IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

LORI HELING,	)	
	)	
Plaintiff,	)	**2:15-cv-01274-JPS**
	)	
v.	)	**Judge Stadtmueller**
	)	**Magistrate Judge Jones**
CREDITORS COLLECTION SERVICE, INC.,	)	
	)	
Defendant.	)	

PLAINTIFF'S PETITION FOR ATTORNEYS' FEES
PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT

NOW COMES the Plaintiff, LORI HELING, by and through her attorneys, SMITHMARCO, P.C., and for her post-trial Petition for Attorneys' Fees and Costs Pursuant to the Fair Debt Collection Practices Act, Plaintiff states as follows:

I. INTRODUCTION

By the time this case reached trial, it had been pending for almost exactly one year to the day that the Complaint was filed.[1] In her Complaint, Plaintiff alleged that Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq., (hereinafter "FDPCA") by the manner with which it attempted to collect a debt allegedly owed by Plaintiff. Despite numerous attempts by Defendant to negate Plaintiff's claim, through myriad motion practice and at trial, Plaintiff ultimately prevailed in her claims and the jury returned a verdict in favor of Plaintiff – a verdict that was recently reduced to a judgment by this Court.

Plaintiff anticipates that Defendant will suggest that this was a simple FDCPA case that did not warrant the time and effort required to prosecute this matter to its ultimate conclusion.

1 The complaint was filed October 26, 2015 and the trial of this case commenced on October 24, 2016.

But the assertion that this was a simple FDCPA case is not a reasonable argument that can be posited given the considerable procedural history of this matter – a history driven almost exclusively by Defendant.

In response to Plaintiff's complaint, Defendant filed a motion to dismiss pursuant to Rule 12(b)(6), based on the *Rooker-Feldman* doctrine, and to dismiss pursuant to Rule 12(b)(6) for failure to state a claim. Defendant's motion was denied in its entirety. Defendant subsequently filed its answer to Plaintiff's complaint and asserted three (3) separate affirmative defenses, though it proceeded without pursuing any of the three (3) defenses at trial.

In addition to the filing of its motion to dismiss, Defendant subsequently filed a motion for summary judgment, which resulted in the taking of four (4) depositions, three (3) witnesses for the Defendant and the deposition of the Plaintiff. Ultimately, Defendant's motion for summary judgment was denied and this case proceeded to trial before a jury. At the conclusion of the trial, the jury entered a verdict in favor of Plaintiff and against Defendant and awarded Plaintiff statutory damages.

In response, Defendant once again persisted in its attempts to have the current matter decided in its favor with the filing of post-trial motions for judgment in its favor or for a new trial. As with its motions to dismiss and for summary judgment, Defendant's post-trial motions were denied in their entirety and on January 23, 2017, this Court entered judgment in favor of Plaintiff. (See **Exhibit A**).

Plaintiff now files the present petition for the award of her attorneys' fees and costs pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692k(a)(3).

II. SETTLEMENT HISTORY

On many occasions throughout the pendency of this lawsuit, Plaintiff attempted to reach an amicable and expeditious resolution with Defendant, all to no avail.

Indeed, prior to the commencement of the present lawsuit, on or about August 11, 2015, Plaintiff's counsel mailed to Defendant notice of counsel's representation of Plaintiff and inviting Defendant to resolve this matter amicably without the need for the filing of a lawsuit. Plaintiff's pre-suit demand was $3,600. No response or offer was received.

In a further attempt at reaching a resolution of this case, on or about August 25, 2015, Plaintiff's counsel mailed a follow up correspondence and advised Defendant of Plaintiff's intention to file suit. Plaintiff renewed her demand of $3,600. No response was received and Plaintiff was compelled to file suit on October 26, 2015.

On April 5, 2016, although no formal offer was tendered, Defendant inquired as to whether Plaintiff would be interested in resolving this matter for the amount of Plaintiff's pre-suit demand (which had been conveyed six months earlier and prior to the filing of the Complaint and the briefing on Defendant's motion to dismiss). A revised settlement demand was subsequently made to Defendant but Defendant made zero offers in response.

On June 10, 2016, the parties were charged with the responsibility to file a settlement report with the Court; as before, Plaintiff attempted to reach a resolution with Defendant and discussed the possibility of a settlement. As before, Defendant informed Plaintiff that no settlement offers would be forthcoming.

On September 8, 2016, during the course of the preparation of the joint pretrial report, Plaintiff reached out to Defendant to again discern whether a settlement of the present matter

could be reached, thus obviating the need to proceed to trial. Defendant again informed Plaintiff that no settlement offers would be forthcoming.

On September 23, 2016, September 30, 2016 and again on October 5, 2016, Plaintiff attempted once more to ascertain whether the parties could settle this case. Defendant again informed Plaintiff that no settlement offers would be forthcoming.

On October 18, 2016, at the pretrial conference, the Court inquired of the parties as to whether a settlement could be reached. As before, Defendant made zero offers to resolve this case.

Finally, on or about January 25, 2017, subsequent to the entry of judgment and before the filing of the present petition, Plaintiff made one last attempt to resolve this case by way of settlement. As the case history had unequivocally shown, and not surprisingly, Defendant made no offers to settle this case.

While Plaintiff is in no way suggesting that Defendant had any affirmative obligation to settle rather than litigate this case, which it did aggressively, the simple fact is that Defendant is a sophisticated debt collector, represented by extremely competent and qualified counsel, and both Defendant and counsel were intimately aware of the ramifications of the fee-shifting provision of the FDCPA and, therefore, cannot bemoan the attorneys' fees and costs that were incurred by Plaintiff in the continued prosecution of this case.

In awarding fees, the Court can consider the substantial effort of plaintiff's attorney caused by defense "counsel who fought the case bitterly to the very end and even now continue their recalcitrant posture." *Birmingham v. Sogen Swiss Intern. Corp. Retirement Plan*, 718 F.2d 515, 523 (2d Cir. 1983).

> *"Although private parties looking only to their own interests would not invest more in litigation than the stakes of the case, the combination of self-interest with*

> *the American Rule on the allocation of legal costs means that people can get away with small offenses. A two-day suspension may be unconstitutional, but a few hours of legal time costs more than the wages lost. Section 1988 helps to discourage petty tyranny. Awarding the full cost of litigation, which looks excessive in the single case, is sensible because it aids in the enforcement of rules of law. [citation omitted]. Put another way: Monetary awards understate the real stakes. Judicial decisions have effects on strangers. This litigation was prosecuted by a lawyer retained by a union of public employees and stoutly resisted by the county. If as the defendants say "only" $3,700 was at stake, why the tenacious resistance? Defendants do not contend that the exertion on plaintiff's side was unreasonable in relation to the defense; no more is necessary to show that the judge acted within his discretion in awarding fees exceeding the monetary recovery."*
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> *Barrow v. Falck*, 977 F.2d 1100, 1103-04 (7th Cir. 1992).

"While [defendant] is entitled to contest vigorously [plaintiff's] claim, once it does so it cannot then complain that the fees award should be less than claimed because the case could have been tried with less resources and with fewer hours expended." *Henson v. Columbus Bank & Trust Co*., 770 F.2d 1566, 1575 (11th Cir. 1985). To the same effect: *Copeland v. Marshall*, 641 F.2d 880, 904 (D.C. Cir. 1980) (en banc) (Title VII; contentious litigation strategy forced plaintiff to respond in kind); *Loggins v. Delo*, 999 F.2d 364, 368 (8th Cir. 1993) ($25,000.00 attorney's fee award for recovery of $102.50 in actual damages).

III. PETITION FOR ATTORNEYS' FEES

A. FEE SHIFTING PROVISION OF THE FDCPA

1. Statutory Authority

The unequivocal language of the FDCPA, and the public policy considerations in support of the Act, clearly entitles Plaintiff to the recovery of her attorney's fees and costs in this matter. 15 U.S.C. §1692k(a) states:

> *[A]ny debt collector who fails to comply with any provision of this subchapter with respect to any person is liable…in the case of any successful action to enforce the foregoing liability, the costs of the*

action, together with a reasonable attorneys' fee as determined by the court.

2. <u>Public Policy and Case Law Requires an Award of Attorneys' Fees for a Prevailing Plaintiff</u>

In enacting the FDCPA, Congress acknowledged the abundance of evidence of the use of abusive, deceptive and unfair debt collection practices by many debt collectors. Congress further acknowledged that the then existing laws and procedures for redressing injuries caused by such practices were woefully inadequate to protect the interests of consumers. 15 U.S.C. 1692.

As is evident by the language of the foregoing preamble to the FDCPA, the act is to be liberally construed in favor of consumers. Further, Congress has frequently envisioned the need for lawyers in private practice to act as private attorney generals in an effort to protect consumer rights and, in the present case, enforce the various provisions of the FDCPA.

Awarding attorneys' fees pursuant to the fee shifting provision of the FDCPA has been held to be mandatory by a plethora of courts around the country. In *Tolentino v. Friedman,* 46 F.3d 645 (7th Cir. 1995), for example, the court affirmed that a separate award for costs and fees is mandatory and held "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. *Id. at* 651-652.

The *Tolentino* court also noted Congress's specific intent to allow an individual plaintiff the ability to pursue an action where the burden of costs and fees would otherwise economically preclude this type of rights enforcement. *Tolentino* at 652 citing *City of Riverside v. Rivera*, 477 U.S. 561 (1986)). "Unlike most private tort litigants, a plaintiff who brings an FDCPA action seeks to vindicate important rights that cannot be valued solely in monetary terms and Congress

has determined that the public as a whole has an interest in the vindication of the statutory rights." *Id.*

In *Zagorski v. Midwest Billing Services, Inc.*, the Seventh Circuit reversed a District Court's refusal to award attorneys fees and stated that the award of attorney's fees to plaintiffs for a debt collector's violation of "any provision" of the FDCPA is mandatory. 128 F. 3d 1164, 1166 (7th Cir. 1997).

In *Camacho v. Bridgeport Financial, Inc.*, the Ninth Circuit held that the determination by the district courts of costs and fees is mandatory, stating that the justification for mandatory fees in FDCPA actions is that Congress elected to put into place a system of "private attorney generals" to enforce the FDCPA. 523 F.3d 973 (9th Cir. 2008). The court further rejected the district court's "flat fee" approach, and in its remand for further findings directed that "the amount of [attorney's fees] must be determined on the facts of each case." *Id.* at 978.

In *Graziano v. Harrison*, the Third Circuit noted that the FDCPA mandates an award of attorneys' fees as a means of fulfilling Congress's intent that the Act should be enforced by debtors acting as private attorneys general. 950 F.2d 107 (3rd Cir.1991).

The recognition that in order to further the purpose of the FDCPA, prevailing plaintiffs must be awarded their attorneys' fees is a fundamental principle in many other cases decided around the country, including the Second Circuit decision in *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22 (2nd Cir. 1989) and the Fourth Circuit decision in *Carroll v. Wolpoff & Abramson*, 53 F.3d 626 (4th Cir. 1995).

Where, as in the present matter, an attorney's fee provision is phrased in mandatory terms, "fees may be denied a successful plaintiff only in the most unusual of circumstances." *De Jesus v. Banco Popular de Puerto Rico*, 918 F.2d 232, 234 (1st Cir. 1990) (a Truth in Lending

Act claim). An award of fees is mandatory in FDCPA cases even if there had been no award of actual or statutory damages. *Savino v. Computer Credit*, 164 F.3d 81, 87 (2d Cir. 1998), citing *Emanuel v. American Credit Exchange*, 870 F.2d 805, 809 (2d Cir. 1989); *Pipiles v. Credit Bureau of Lockport*, 886 F.2d 22, 28 (2d Cir. 1989).

"The reason for mandatory fees is that congress chose a 'private attorney general' approach to assume enforcement of the FDCPA." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008); *Jacobson v. Healthcare Fin. Servs*., Inc., 516 F.3d 85, 91 (2d Cir. 2008) ("[T]he FDCPA enlists the efforts of sophisticated consumers like Jacobson as 'private attorneys general' to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others"); *Zagorski v. Midwest Billing Services, Inc.*, 128 F.3d 1164 (7th Cir. 1997); *Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995); *Graziano v. Harrison*, 950 F.2d 107, 113-14 (3d Cir. 1991) (FDCPA "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").

> *"Civil suits will deter abusive practices only if it is economically feasible for consumers to bring them. Unless consumers can recover attorneys fees it may not be possible for them to pursue small claims .... [U]nscrupulous collection agencies have little to fear m such suits if consumers must pay thousands of dollars in attorney fees to protect hundreds. Congress recognized this problem and specifically provided for the award of attorney fees to successful plaintiffs."*
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> *Venes v. Professional Service Bureau, Inc.*, 353 N.W.2d 671 (Minn. App. 1984).

The FDCPA mandates that the recovery of attorneys' fees and costs in connection with the successful prosecution of an action under the FDCPA is integral to the success of the policy goals underlying the FDCPA. As noted by the court in *Sandoval v. Stellar Recovery, Inc.*, 2016 WL 74941, at * (D. Colo. Jan. 7, 2016): "*the amount of attorney fees awarded in these cases is*

based on the number of hours reasonably expended multiplied by a reasonable hourly rate rather than a percentage of the amount recovered. The value of the litigation, as it were, is determined by ***the fulfillment of the statute's purposed rather than any amount recouped.****"* (Emphasis added).

3. Plaintiff is the Prevailing Party in this Matter

The Supreme Court has defined a plaintiff as the "prevailing party" for purposes of an award of attorney's fees "if [the plaintiff] succeed[s] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *see also Busche v. Burkee*, 649 F. 2d 509 (7th Cir. 1981), *cert. denied*, 454 U.S. 897 (1981) ("[The] proper focus is whether the plaintiff has been successful on the central issue as exhibited by the fact that he has acquired the primary relief sought.").

Where sought, monetary relief constitutes at least "some of the benefit the parties sought in bringing the suit." *Id*. at 432 citing *Nadeau v. Helgemoe*, 581 F. 2d 275 (1st Cir. 1978); see also *Farrar v. Hobby*, 506 U.S. 103 (1992) (holding that even nominal damages suffice under the test that a party prevail on the merits of at least some of its claims).

In the present case, there can be no doubt that Plaintiff is the prevailing party by virtue of the judgment entered by this Court (see **Exhibit A**).

4. The Attorneys' Fees sought by Plaintiff are Reasonable

Enforcement of a plaintiff's rights under the FDCPA through the courts is prohibitively expensive. Awarding fees based upon actual time expended rather than amount of recovery makes economically feasible the pursuit of remedies by consumers in federal court.

As its name suggests, the lodestar figure has become the guiding light of fee-shifting jurisprudence." *Burlington v. Dague*, 505 U.S. 557 (1992). In *Hensley v. Eckerhart*, the

Supreme Court noted that "[i]deally...litigants will settle the amount of a fee." 461 U.S. 424 (1983). But where settlement between the parties is not possible, "[t]he most useful starting point for [court determination of] the amount of a reasonable fee [payable by the loser] is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Id.* at 433. Thus, the lodestar method today holds sway in federal-court adjudication of disputes over the amount of fees properly shifted to the loser in the litigation. See *Id.* at 440. Furthermore, the Supreme Court has held that courts must indulge a "strong presumption" that the lodestar "represents a 'reasonable" fee." *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986).

As a result of the Judgment Order entered by the Court, this Honorable Court has been called upon to consider Plaintiff's attorneys' fees and litigation costs. In *Blum v. Stenson*, the Supreme Court held that "[t]he initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours expended on the litigation times a reasonable hourly rate." 465 U.S. 886, 888 (1984). A reasonable hourly rate can be measured by the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation. *Id.* at 895-896.

The figure resulting from this calculation is more than a mere "rough guess" or initial approximation of the final award to be made. Instead, when the applicant for a fee has carried his or his burden of showing that the claimed rate and number of hours are reasonable, the resulting product is presumed to be the reasonable fee to which counsel is entitled. *Thorpe v. Collection Information Bureau,* 963 F.Supp.2d 1172 (U.S.D.C. S.D. Fla. 2003); *Valenti v. Allstate Ins. Co.*, 243 F.Supp.2d 200 (U.S.D.C. M.D. Pa. 2003); *System Management, Inc. v. Loiselle*, 154 F.Supp.2d 195, 2001 U.S.Dist.Lexis 1808 (U.S.D.C. Mass. 2001).

To determine a proper fee award, a court must necessarily "engage in a thoughtful analysis of the number of hours expended and the hourly rates charged to ensure both are reasonable." *Rupert v. Secretary of Health and Human Services*, 2002 Westlaw 360005 (Fed. Cl. 2002); *Guckenberger v. Boston Univ.*, 8 F.Supp.2d 91, 100 (U.S.D.C. Mass. 1998). See also *King v. Greenblatt*, 560 F.2d 1024, 1026-27 (1st Cir. 1977). In doing so, the court is obliged "to see whether counsel substantially exceeded the bounds of reasonable effort." *United States v. Metro. Dist. Comm.*, 847 F.2d 12, 17 (1st Cir. 1988) (citation and internal quotation marks omitted); *Rolland v. Cellucci*, 106 F.Supp.2d 128, 134 (U.S.D.C. Mass. 2000).

Attorneys' fees awarded under the FDCPA must reflect current rates, in essence, rates that prevailed when the work was done. *Varner v. Century Fin. Co.*, 738 F.2d 1143 (C.A. Ga. 1984); *Mares v. Credit Bureau of Raton*, 801 F.2d 1197 (10th Cir. 1986) (N.M.). There is no proportionality requirement.

Calculation of fees in terms of billing rate multiplied by hours of service is the fairest and most manageable approach to awards of attorneys' fees under the FDCPA and the possibility that a calculation of attorneys' fees may exceed Plaintiff's damages in an action against a debt collection company does not require a reduction of fees on the theory that the fees should be calculated on a contingency basis. *Bryant v. TRW, Inc.*, 689 F.2d 72 (6th Cir. 1982). Enforcing the fee shifting provision is consistent with the longstanding principle that an attorney who renders legal services should be compensated for those services. See *In Re Estate of Healy*, 137 Ill.App.3d 406, 409 (2nd Dist. 1985).

The Supreme Court has held that the most critical factor in determining the reasonableness of an award of attorneys' fees is the degree of success obtained. *Farrar v. Hobby*, 506 U.S. 103 (1992) (quoting *Hensley v. Eckerhart*, 461 U.S. 424 (1983). Success must be

measured not only in the amount of the recovery but also in terms of the principle established and the harm checked. The cumulative effect of petty violations may not be petty, and the mere fact that the suit does not result in a large award of damages or the breaking of new ground is not a justification for refusing to award any attorneys' fees. *Hyde v. Small*, 123 F.3d 583(7th Cir. 1997).

Finally, 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 652; see also *Gusman v. Unisys Corp*., 986 F.2d 1146 (7th Cir. 1993). "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." *Tolentino*, 46 F.3d at 653

In the current case, Plaintiff petitions this Honorable Court for her attorneys' fees in the amount of $73,429.00. This amount reflects 9.0 hours by attorney Larry Smith at $450 per hour, 135.1 hours by attorney David Marco at $385 per hour, 56.5 hours by attorney Sara Collins, at $300 per hour, 3.2 hours by paralegals at $130 per hour. These fees are delineated in Plaintiff's Statement of Services Rendered, attached hereto as **Exhibit B**.

a. The rates sought by Plaintiff's counsel are reasonable as evidenced by the United States Attorneys' Office and the "Laffey Matrix"

The hourly rates requested by Plaintiff as detailed in Plaintiff's Statement of Services are commensurate with the prevailing rates for attorneys that practice federal law. As the case at bar was filed pursuant to a federal remedial statute, the FDCPA, rates charged by other attorneys practicing federal law may be compared to determine an appropriate rate. *See Laffey v. Northwest Airlines, Inc*., 572 F. Supp. 354, 371 (D.D.C. 1983).

In *Laffey*, the court compared rates of attorneys practicing federal claims with fee-shifting provisions to reach a hybrid rate. *Id*. The court's analysis in *Laffey* was taken one step further by the Civil Division for the United States Attorney's Office to reflect how rates have changed over the years due to inflation. In doing so, the United States Attorney's office created the "Laffey Matrix."

The Laffey Matrix is an official statement of market-supported reasonable attorney fee rates that was adopted, and is periodically updated, by the United States Court of Appeals for the District of Columbia. *Adcock-Ladd v. Secretary of Treasury*, 227 F.3d 343, 347 (6th Cir. 2000), citing *Laffey v. Northwest Airlines, Inc.*, 746 F.2d 4 (D.C. Cir. 1984).

As demonstrated by the "Laffey Matrix" the rates sought by Plaintiff's attorneys herein are commensurate with recognized rates for attorneys' with similar experience. (See Laffey Matrix, attached hereto as **Exhibit C**).

The "Laffey Matrix" when coupled with the biographical data presented by Plaintiff's counsel (attached hereto as **Exhibit D**) provides conclusive evidence that the rates sought by Plaintiff in this matter are reasonable. Larry Smith has been practicing law for twenty-three (23) years and charges $450 per hour (compared with the Laffey Matrix recognized rate of $543 per hour). David Marco has been practicing law for sixteen (16) years and charges $385 per hour (compared with the Laffey Matrix recognized rate of $516 per hour) Sara Collins has been practicing law for fourteen (14) years and charges $300 per hour (compared with the Laffey Matrix recognized rate of $465 per hour) Paralegals at SmithMarco, P.C., charge $130 per hour (compared with the Laffey Matrix recognized rate of $157 per hour).

b. Orders from myriad District Courts demonstrate the reasonableness of the hourly rates and hours requested by Plaintiff

Attached hereto as **Exhibit E** are numerous orders entered from various courts around the country awarding Plaintiff's counsel their attorneys' fees, including orders from the Eastern and Western Districts of Missouri, Northern and Southern Districts of Illinois, Northern and Southern Districts of Indiana, Eastern and Western Districts of Michigan, Eastern and Western Districts of Wisconsin, Eastern District of Texas, Southern District of Florida and the Districts of Arizona, Minnesota, Colorado, Nebraska and Kansas. In each case to which the respective order applies, the court was asked to review a fee petition similar to that submitted by counsel in the present matter[2]. Without exception, each court reviewed the fee petition and granted counsel their fees in their entirety. The attached orders evince the reasonableness of Plaintiff's counsel in the manner with which they prosecute matters similar to the case at bar.

In addition to the aforesaid orders, attached collectively hereto as **Exhibit F** are four (4) orders entered by this Court in which this Court was called upon to consider a fee petition submitted by the same Plaintiff's attorneys as in the present matter (see, *Wright v. Global Check & Credit Services, LLC*, 2:10-cv-00129-JPS (E.D. Wisc. 2010); *House v. Shapiro & Price*, 2:10-cv-00842-JPS (E.D. Wisc. 2011); *Moreland v. Dorsey Thornton & Associates*, 2:10-cv-00867-JPS (E.D. Wisc. 2011); and, *Vang v. California Recovery Systems, Inc.*, 2:11-cv-192-JPS (E.D. Wisc. 2011). In each case, and without exception, this Court concluded that the then requested hourly rate was reasonable.

It must be noted, however, that the rates being sought by Plaintiff's counsel in 2010 and 2011 were, not surprisingly less than the rates sought by Plaintiff's counsel as part of the present

[2] Prior to January 2, 2013, Plaintiff's counsel's hourly rates were as follows: Larry Smith - $385; David Marco - $300; Paralegals - $105. On January 2, 2013, in line with additional experience and increased costs, Plaintiff's counsel increased their hourly rates as follows: Larry Smith - $395; David Marco - $340; Paralegals-$115.00. On January 1, 2015, Plaintiff's counsel increased their hourly rates to those requested by this petition.

petition six (6) years later. Indeed, in 2011, Plaintiff's counsel's billable rates were $375 per hour for Larry Smith, $275 per hour for David Marco and $105 for paralegals, compared to current rates of $450, $385 and $130 respectively. Yet, notwithstanding the obvious passage of time, since 2011 Plaintiff's counsel have garnered considerable additional experience prosecuting consumer litigation matters and David Marco has become a principal in the firm of SmithMarco, P.C. Moreover, the rates being sought today remain in line with the hourly rates being sought from this Court in the aforesaid fee petitions.

In *House v. Shapiro & Price* and in *Moreland v. Dorsey Thornton & Associates, LLC*, in addition to reviewing Plaintiff's counsel's biographies on the firm's website (which in 2011 was http://www.smithlaw.us and is now http://www.SmithMarco.com), this Court reviewed the United States Consumer Law Attorney Survey for 2008-2009 for the Midwest and found *"the hourly rates sought by counsel in light of their experience as described in their attorney profiles ion the firm's website are reasonable."* Id.

A current, albeit two-year old, version of that survey, the United States Consumer Law Attorney Fee Survey Report 2013-2014, is attached hereto as **Exhibit G** and shows that the current rates sought by Plaintiff's counsel remain in line with the rates delineated both in summary profile of the Midwest region and also in line with the rates delineated for the Milwaukee area.

c. It is Defendant's burden to establish a reduction in requested attorneys' fees

It has generally been recognized in fee-shifting cases that "a party advocating the reduction of the lodestar amount bears the burden of establishing that a reduction is justified." *United States Football League v. National Football League*, 887 F.2d 408, 413 (2nd Cir. 1989), cert. denied, 493 U.S. 1071 (1990) (awarding $5,500,000 in fees on $3 recovery) cited in *Grant*

v. Martinez, 973 F.2d 96, 101 (2nd Cir. 1992). *See Laura B. Bartell, Taxation of Costs and Awards of Expenses in Federal Court*, 101 F.R.D. 553, 560-62 (1984). Accordingly, unless Defendant is able to sustain such a burden, it is incumbent upon this Honorable Court to accept Plaintiff's lodestar calculations and award the attorneys' fees sought in this matter.

IV. DEFENDANT'S CONDUCT RESULTED IN THE PROLIFERATION OF ATTORNEYS' FEES AND COSTS

Courts have repeatedly admonished that defendants "cannot litigate tenaciously and then be heard to complain about the time necessarily spent by plaintiff in response." *See Copeland v. Marhsall*¸641 F.2d 880, 904 (D.C. Cir 1980) (en banc), citing *Wolf v. Frank*, 555 F.2d 1213, 1217 (5th Cir. 1977) ("Obviously, the more stubborn the opposition, the more time would be required" by the other side). Courts recognize that, while a vigorous defense is permitted, the result of such will be to increase the attorneys' fees awarded against the defendant if the Plaintiff prevails.

> In this instance, the discrepancy is explained largely by what we have referred to as the "Stalingrad defense." While this hard-nosed approach to litigation may be viewed as effective trench warfare, it must be pointed out that such tactics have a significant downside. The defendants suffer the adverse effects of that downside here. There is a corollary to the duty to defend to the utmost – the duty to take care to resolve litigation on terms that are, overall, the most favorable to a lawyer's client. Although tension exists between the two duties, they apply concurrently. When attorneys blindly pursue the former, their chosen course of action may sometimes prove to be at the expense of the latter.

Lipsett v. Blanco, 975 F.2d 934, 941 (1st Cir. 1992); *see also, Henson v. Columbus Bank & Trust Company*¸770 F.2d 1566, 1575 (11th Cir. 1985) ("CB & T has spiritedly contested Henson's claims at every stage…While CB & T is entitled to contest vigorously Henson's claims, once it does so, it cannot complaint that the fees award should be less than claimed because the case could have been tried with less resources and with fewer hours expended.");

and *McGowan v. King, Inc.*, 661 F.2d 48, 51 (5th Cir. 1981) ("Although defendants are not required to yield an inch or to pay a dime not due, they may be militant resistance increase the exertions required of their opponents and thus, if unsuccessful, be required to bear that cost.").

In this case, it was Defendant that was the driving force behind the litigation. The history of the litigation of this case, as delineated in the introduction of the present petition, is included to elucidate that the attorneys' fees incurred by Plaintiffs in this matter was reasonably incurred, notwithstanding Plaintiffs myriad efforts to resolve this matter.

V. PETITION FOR COSTS

In addition to her attorneys' fees, and filed concurrently with the present petition, Plaintiff petitions this Honorable Court for reimbursement of the $2,904.70 in costs incurred in the prosecution of this matter.

VI. CONCLUSION

The fundamental predicate of the fee-shifting provision contained within consumer statutes such as the FDCPA is to ensure that private attorneys engage in protecting consumers' rights. Congress has repeatedly acknowledged that private enforcement of consumer statutes is necessary if statutes such as the FDCPA are to have any force and effect. Moreover, the fee-shifting provision recognizes that consumers are unlikely to take on businesses in litigation, especially if their damages, as in FDCPA cases, are capped at $1,000.

From the outset, it was the Defendant that was the driving force in the litigation of this matter; Defendant elected to take this matter through multiple motions and on to trial. At the trial of this case, the jury returned a verdict against Defendant and in favor of Plaintiff, finding that Defendant violated the FDCPA, the very statute that governs its commercial activities as a debt collector.

At all stages of the litigation, Plaintiff made every effort to resolve this matter amicably and to refrain from engaging in unnecessary and protracted litigation. Plaintiff's attorneys acted diligently and reasonably to bring about an expeditious resolution of this matter. As the billing record suggests, Plaintiff's attorneys' time spent in this matter was reasonable and as such, proper grounds exist for this Honorable Court to enter a judgment for attorneys' fees and costs in the amount as detailed in this petition.

Respectfully submitted,
LORI HELING

By: s/ David M. Marco
Attorney for Plaintiff

Dated: February 6, 2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

LORI HELING,	)	
	)	
Plaintiff,	)	**2:15-cv-01274-JPS**
	)	
v.	)	**Judge Stadtmueller**
	)	**Magistrate Judge Jones**
CREDITORS COLLECTION SERVICE, INC.,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

To: David M McDorman
McDorman Law Office
2923 Marketplace Drive, Suite 100
Madison WI 53719

I, David M. Marco, an attorney, certify that on **February 6, 2017**, I shall cause to be served a copy of **Plaintiff's Petition for Attorneys' Fees and Costs,** upon the above named individual(s) by: depositing same in the U.S. Mail, prior to 5:00 p.m., postage prepaid; messenger delivery; Federal Express; facsimile transmitted from (888) 418-1277; email; and/or electronically via the Case Management/Electronic Case Filing system ("ECF"), as indicated below.

____	U.S. Mail	____	Facsimile
____	Messenger Delivery	____	Email
____	Federal Express/UPS	__X__	ECF

By: s/ David M. Marco
Attorney for Plaintiff

Dated: February 6, 2017

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