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Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**ERIC MACCARTNEY
LUANNE MUELLER**

individually and on
behalf of all others

Plaintiffs

Case No. 3:18-cv-00568-AC

**MOTION TO ALLOW
CLASS COUNSEL'S
ATTORNEY FEES**

vs

**GORDON, AYLWORTH &
TAMI, P.C. and VISION
INVESTIGATIVE SERVICE,
LLC**

Defendants

INTRODUCTION

For many years, Matthew Sutton was a creditor rights lawyer, helping advise debt collectors in Southern Oregon. Fuller ¶ 1. In 2017, Sutton began switching the focus of his practice to debtor rights, and he began helping families with their defaulted consumer debts. *Id.* In his newfound role as a debtor rights lawyer, Sutton began reviewing various client files and noticed a pattern: Oregon's largest debt collection law firm was charging excessive service fees on almost every collection lawsuit it filed. *Id.*

In February 2018, Sutton contacted Michael Fuller and Kelly D. Jones, two attorneys Sutton had worked with as adversaries back when he was a creditor rights lawyer. *Id.* at ¶ 2. Fuller and Jones specialized in consumer protection class action litigation. *Id.* Together, Fuller, Jones and Sutton reviewed thousands of court records, spoke with various consumers who might qualify as potential representative plaintiffs, and ultimately filed a putative class action in April 2018. *Id.* Under state and federal consumer protection laws, plaintiffs stood to recover up to \$245 per class member, if they could win their case at trial. *Id.* After years of extensive motions practice, F&R objections, discovery, pleading amendments, and after two mediations with a retired judge, the parties reached a proposed settlement. *Id.*

As part of the proposed settlement, Class Counsel negotiated payment from defendants of \$245 to each class member, the maximum amount available to each class member under the law¹. *Id.* at ¶ 3. Under the circumstances of this case and based on the perceived strength of the evidence, Class Counsel refused to negotiate for less than the full maximum statutory relief available for each class member. *Id.* Only after substantive relief for the class members was negotiated, Class Counsel negotiated payment of their attorney fees. *Id.* Class counsel refused to entertain any clear-sailing arrangement, or reversion clause, or any other stipulation that might give any appearance of collusion or otherwise create a conflict with the class. *Id.* Solely as a result of the efforts and resources of Class Counsel over the last several years, defendants ceased the practices giving rise to the class action, good case law was created that will benefit consumers in the future, and the relief obtained through settlement will pay each class member the maximum amount they could have received had they gone to trial and prevailed on their claims. *Id.*

¹ As explained in plaintiffs' preliminary approval motion, the Fair Debt Collection Practices Act caps class members' statutory damages at the lesser of \$500,000 or 1% of a defendant's net worth. Fuller ¶ 4. Here, GAT's net worth indicates that if successful at trial on this claim, the class members' statutory damages under the FDCPA would be a de minimis recovery. *Id.* In regard to actual damages under the FDCPA and defendant's unjust enrichment, the maximum amount of the service fee collected by defendants was \$45. *Id.*

On October 12, 2021, the Court issued its Findings and Recommendation (F&R), *inter alia*, preliminarily certifying the proposed Settlement Class under FRCP 23, appointing plaintiffs' counsel as Class Counsel, appointing plaintiffs as the Class Representatives, and preliminarily approving this settlement. Doc. 92. Under Article III review, the Court approved the F&R on October 27, 2021. Doc. 94. A Fairness Hearing to weigh any objections to the settlement or this application, and to finally approve the settlement and this motion, is set for April 19, 2022, before this Court.

MOTION

According to the settlement of the parties and the order granting preliminary approval of the proposed settlement, Class Counsel now moves for an order allowing \$155,422.50 in fees for Class Counsel, plus an upward departure or multiplier or other fee enhancement as the Court deems appropriate. Class Counsel intends to file another motion for a supplemental allowance of reasonable attorney fees incurred moving forward in this class action, responding to any objections, monitoring the settlement administrator, and otherwise working to secure entry of final judgment for the class members. *Id.*

1. Absence of Collusion or Other Conflicts of Interest

This settlement contains no indicia of collusion because the class is receiving the maximum recovery available under the law, Class Counsel has agreed to accept reasonable attorney fees in an amount to be decided by the Court and under the lodestar method rather than as a percentage of a class member common settlement fund, and thus there is no clear-sailing arrangement or reversion clause that might stand to create a conflict of interest between Class Counsel and the class members. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F3d 935, 947 (9th Cir 2011).

2. Class Counsel's Lodestar Request is Reasonable

This Court should exercise its discretion to allow Class Counsel's lodestar requests below for reasonable attorney fees of \$55,805.00 for work performed by Fuller, \$81,557.50 for work performed by Jones, and \$18,060 for work performed by Sutton, plus an upward departure or multiplier or other fee enhancement as the Court deems appropriate. *In re Bluetooth*, 654 F.3d at 942.

Under federal fee-shifting statutes such as the FDCPA, "the lodestar approach" is "the guiding light" in determining a reasonable fee. *Perdue v Kenny A.*, 559 US 542, 551 (2010) (internal quotation omitted). Under the lodestar method, courts first determine the appropriate hourly rate for the work performed, and then multiply that amount by

the number of hours properly expended in doing the work. *Id.* Under Oregon fee-shifting statutes such as the UTPA, an allowance of “reasonable” attorney fees does not preclude the use of a multiplier or other fee enhancement, especially in contingency cases. *Strawn v. Farmers Ins. Co.*, 233 Or App 401, 416 (2010) (noting that standard billing rates of Portland class action plaintiff attorneys “can range from \$450 to \$590 per hour” in 2010 dollars).

Under federal fee-shifting statutes like the FDCPA, courts may consider the following factors in determining a reasonable attorney fee: (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) 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 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. *Fischel v Equitable Life Assur. Soc’y of U.S.*, 307 F3d 997, 1007 n.7 (9th Cir 2002). Courts may consider similar factors under Oregon fee-shifting statutes. ORS 20.075(2). According to the custom in this District, the Court uses the most recent Oregon State Bar Economic Survey as its initial

benchmark to determine reasonable hourly rates. *See* LR 54 Practice Tip; “Message from the Court Regarding Fee Petitions.” Attorneys may then argue for higher rates based on inflation, specialty, or any number of other factors. *Id.*

As reflected in the docket, and as set forth in the declarations and exhibits of Class Counsel filed in support of this motion, the time and labor required to prosecute this case and to obtain the pending class-wide settlement was extensive, though not excessive. As to the novelty and difficulty of the questions involved, and also verified by a review of the filings in this matter, this class action litigation presented novel, difficult, and complex issues of first impression including, but not limited to, Oregon’s Anti-SLAPP statute as applied to the FRCP, the Court’s jurisdiction under the *Rooker-Feldman* doctrine, Oregon’s attorney litigation privilege as applied to a debt collection law firm’s alleged intrinsic and extrinsic fraud and a statutory claim, and application of state law issue preclusion principles. The complexity and novelty of the legal issues in this case is partly demonstrated by the conflicting findings of the Judges’ assigned to this case as to these issues.

Despite the Court initially granting dismissal, plaintiffs ultimately prevailed on each issue on review, preserving all of their claims on behalf of the putative class. In order to prevail, Class Counsel had to conduct extensive research into the novel and complex legal

issues described above, draft and review voluminous briefing, and attend two oral arguments to present and defend plaintiffs' ultimately prevailing positions to the Court. All of this extensive and difficult work was performed on a pure contingency basis, with the substantial risk that Class Counsel would receive no compensation. The work of Class Counsel in this regard ultimately secured a proposed class-wide settlement which will provide the class members with the maximum relief available for their claims. Set forth below are the reasonable individual lodestar requests that Class Counsel respectfully request the Court allow for their work on this case.

2.1. Fuller

Fuller respectfully requests 94.10 hours of time compensated at his market rate of \$525 per hour totaling \$49,402.50, and 19.70 hours of time at a discounted rate of \$325 per hour totaling \$6,402.50, resulting in 55,805.00 in attorney fees. Fuller ¶ 12. As evidenced by the attached declaration of Fuller and his exhibits, along with the declaration of Bonner Walsh, this Court should allow Fuller's request in full, and allow an upward departure or multiplier or other fee enhancement as the Court deems appropriate.

2.2. Jones

Jones respectfully requests \$475 per hour for 171.70 hours of work performed, in the total amount of \$81,557.50. As evidenced by the attached declaration of Jones and his exhibits, along with the declaration of Bonner Walsh, this Court should allow Jones's request in full, plus an upward departure or multiplier or other fee enhancement as the Court deems appropriate.

2.3. Sutton

Sutton respectfully requests \$350 per hour for 51.60 hours of work performed, in the total amount of \$18,060. As evidenced by the attached declaration of Sutton and his exhibits, this Court should allow Sutton's request in full, plus an upward departure or multiplier or other fee enhancement as the Court deems appropriate.

CONCLUSION

The purpose of fee-shifting statutes is to encourage attorneys in private practice to enforce the laws that protect the public in areas like civil rights, consumer protection and the environment. *City of Riverside v Rivera*, 477 US 561, 574-575 (1986); *Evon v. Law Offices of Sidney Mickell*, 688 F3d 1015, 1033 (9th Cir 2012) (In overturning the district court's fee award, the Ninth Circuit acknowledged the value of the litigation in stopping the defendant's use of the unlawful collection

practices at issue, the successful recovery of maximum available statutory damages, and held that “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.”); *Holman v Experian Info. Sols., Inc.*, 2014 U.S. Dist. LEXIS 173698, *10 (ND Cal 2014) (“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.”).

As the record and submissions reflect, Class Counsel prosecuted this case not only vigorously and effectively, but also efficiently. Class Counsel did so on pure contingency for several years, fronting thousands of dollars in case expenses, because their clients, by their very nature, could not afford to hire attorneys by the hour. Fuller ¶ 7.

Due to the efforts of Class Counsel, the practices giving rise to the class action have ceased, and each class member is set to receive the maximum damages available under the applicable consumer protection statutes. Class Counsel was careful not to negotiate their attorney fees before substantive relief for the class was secured. And Class Counsel passed on any opportunity to lock in a guaranteed payday which might have given the impression of collusion, and instead insisted on

reasonable attorney fees as determined by the Court, as contemplated by the applicable state and federal consumer protection laws.

Under these circumstances, Class Counsel should be allowed reasonable attorney fees in the amounts sought, plus an upward departure or multiplier or other fee enhancement as the Court deems appropriate.

December 24, 2021

s/ Michael Fuller
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CERTIFICATE OF SERVICE

I certify that on the date below, counsel caused this document and all attachments to be served on the parties to this action via ECF, and have forwarded this document to the Class Administrator to be posted on the Settlement Website at www.visionclasssettlement.com.

December 24, 2021

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