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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

MICHELL T. FRANKLIN, KARA SAMPSON, CYBELE A. MUNSON, ET. AL.,
Plaintiffs,

v.

MIDWEST RECOVERY SYSTEMS, LLC, ET. AL.
Defendants.

No. 8:18-cv-02085-SB-DFMx
Complaint filed July 11, 2018
Class Action
PLAINTIFFS' MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS, AND INCENTIVE AWARDS, POINTS AND AUTHORITIES IN SUPPORT THEREOF
Hearing Date:September 24, 2021, 8:30am
Department 6-C
Hon. Stanley Blumenfeld, Jr.

NOTICE OF MOTION

TO EACH PARTY AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on the 24th day of September 2021, at the hour of 8:30 a.m. or as soon thereafter as counsel may be heard in Department 6C of the United States District Court, Central District of California, 350 West 1st Street, Los Angeles, California 90012, Plaintiffs Kara Sampson and Cybele A. Munson will move for an order awarding attorney's fees and costs to Class Counsel Lakeshore Law Center and Spencer Law Firm and awarding incentive or service awards to Plaintiffs.

Said motion will be made on the grounds set forth in the accompanying memorandum of law. This motion will be based upon this notice, the points and authorities set forth below, the attached declaration(s), and the complete files and records in this action.

The Parties have complied with the meet and confer requirement of Local Rule 7-3 and this motion is pursuant to order of the Court granting preliminary approval.

Lakeshore Law Center

Respectfully submitted,

Dated: July 21, 2021

By: /s/ Jeffrey Wilens

Jeffrey Wilens

Attorney for Plaintiffs Michell T. Franklin, et. al.

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STATEMENT OF CASE

The litigation history, settlement negotiations, and terms of the settlement are set out in detail in the Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (Doc. 110) and are incorporated here. This Memorandum will focus on the efforts of Class Counsel and the Plaintiffs in this and the related action.

As explained in Doc. 110, the Class is receiving relief for violations of California Consumer Credit Reporting Agencies Act (CCRAA) and the California Unfair Competition Law (UCL).

Plaintiffs Sampson and Munson, along with Michell Franklin, who originally filed this class action, sued Defendant Midwest Recovery Systems, a collection agency, and its owners, which attempted to extort payment on old payday loan debt from 11,000 California residents. Because the debt was not enforceable due to the passage of time, not to mention the loans were themselves illegal, Midwest decided to use the leverage of credit-reporting to compel borrowers to make payments on the alleged debt. Accordingly, on various dates in 2017 and 2018, Midwest furnished information to consumer credit reporting agencies, including Equifax, Experian and TransUnion, stating that Plaintiffs and the other Class Members owed money to the illegal lenders. (Wilens Declaration, ¶ 2.)

Plaintiffs Sampson and Munson and 187 other persons paid money under duress to Midwest in order to have the adverse information deleted from their credit report. The total amount paid was $94,366.34. Plaintiff Franklin and the rest of the putative class members did not and continued to suffer the adverse consequences. Eventually, in response to this litigation, Midwest Recovery asked the credit bureaus to delete all 11,000 tradelines. (Wilens Declaration, ¶ 3.)

On February 5, 2021, the Court granted in part and denied in part Plaintiffs' motion for class certification. The Court denied the motion brought by Franklin to

certify a class of all persons who had their credit damaged by Defendants' actions, but who did not pay money to Defendants. Franklin subsequently negotiated a settlement to resolve her individual claims, but (at Defendants' insistence) it will not go into effect unless the class action settlement (discussed below) is granted final approval. (Wilens Declaration, ¶ 4.)

On the other hand, the Court granted the certification motion with respect to the class (formerly a subclass) of persons who paid money under duress to Defendants. Subsequently, Plaintiffs Sampson and Munson negotiated a class action settlement on behalf of the class with Defendants, which was granted preliminary approval. (Wilens Declaration, ¶ 5.)

The settlement class is the same as the restitution subclass certified by the Court. However, after the class was certified, Defendants located 23 additional instances where consumers paid money to Midwest Recovery after the subject payday loan debt was reported. This batch of consumers paid another $9,376.45 to Defendants, but did so around April 2020, while the members of the certified class paid between 2017 and 2018. This raises the total amount of money paid by class members to $103,742.79. Because some individuals paid on more than one loan, the new total number of class members is 209. Under the settlement, the average payout is $429 but some class members will receive more than one payment. The range of payments is $25 to $1,380. (Wilens Declaration, ¶ 6.) Pursuant to the settlement agreement, these additional persons were added to the settlement class

On February 5, 2021, and again on May 20, 2021, the Court previously approved Lakeshore Law Center and Spencer Law Firm to serve as Counsel for the Class. (Wilens Declaration, ¶ 7.) Defendants also agreed not to oppose requests for attorney's fees and costs and for incentive awards up to the following amounts: (1) Attorney's fees and costs and expenses of $86,000.21; (2) Incentive awards to the Plaintiffs and Class Representatives in this action, Sampson and Munson, in the amount of $5,000 each.

The class settlement agreement provided that in the "motion for an award of attorneys' fees, costs, and service awards, Plaintiffs shall disclose the amount of attorneys' fees that are to be paid pursuant to an individual settlement agreement with Plaintiff Franklin." That amount is $136,257 total for both of Plaintiffs' law firms. (Wilens Declaration, ¶ 8.)

Lakeshore Law Center

Respectfully submitted,

Dated: July 21, 2021

By: /s/ Jeffrey Wilens

Jeffrey Wilens

Attorney for Plaintiffs Michell T. Franklin, et. al.

POINTS AND AUTHORITIES

I. THE APPLICATION FOR AN AWARD OF $86,000.21 IN ATTORNEY'S FEES AND COSTS SHOULD BE APPROVED.

A. CALCULATING ATTORNEY'S FEES AUTHORIZED BY STATUTE.

Class counsel seek the award of $86,000.21 which applies to both attorney's fees and costs/expenses. If one separates out the costs reimbursement, the fees demand is for only $75,301.21. As seen below, this amount is well below counsel's lodestar.

The general rule in federal court with respect to removed cases, such as this one, is that when a plaintiff prevails on a state-law claim (and especially where there is no remaining federal claim), state law will govern the determination of attorney's fees. (See, e.g., Independent Living Center of Southern California, Inc. v. Kent (9th Cir. 2018) 909 F.3d 272, 281–283.) In the instant case, the class award is based on violations of state law only. Civ. Code, § 1785.31, subd. (d) specifies the relief available for a violation of the CCRAA, which relief includes "Except as provided in subdivision (e), the prevailing plaintiffs in any action commenced under this section shall be entitled to recover court costs and reasonable attorney's fees."

The lodestar method is primarily used in cases, involving a statutory fee-shifting provision or where the relief sought is injunctive in nature and thus not easily monetized. (*Robinson v. Open Top Sightseeing San Francisco, LLC* (N.D. Cal. May 4, 2018, No. 14-CV-00852-PJH) 2018 WL 2088392, at *2, appeal dismissed (*9th Cir., June 12, 2018, No. 18–16033)* 2018 WL 6333936; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1029; *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 943 (emphasizing the district court must make explicit lodestar calculations); *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 966 (attorneys' fees could have properly been calculated under lodestar approach).) Here, use of the

lodestar method is also appropriate because there was significant equitable relief when Defendants voluntarily deleted the tradelines from 11,000 proposed class members credit reports. The value of those deletions would be difficult to quantify.

In *Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1171, the court used the lodestar approach to calculate statutory fees rather than common fund or percentage of recovery because doing so would have caused the attorneys to be compensated below the reasonable value of their services. The court noted that in such circumstances, where individual losses were modest, awarding fees based on an arbitrary percentage of recovery would undermine the purpose of fee-shifting statutes designed to encourage attorneys to accept low-dollar cases. Therefore, the court relied on a lodestar calculation.

Sometimes statutory fees awarded per the lodestar approach exceed the payments to the plaintiffs/class. One example is *In re Ferrero Litig.* (S.D. Cal. July 9, 2012, No. 11-CV-00205-H-KSC) 2012 WL 2802051, at *4, aff'd (9th Cir. 2014) 583 Fed.Appx. 665, where the district court awarded $985,920 to class counsel pursuant to fee-shifting provisions of the state Consumer Legal Remedies Act. This was awarded despite the fact the monetary relief to the class was $550,000 in cash and an injunction requiring changes to that defendant's business practices. On appeal, the Ninth Circuit rejected an objection that the court was obligated to use the "percentage of the fund" calculation method, in which fees are typically limited to 25% of the overall value of a settlement fund. Instead, the Ninth Circuit affirmed the district court had discretion to award fees using the lodestar method. (*In re Ferrero Litig.* (9th Cir. 2014) 583 F.App'x 665, 668.) In the instant case, counsel would only receive $86,000 in fees and expenses compared to $103,742 to the class, but if the $136,257 from the Franklin individual settlement is included then total compensation to class counsel would be $222,257 (although the payment to Franklin personally is still confidential).

Similarly, in Parkinson, supra, the court awarded $3.7 million in fees even though a 25% percentage of recovery would have yielded a fee award of $350,000 to $855,000. (*Parkinson v. Hyundai Motor Am.*, *supra*, 796 F.Supp.2d at p. 1171.)

The lodestar fee is calculated and adjusted as follows.

> First, a court determines the "lodestar" amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. The party seeking an award of fees must submit evidence supporting the hours worked and the rates claimed. A district court should exclude from the lodestar amount hours that are not reasonably expended because they are "excessive, redundant, or otherwise unnecessary." Second, a court may adjust the lodestar upward or downward using a "multiplier" based on factors not subsumed in the initial calculation of the lodestar. (*Van Gerwen v. Guarantee Mut. Life Co.* (9th Cir. 2000) 214 F.3d 1041, 1045 (citations omitted).

B. CALCULATING THE HOURLY RATE.

Lakeshore Law Center and Spencer Law Firm are requesting their attorneys and staff be compensated at the following hourly rates:

Jeffrey Wilens 1985 Admittee $750

Jeffrey Spencer 1996 Admittee $750

Macy Wilens 2019 JD (paralegal) $165

Mr. Wilens and Mr. Spencer have submitted declarations indicating that they have both served as lead class counsel in dozens of cases and have extensive litigation experience. (Wilens Declaration, ¶¶ 12–21; Spencer Declaration, ¶¶ 3–44, 47.) Both attorneys currently bill at $750 per hour. Both have been awarded attorney's fees at the rate of $750 by multiple courts where they had served as lead counsel in class actions. The work done by paralegal Macy Wilens (who was a JD in 2019 with bar results pending at the end of the year) is billed at low-end market rate of $165. (Wilens Declaration, ¶ 9.) The paralegal fee is reasonable. (*Moore v. Astrue* (C.D. Cal. June 30, 2008, No. CV 04–7551 CW) 2008 WL 2620724, at *2 (approving paralegal rate of $169).)

It is appropriate to rely on counsel's current billing rates and the current market rates where a lawsuit has lasted many years. This compensates for the delay in payment and the fact counsel has had to carry expenses on the books for many years. (*Missouri v. Jenkins* (1989) 491 U.S. 274, 284; *Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1406; *Brown v. Hain Celestial Grp., Inc.* (N.D. Cal. Feb. 17, 2016, No. 3:11-CV-03082-LB) 2016 WL 631880, at *8.)

Courts may find hourly rates reasonable based on evidence of other courts approving similar rates or other attorneys engaged in similar litigation charging similar rates. (*Parkinson v. Hyundai Motor Am.*, *supra*, 796 F.Supp.2d at p. 1172.) Here, class counsel have presented evidence that they were recently awarded hourly fees of $750 in other consumer class actions. (Wilens Declaration, ¶¶ 16–18, Exhibit 2; Spencer Declaration, ¶¶ 9–11, Exhibits 1–3.) Moreover, these rates are consistent with the prevailing rates in the Central District:

- *Perfect 10, Inc. v. Giganews, Inc.* (C.D. Cal. Mar. 24, 2015, No. CV 11–07098-AB SHX) 2015 WL 1746484, at *20, *30, aff'd (9th Cir. 2017) 847 F.3d 657 (approving rates of $825-$930 for 29 year attorney and $715-$750 for 17 year attorney);
- *Ayala v. U.S. Xpress Enters., Inc.* (C.D. Cal. Feb. 13, 2019, No. EDCV 16–137-GW (KKX)) 2019 WL 1581395, at *2–3 (approving rates of $660 for a 2007 JD graduate (not admitted in California), $875 for a 1981 State Bar admittee, and $840 for a 1983 admittee);[1]

Finally, it is not appropriate to penalize class counsel by reducing their hourly rate if they are the sole timekeepers without an army of paralegals and associates. "Reasonable fees are to be calculated according to the prevailing market rates of the relevant legal community and are generally not conditioned on factors such as plaintiff's counsel's conformance to the typical commercial law firm's pyramidal staffing structure." (*Dytch v. Lazy Dog Rests., LLC* (N.D. Cal. Aug. 16, 2019, No.

[1] [1]The experience levels of the attorneys was obtained from their declarations.

16-CV-03358-EDL) 2019 WL 3928752, at *4, appeal dismissed (9th Cir., Dec. 20, 2019, No. 19–16801) 2019 WL 8219423, and appeal dismissed (*9th Cir., Dec. 23, 2019, No. 19–17245)* 2019 WL 7835611. Similarly, in *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1114, the Court of Appeals criticized the district court considering a fee petition for reducing an hourly rate based on preconceptions of law firm structure:

> But the district court went on to consider impermissible factors. The district court reduced the hourly rate from $300 an hour to $250 an hour, in part because it thought that other firms could have staffed the case differently. The court speculated that other firms would have used a less skilled attorney, rather than the lead counsel, to perform document review. While it is appropriate to consider the skill required to perform a task, Hensley, 461 U.S. at 430 n. 3, 103 S.Ct. 1933, the district court may not set the fee based on speculation as to how other firms would have staffed the case.

Based on the foregoing, the Court should approve the hourly rates requested.

C. DOCUMENTING THE TIME SPENT.

Although it is true that the fee applicant bears the burden of submitting "evidence supporting the hours worked and rates claimed," counsel "is not required to record in great detail how each minute of his time was expended." (*Fischer v. SJB-P.D. Inc.* (9th Cir. 2000) 214 F.3d 1115, 1121.) Nevertheless, Lakeshore Law Center and Spencer Law Firm have submitted detailed contemporaneous time records. (Wilens Declaration, ¶ 22, 24–25; Exhibit 1, pp. 1–24; Spencer Declaration, ¶ 48, Exhibit 4.)

This case has been extensively litigated since July 11, 2018, including these events:

- Drafting the original complaint and multiple amendments
- Drafting deposition notices, interrogatories and requests for production, multiple briefings and hearings on discovery disputes
- Responding to interrogatories, requests for admissions, and requests for production of documents

- Defending four depositions
- Drafting motion for class certification which was contested but granted
- Drafting motions for preliminary approval and this motion for fees (and future motion for final approval)
- Drafting settlement conference brief and later mediation brief, Preparation for and attending two settlement conference/mediation sessions
- Meeting with clients on multiple occasions, regular phone and email communication with clients
- Review and analyzing extensive document production including spreadsheet of 11,000 violations, efforts to contact and obtain statements from witnesses from that list
- Briefing opposition to motion to dismiss and later motion for summary judgment and in limine motions. (Wilens Declaration, ¶ 22.)

The following chart summarizes the time expended by timekeepers:

Jeffrey Wilens 386.9 x $750 = $290,100

Macy Wilens 5.4 x $165 = $891

Jeffrey Spencer 164.4 x $750 = $123,310

(Wilens Declaration, ¶ 22; Spencer Declaration, ¶ 48.)

Thus, the lodestars would be $291,066 for Lakeshore Law Center and $123,310 for Spencer Law Firm. However, that total of $414,376 exceeds the negotiated cap of $86,000.21, which is reduced to $75,301.21 after deduction for expenses. Therefore, the total lodestar by virtue of the settlement must be reduced by 82%. Given that massive reduction, there is little need to scrutinize the fee petition. The resulting adjusted lodestars are $52,893 for Lakeshore Law and $22,408.21 for Spencer Law Firm.

D. PLAINTIFFS HAVE DOCUMENTED COSTS IN THE AMOUNT OF $10,699 WHICH SHOULD BE AWARDED.

Counsel are entitled to reimbursement of their reasonable out-of-pocket expenses. (*Walsh v. Kindred Healthcare* (N.D. Cal. Dec. 16, 2013, No. C 11–00050 JSW) 2013 WL 6623224, at *3.) Lakeshore Law Center has submitted

contemporaneous expense records. Lakeshore Law Center had $10,699 in expenses and Spencer Law is not claiming any. (Wilens Declaration, ¶ 24; Exhibit 1, pp. 24–25.) Thus, the Court should award Lakeshore Law Center $10,699 in costs and expenses.

E. THE COURT SHOULD AWARD $63,592 IN LEGAL FEES AND EXPENSES TO LAKESHORE LAW CENTER AND $22,408.21 IN FEES TO SPENCER LAW FIRM.

Class counsel represented Plaintiffs on a contingent fee basis. (Wilens Declaration, ¶ 27.) Although courts sometimes will enhance the lodestar to reflect various factors, including the contingent nature of the work, Class Counsel are not seeking a multiplier here. Instead, they are accepting much less than their lodestar. Moreover, all work done after the filing of this motion, including the motion for final approval, will be uncompensated.

Based on the foregoing analysis and documentation, the Court should award attorney's fees and costs of $63,592 to Lakeshore Law Center and $22,408.21 to Spencer Law Firm.

II. THE APPLICATION FOR INCENTIVE AWARDS OF $5,000 TO EACH OF THE PLAINTIFFS SHOULD BE GRANTED.

Each class representative plaintiff seeks an incentive award of $5,000.

"Incentive awards are fairly typical in class action cases," and are "generally sought after a settlement or verdict has been achieved." (*Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958–59.) "Such awards are discretionary, and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Id.* at p. 958.)

Incentive awards of $5,000 are not uncommon. (*Weeks v. Kellogg Co.* (C.D. Cal. Nov. 23, 2013, No. CV 09–08102 MMM RZX) 2013 WL 6531177, at *37; *Pike v.*

Cnty. of San Bernardino (C.D. Cal. Jan. 27, 2020, No. EDCV171680JGBKKX) 2020 WL 1049912, at *6–7 (approving $15,000 incentive awards due to the two class representatives' extraordinary efforts including spending 200 hours each on the case but noting incentive awards are normally closer to $5,000.)

Courts have discretion to grant incentive awards, guided by the following considerations:

> the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (*Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299, cited with approval in *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 470.)

There is a little unusual twist in this case because only two of the named Plaintiffs are also class representatives while the third plaintiff is settling her case on an individual basis (because the Court declined to certify the class she would have represented). No incentive award is requested for her, Michell Franklin.

There was risk to the plaintiffs as they could have been liable for substantial court costs including more than $2,000 in deposition transcript costs. There was also some exposure to notoriety in a public lawsuit where their involvement with payday loans and debt became a matter of public record. Plaintiffs have submitted declarations describing their involvement in the case including 1) gathering documents and information to provide counsel at the beginning of the case; 2) identifying payday lenders they had dealt with; 3) reviewing and responding to requests for production of documents; 4) meeting or conferring with counsel on multiple occasions; 5) preparing for and testifying in a deposition; 6) assisting in the preparation of declarations for use in the certification proceedings and to oppose summary judgment; and 7) assisting their attorneys with the settlement process. Each spent at least 50 hours in these efforts.

(Sampson Declaration, ¶ 12; Munson Declaration, ¶ 11.) The litigation overall was three years and the class representatives participated for two years. Finally, the plaintiffs had little personal benefit compared to the time and risk. One plaintiff will recover $408 and the other $505.

All of these factors support the $5,000 incentive awards. As noted above, the average payment to class members per transaction is $429 although some class members will receive more than one payment. The maximum payment is $1,380. Thus, each plaintiff will receive an incentive award that is around 10 times the typical payment to each class member. That is not an unreasonable ratio. (*In re Online DVD-Rental Antitrust Litig.* (9th Cir. 2015) 779 F.3d 934, 947 (approving incentive award that was 417 times individual class member payments).)

Therefore, the Court should approve incentive awards of $5,000 to each plaintiff.

III. CONCLUSION

For the above stated reasons, Plaintiffs respectfully urge the court to grant the motion for an award of attorney's fees and costs and incentive awards.

Lakeshore Law Center

Respectfully submitted,

Dated: July 21, 2021

By: /s/ Jeffrey Wilens

Jeffrey Wilens

Attorney for Plaintiffs Michell T. Franklin, et. al.