos. 14-24502, 14-20933, 2015 WL 738329, at \*5 (S.D. Fla. Feb. 23, 2015) (awarding \$65,000).

Thus, Plaintiff respectfully submits that this Court should approve his unopposed fee and expense request.

**C. The requested fee and expense award includes expenses reasonably incurred in this class action and which are reimbursable under Rule 23.**

The requested \$31,500 fee and expense award includes the reimbursement of litigation costs and expenses, including the filing fee for the complaint (\$402), the cost of service of process (\$70), and Mr. Kruzyk's admission to this Court (\$238). *See Greenwald Decl.*, ¶¶ 44-45. Counsel have incurred additional reimbursable expenses, such as for photocopies, long distance telephone calls, and computerized legal research. Those expenses are not separately itemized herein, and are subsumed within the unopposed request for a fee and expense award of \$31,500. *Id.*, ¶¶ 46-47.

**D. The other factors to be weighed when determining a reasonable award of attorneys' fees support the requested fee and expense award.**

As the Seventh Circuit has noted, “[t]here are several factors that a court should consider when calculating attorney’s fees, including (1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) any 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 plaintiff’s attorney; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.” *Tolentino*, 46 F.3d at 652. These factors support the reasonableness of the proposed fee.

First, and as noted above, the time and labor involved support the reasonableness of the requested fee. Second, “[t]he 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 (2010) (Kennedy, J., dissenting). While the questions at the heart of this case were fairly straightforward, district courts have reached opposite conclusions. *Compare Santiago v. Medicredit, Inc.*, No. 21-CV-61424-WPD, 2021 WL 4987525, at \*1 (S.D. Fla. Aug. 30, 2021) (denying motion to dismiss similar claims) *with Cavazzini v. MRS Assocs.*, No. 21CV5087ARRST, 2021 WL 5770273, at \*7 (E.D.N.Y. Dec. 6, 2021) (dismissing similar claims). As such, had this case proceeded to summary judgment or trial, and then ultimately to an appeal, there was no guarantee that Plaintiff would have prevailed on his or the class’s claims.

Third, considering the limitations on damages imposed by the FDCPA, this settlement can only be seen as a complete victory for Plaintiff and the class. It bears mention that the FDCPA provides no *minimum* amount of statutory damages to be awarded. Consequently, this Court

ultimately could have awarded Plaintiff the class some amount less than one percent of Defendant's net worth, or perhaps no money at all, even in the face of victory. *See* 15 U.S.C. § 1692k(b)(2) (among the factors to be considered in awarding class damages: the frequency and persistence of noncompliance by the defendant, the nature of the noncompliance, and whether such noncompliance was intentional). Despite this, the class will receive a recovery nearing one percent of Defendant's net worth, equivalent to approximately 96 percent of class damages. This result supports the reasonableness of class counsel's requested fee and expense award. *See, e.g., Acosta v. Patenaude & Felix*, No. 19-CV-954-CAB-BGS, 2020 WL 5423875, at \*6 (S.D. Cal. Sept. 10, 2020) (approving fee request where "[h]ere, the Court notes that the settlement amount obtained represents approximately 70% of the maximum class-wide statutory damages recoverable by the FDCPA.").

Fourth, there may be no question that class counsel's knowledge and experience significantly contributed to the fair and reasonable settlement reached, particularly the efficient and judicious manner in which it was achieved. *See McWilliams*, 2017 WL 2625118, at \*3 ("[GDR]'s level of experience in handling cases brought under the FDCPA, other consumer protection statutes, and class actions generally cannot be overstated."). This factor supports counsel's requested attorneys' fees. *See 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.").

Fifth, acceptance of this matter impacted class counsel's ability to handle other matters. Class counsel—Greenwald Davidson Radbil PLLC—is a relatively small firm that includes four partners, one associate, and one of-counsel attorney. *See* <http://www.gdrllawfirm.com/firm-profile> (last visited Dec. 29, 2021). The amount of work that class counsel can handle at any given time

is accordingly limited. As a consequence, the time they devoted to this matter curtailed their ability to accept other work.

Sixth, like many consumers bringing claims under the FDCPA, Plaintiff entered into a contingent attorneys' fee agreement with his counsel. Greenwald Decl., ¶ 8. As a result, class counsel would only receive payment for their efforts if they obtained a recovery. Of note, class counsel has not received any payment for their work in this case to date. *Id.*, ¶ 9. That the attorneys' fee arrangement in this case was contingent "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); *accord Been v. O.K. Indus., Inc.*, No. 02-285, 2011 WL 4478766, at \*9 (E.D. Okla. Aug. 16, 2011) ("Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney's success.").

Seventh, the results obtained in the settlement strongly support the requested fee. Here, the settlement provides benefits to Plaintiff and absent class members that approach their maximum possible recovery allowed under the FDCPA. And, of course, the settlement provides immediate cash relief, whereas any hypothetical recovery from trial might take years to receive in light of the likely appeals that would follow.

As well, Plaintiff's individual recovery of \$1,000 represents the maximum allowable statutory damages under the FDCPA, which could not have been bested at trial. *See id.*, § 1692k(a)(2)(A).

Eighth, and as noted above, the fee requested here is in line with (and less than) awards in similar FDCPA class actions and represents a negative multiplier on class counsel's lodestar, further underscoring its reasonableness. *See, e.g., Brown v. Transurban USA, Inc.*, 318 F.R.D. 560,

578 (E.D. Va. 2016) (“Here, Class Counsel’s requested fee represents a negative multiplier of 0.77. Such a low multiplier is comfortably below the range of multipliers other courts have found to be reasonable.”); *accord Norton v. LVNV Funding, LLC*, No. 18-CV-05051-DMR, 2021 WL 3129568, at \*11 (N.D. Cal. July 23, 2021) (“Given that contingency cases may warrant a positive multiplier, the negative multiplier weighs in favor of reasonableness.”).

Finally, the lack of any objections from class members, to date, weighs strongly in favor of the fee request. Indeed, the class notice apprised absent class members that class counsel would seek an award of attorneys’ fees and reimbursement of expenses of up to \$40,000. “The absence of objections or disapproval by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.” *Ford v. Sprint Communications Co L.P.*, No. 3:12–cv–00270–slc, 2012 WL 6562615, at \*4 (W.D. Wisc. Dec. 14, 2012).

### **Conclusion**

Plaintiff respectfully requests that this Court enter the accompanying order awarding attorneys’ fees and the reimbursement of litigation costs and expenses in the agreed amount of \$31,500. Importantly, the proposed award will not diminish class members’ recoveries in any way, as it will be paid in addition to, and not *from*, the class settlement fund. *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.”).

Dated: January 5, 2022

/s/ Michael L. Greenwald  
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