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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

TERRI N. WHITE et. al.,
Plaintiff(s),

v.
EXPERIAN INFORMATION
SOLUTIONS, INC et. al.,
Defendant(s).

**CASE NO. SACV 05-1070 DOC
(MLGx)**

**ORDER GRANTING IN PART
AND DENYING IN PART REQUEST
FOR ATTORNEYS FEES AND
COSTS FOR INJUNCTIVE RELIEF
SETTLEMENT**

Before the Court is Motion for Attorneys Fees for Injunctive Relief Settlement filed in the above-captioned case (“Motion”) (Docket 573). After considering all relevant written submissions, as well as oral argument, the Court GRANTS in part and DENIES in part the Motion.

I. BACKGROUND

The facts of this case have been recounted exhaustively in several of the Court’s previous

1 orders in this action. In brief, Injunctive Relief Class Counsel¹ represented a class of consumers
2 in an action against the nation's three major credit-reporting bureaus, Experian Information
3 Solutions, Inc. ("Experian"), Equifax Information Services, LLC ("Equifax"), and Transunion
4 LLC ("Transunion") (collectively, "Defendants"). The class members' suit alleged that
5 Defendants had violated – and were continuing to violate – provisions of the Fair Credit
6 Reporting Act ("FCRA") by maintaining unreasonable procedures for the reporting, and
7 reinvestigation, of debts discharged in bankruptcy. After intensive mediation sessions, two
8 settlements were reached in this case: one for injunctive relief, entered into on or about April 3,
9 2008, and one for damages, entered into on or about February 5, 2009. As a result of the
10 injunctive relief settlement, Defendants agreed to retroactively update the credit files of all of the
11 injunctive relief class members. Defendants also agreed to adopt new procedures for the
12 updating of certain pre-bankruptcy civil judgments and tradelines when a public record entry of
13 bankruptcy is added to a consumer's file. The Court issued an order approving the injunctive
14 relief settlement and certifying an injunctive relief settlement class under Fed. R. Civ. P.
15 23(b)(2) on August 19, 2008. Approval Order Regarding Settlement Agreement and Release,
16 Aug. 19, 2008 (Docket 338). With the instant Motion, Plaintiffs seek approval for the payment
17 of \$5,977,500 in attorneys fees and costs to Injunctive Relief Class Counsel, as well as a total of
18 \$22,500 in service payments to the injunctive relief class representatives (\$2,500 to each
19 representative).² Defendants have agreed to bear these expenses, meaning that no amount of the
20 attorneys fees awarded in connection with the injunctive relief settlement will be deducted from

21
22 ¹The term "Injunctive Relief Class Counsel" refers to: Daniel Wolf, Esq., Law
23 offices of Daniel Wolf; Leonard A. Bennett, Esq., Consumer Litigation Associates, P.C.;
24 Mitchell A. Toups, Esq., Weller, Green, Toups & Terrell, L.L.P. ("Toups"); Michael A.
25 Caddell, Esq., Caddell & Chapman; Michael W. Sobol, Esq., Leiff Cabraser Heimann &
26 Bernstein; Charles W. Juntikka, Esq., Charles Juntikka & Associates; Charles Delbaum
and Stuart T. Rossman, National Consumer Law Center; and Lee A. Sherman, Esq.,
Callahn, McCune & Willis.

27 ²The injunctive relief class representatives are: Jose Hernandez, Robert Randall,
28 Bertram Robinson, Kathryn Pike, Chester Carter, Robert Radcliffe, Arnold E. Lovell, Jr.,
Maria Falcon, and Clifton C. Seale, III.

1 the recovery set aside for the class as part of the monetary relief settlement also reached in this
2 case.

3 II. LEGAL STANDARD

4 Upon motion in a class action, the court “may award reasonable attorney fees and
5 nontaxable costs authorized by law or by the parties’ agreement.” Fed.R.Civ.P. 23(h).
6 “Attorneys’ fees provisions included in proposed class action settlement agreements are, like
7 every other aspect of such agreement, subject to the determination of whether the settlement is
8 ‘fundamentally fair, adequate, and reasonable.’” *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th
9 Cir. 2003) (quoting Fed. R. Civ. P. 23(e)). The Court has discretion to use the lodestar method
10 to determine the reasonableness of the requested fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d
11 1011, 1029 (9th Cir. 1998). The starting point for computing the lodestar amount is to multiply
12 the number of hours the prevailing party reasonably expended on the litigation by a reasonable
13 hourly rate. *See Caudle v. Bristow Optical Co., Inc.*, 224 F.3d 1014, 1028 (9th Cir. 2000). The
14 hourly rates used must be “in line with those prevailing in the community for services by lawyers
15 of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895
16 (1984). After computing the “raw” lodestar figure, courts may take into consideration additional
17 factors to enhance or reduce the lodestar, including: the time and labor required; the novelty and
18 difficulty of the questions involved; the skill requisite to perform the legal service properly;
19 whether the fee is fixed or contingent; the amount involved and the results obtained; the
20 experience, reputation, and ability of the attorneys; and awards in similar cases. *See Ballen v.*
21 *City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006) (internal citations and quotations omitted).

22 In addition to attorneys fees, reasonable costs and expenses are eligible for
23 reimbursement. *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996)
24 (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970)); *see also Staton*, 327 F.3d at
25 974. The requested costs must be relevant to the litigation and reasonable in amount. *In re*
26 *Media Vision*, 913 F. Supp. at 1366.

27 III. DISCUSSION

28 The \$5,977,500 attorneys fees and costs requests consists of \$5,671,778.68 in asserted

1 fees and \$305,721.32 in asserted costs. Injunctive Relief Class Counsel report that they
2 expended 10,192.60 hours on work related to the injunctive relief settlement, at an hourly rate of
3 approximately \$467, resulting in a lodestar of \$4,762,018.25. The requested fee award of
4 \$5,671,778.68 therefore reflects the use of a 1.9 multiplier (*i.e.* the ratio of requested fees to the
5 lodestar incurred is 1.9). For the following reasons, the Court concludes that the amount of
6 requested fees is reasonable.

7 **a. Authority to Award Fees**

8 The Court is authorized to grant attorneys fees and costs. The FCRA allows an award of
9 attorneys fees and costs “in the case of successful action to enforce liability” under the statute.
10 15 U.S.C. §§ 1681n(a)(3), 1681o(a)(3). Though statute does not specifically define the term
11 “successful,” courts applying this provision have relied on the two-part test established by the
12 Supreme Court in *Buckhannon Bd. & Care Home Inc. v. West Virginia Dept. of Health &*
13 *Human Resources*, 532 U.S. 598 (2001), for determining whether a party is entitled to fees as a
14 “prevailing” party. *See Nagle v. Experian Information Solutions, Inc.*, 297 F.3d 1305, 1307
15 (11th Cir. 2002); *Crabill v. Trans Union LLC*, 259 F.3d 662, 666-67 (7th Cir. 2001). Under this
16 standard, a plaintiff may recover fees where: (1) she obtains a material alteration of the legal
17 relationship between the parties that benefits her; and (2) such alteration is “judicially
18 sanctioned.” *Buckhannon*, 532 U.S. at 604-05. The phrase “judicially sanctioned” does not
19 require a final judgment on the merits; a judicially-enforceable settlement agreement also counts.
20 *See, e.g. Richard S. v. Dept. of Developmental Servs.*, 317 F.3d 1080, 1087 (9th Cir. 2003).
21 Moreover, it is clear that “a plaintiff can be the prevailing party based exclusively on injunctive
22 relief.” *Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1118 (9th Cir. 2000). Here, the injunctive
23 relief settlement, by permanently modifying Defendants’ reporting practices, undoubtedly works
24 a material, judicially-sanctioned alteration in the parties’ legal relationship. Plaintiffs easily
25 satisfy the *Buckhannon* test. The Court may award fees under the FCRA.

26 **b. Propriety of the Attorneys Fee Award**

27 **i. Fee Agreement Arises from Arm’s Length Negotiations**

28 The Court notes initially that Defendants have stipulated to the propriety of Plaintiffs’

1 fee request. *See* Agreement Re: Injunctive Relief Fees, May 1, 2009 (Docket 413-2). Where
2 there is no evidence of collusion or detriment to the class members, courts generally “should
3 refrain from substituting its own value for a properly bargained-for agreement.” *In re Apple*
4 *Computer, Inc. Derivative Litig.*, 2008 WL 4820784 at *3 (N.D. Cal. 2008); *Ingram v. Coca-*
5 *Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) (explaining that courts “should give substantial
6 weigh to a negotiated fee amount, assuming that it represents the parties’ best efforts to
7 understandingly, sympathetically, and professional arrive at a settlement as to attorneys fees.”).
8 The Court sees no evidence of collusion or detriment to the class arising from the instant request
9 for attorneys fees. The Court accordingly gives due weight the views of the parties in approving
10 the request.

11 **ii. The Lodestar Is Reasonable**

12 Injunctive Relief Class Counsel’s “raw” lodestar is reasonable. Injunctive Relief
13 Class Counsel have extensive experience in the area of consumer class actions, other complex
14 class actions, and FCRA litigation. *See e.g.*, Decl. of M. Sobol ISO Mot. For Attorneys’ Fees
15 for Injunctive Relief Settlement, ¶ 2, 5 (Docket 575-3); Decl. of M. Caddell ISO Mot. for
16 Attorneys’ Fees for Injunctive Relief Settlement, ¶¶ 3-14, 18 (Docket 577-4); Decl. of L.
17 Bennett ISO Mot. for Attorneys’ Fees for Injunctive Relief Settlement, ¶¶ 5-10, 15 (Docket
18 577-7). Injunctive Relief Class Counsel’s customary rates, which were used for purposes of
19 calculating the lodestar in this case, are justified in light of the attorneys’ reputation and
20 experience, are based on prevailing fees in this District, and have been approved by courts in the
21 past. *See Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)
22 (“[A]ffidavits of the plaintiffs’ attorney[s] and other attorneys regarding prevailing fees in the
23 community, and rate determinations in other cases . . . are satisfactory evidence of the prevailing
24 market rate.”) (internal citations and quotations omitted).

25 Similarly, Injunctive Relief Class Counsel expended an appropriate amount of time –
26 10,192.60 hours – on efforts related to the injunctive relief settlement. These hours reflect time
27 spent undertaking substantial investigation, gathering facts, conducting formal discovery,
28 engaging in significant motion practice, and attending court appearances. The parties also

1 participated in seven full days of mediation sessions in order to properly negotiate the
2 complicated terms of the injunctive relief awarded to the class and successfully prosecuted a
3 motion for court approval of the settlement. Counsel performed this work entirely on a
4 contingent basis and have not yet been compensated for their time.

5 **iii. A Multiplier of 1.9 is Reasonable**

6 The Court further approves the use of a 1.9 multiplier to increase the amount of attorneys
7 fees from \$4,762,018.25 to \$5,671,778.68. As stated above, courts look to the following factors
8 in determining whether to enhance a “raw” lodestar: the time and labor required; the novelty
9 and difficulty of the questions involved; the skill requisite to perform the legal service properly;
10 whether the fee is fixed or contingent; the amount involved and the results obtained; the
11 experience, reputation, and ability of the attorneys; and awards in similar cases. *Ballen*, 466
12 F.3d at 746. Consideration of these factors – particularly an evaluation of the significance of the
13 results obtained – support the use of a multiplier.

14 Injunctive Relief Class Counsel hit a home run with the injunctive relief settlement: it
15 achieved virtually everything that Plaintiffs could have achieved had they prevailed on their
16 claims for injunctive relief after full litigation. Indeed, had Plaintiffs established at trial that
17 Defendants’ procedures for reporting pre-bankruptcy debt ran afoul of the FCRA, any injunctive
18 relief obtained as a result, at most, would have mandated that Defendants adopt reasonable
19 alternative procedures. Not only does the injunctive relief settlement do that, it actually specifies
20 the new procedures that must be used. The injunctive relief settlement thus represents a
21 complete victory for the injunctive relief class members. It also serves the public good: society
22 at large benefits from the increased accuracy in the field of credit reporting that the injunctive
23 relief settlement has triggered.

24 The novelty of the questions raised by this case, the amount of skill required to negotiate
25 the settlement, the experience and reputation of the attorneys, and the use of a contingent fee
26 arrangement further support the decision to increase the “raw” lodestar. As is explained in more
27 detail in the Court’s orders approving both the injunctive and monetary relief settlements,
28 Plaintiff’s case presented largely novel, complex questions. Ascertaining a solution to these

1 complicated problems therefore required significant skill. Injunctive Relief Class Counsel rose
2 to the occasion, all the while operating under a contingent fee arrangement that offered no
3 guarantee of compensation. Use of a 1.9 multiplier is appropriate under these circumstances.

4 **c. Objections to the Attorneys Fee Award**

5 Several objectors take issue with the fact that attorneys fees and costs are being sought
6 separately under the injunctive relief settlement and under the monetary relief settlement. These
7 objections lack merit. Given that the injunctive relief settlement and the monetary relief
8 settlement constitute distinct, independently negotiated agreements, it is entirely proper for
9 Injunctive Relief Class Counsel to seek fees for the injunctive relief settlement separately and
10 apart from any fees sought in connection with the monetary relief settlement. Certain courts
11 have even allowed for distinct fee awards for injunctive and monetary relief when both kinds of
12 relief were included in the same settlement agreement. *See, e.g. Weiss v. York Hosp.*, 628 F.
13 Supp. 1392, 1415 (M.D. Pa. 1986); *A fortiori*, separate fee awards are appropriate for
14 independent injunctive and monetary relief settlements. In any event, the total amount of
15 attorneys fees awarded in this case (for both settlements) is reasonable considering the
16 circumstances of the case and the factors identified above.

17 All objections to the provision of \$5,671,778.68 in attorneys fees to Injunctive Relief
18 Class Counsel are overruled. The Motion for \$5,671,778.68 in attorneys fees is GRANTED.

19 **d. Distribution of the Fees**

20 Each member of the Injunctive Relief Class Counsel team contributed to the injunctive
21 relief settlement achieved in this case. A group of law firms consisting of Leiff Cabraser
22 Heimann & Bernstein; Caddell & Chapman; Weller, Green, Toups & Terrell, L.L.P.; National
23 Consumer Law Center; Consumer Litigation Associates, P.C.; and Callahn, McCune & Willis
24 (collectively, "Leiff Cabraser group"), however, ask that the Court allocate the entire amount of
25 approved attorneys fees to be split among this group. The Leiff Cabraser group contends that
26 the other members of the Injunctive Relief Class Counsel team – Law offices of Daniel Wolf
27 ("Wolf") and Charles Juntikka & Associates ("Juntikka") – have waived their right to seek
28 attorneys fees for the injunctive relief settlement by failing to request them by the Court-imposed

1 deadline of December 21, 2009.

2 This argument is without substance. Wolf and Juntikka timely filed a statement regarding
3 their entitlement to attorneys fees for the injunctive relief settlement on December 21, 2009.
4 Statement of Daniel Wolf and Charles Juntikka Regarding Rights to Attorneys Fees In
5 Connection with Injunctive Relief Settlement, Dec. 21, 2009 (Docket 572). That Wolf and
6 Juntikka filed this "Statement" instead of a standard motion has no bearing on their right to fees.
7 Wolf and Juntikka structured their fee request the way that they did because they did not want
8 their request for attorneys fees from the injunctive relief settlement to be misconstrued as
9 implicit support for the monetary relief settlement, which their clients opposed. Wolf and
10 Juntikka's efforts in this regard were unnecessary – given their sustained communication of
11 objections to the monetary relief settlement, the Court would not have treated a standard motion
12 for attorneys fees for the injunctive relief settlement as an admission of support for the monetary
13 relief settlement. Nonetheless, the fact that Wolf and Juntikka's request for attorneys fees took a
14 non-orthodox form does not affect their entitlement to compensation. The attorneys fees
15 awarded for the injunctive relief settlement is to be divided fairly among all members of the
16 Injunctive Relief Class Counsel team.

17 The parties are strongly encouraged to establish a plan for the proper distribution of
18 attorneys fees on their own.³ If the parties prove unable to do so, the Leiff Cabraser group, on
19 the one hand, and Wolf and Juntikka, on the other, may submit briefing to the Court, not to
20 exceed twenty pages, regarding their position on a proper fee allocation plan, accompanied by all
21 relevant billing records, no later than noon on July 29, 2011. At least five (5) days prior to filing
22 such briefs, the parties are required to submit their billing records to the other side for review. If
23 briefs in support of each parties' allocation plan are filed, the Leiff Cabraser group and the Wolf
24 / Juntikka group shall be given until noon on August 4, 2011 to respond to the other side's
25 argument in a brief not to exceed fifteen pages.

26
27 ³If the parties are able to work out a distribution plan on their own, they must
28 notify the Court of this fact in a joint submission filed no later than noon on July 29,
2011.

1 **e. Costs**

2 Injunctive Relief Class Counsel also request reimbursement for \$305,721.32 in costs.
3 No accounting, however, is provided in support of these claimed expenditures. In the absence of
4 any such accounting, the Court declines to authorize reimbursement for costs.

5 The request for \$305,721.32 in costs is therefore DENIED without prejudice to Injunctive
6 Relief Class Counsel's ability to submit a renewed request for costs, accompanied by a proper
7 accounting, within ten (10) days of the entrance of this Order.

8 **f. Service Awards**

9 The instant Motion also seeks Court approval to allow Defendants to pay a total of
10 \$22,500 in service awards to the class representatives in this case: Jose Hernandez, Robert
11 Randall, Bertram Robinson, Kathryn Pike, Chester Carter, Robert Radcliffe, Arnold E. Lovell,
12 Jr., Maria Falcon, and Clifton C. Seale, III. A total service fee award of \$22,500 yields a \$2,500
13 payment to each class representative. Each of the named plaintiffs have provided valuable
14 services to the absent class members in this case by consulting with counsel, producing and
15 reviewing documents, and providing sworn testimony at depositions. *See* Decls. of Jose
16 Hernandez, Clifton Seale III, Robert Radcliffe, Maria Falcon, Chester Carter, Arnold Lovell,
17 Bertram Robison, Robert Randall, and Kathryn Pike ISO Plaintiffs' Motion for Settlement Class
18 Certification and Final Approval of Proposed Injunctive Relief Class Settlement, attached as
19 Exhs. F-N to Decl. of M. Sobol ISO Proposed Injunctive Relief Class Settlement (Docket 301).
20 In light of this effort, as well as in recognition of the groundbreaking changes to the credit
21 reporting industry that the class representatives helped to precipitate through the injunctive relief
22 settlement, the Court finds service fees of \$2,500 per named plaintiff to be warranted.

23 The Motion for a total of \$22,500 in service awards to the class representatives is
24 GRANTED.

25 **IV. DISPOSITION**

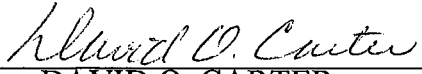
26 For the reasons set forth above, the Motion for Attorneys Fees of \$5,671,778.68 and for
27 service awards of \$2,500 per named plaintiff is GRANTED.

28 The Motion for \$305,721.32 in costs is DENIED without prejudice to Injunctive Relief

1 Class Counsel's ability to submit a renewed request for costs in line with the procedures
2 described in this Order.

3
4 IT IS SO ORDERED.

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6 DATED: July 15, 2011

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DAVID O. CARTER
United States District Judge

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