UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

BROOKE CHAMPAGNE and MARICO THOMAS,
Plaintiffs,
v.
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP,
Defendant.

Case No. 4:20-cv-00275-SMR-SBJ

REPLY TO DEFENDANT'S RESPONSE TO FEE PETITION

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INTRODUCTION

Under the pretext of attacking the "novelty" of Plaintiffs' arguments, Linebarger spends a substantial portion of its response attacking the merits of a settled case. Notably, at no time does Linebarger actually defend the actions it took against the Plaintiffs, Brooke Champagne and Marico Thomas. For example, Linebarger does not suggest that the law firm had any legal authority to threaten Brooke and Marico with jail or revocation of their driver's licenses for nonpayment. Nor does Linebarger deny that even were jail a lawful consequence of nonpayment (it is not), due process requires the company disclose to debtors that they cannot be lawfully jailed for nonpayment unless a court determines their failure to pay was willful. Likewise, Linebarger does not deny it is constitutionally obligated to ensure that each debt is validly owed before attempting to collect it.

Instead, Linebarger argues that because defense counsel disagrees with Plaintiffs' legal arguments on their *merits*,[1] Plaintiffs' claims are not complex or novel. But as Linebarger concedes, the central legal question presented by this case—whether fees imposed in exchange for the services of appointed counsel in a criminal case are "debts" under the FDCPA and IDCPA—has never been resolved by *any* court. If anything, the fact that Linebarger so vigorously disputes the merits of Plaintiffs' legal arguments at this stage of proceedings only confirms the need for Plaintiffs' counsel to invest substantial time into developing legal theories that they were confident could survive a motion to dismiss and hold up on appeal before filing the detailed, meticulously researched complaint in this matter.

[1] The Plaintiffs note that the framing of Linebarger's reply as focusing on the merits of the case has required a more extensive reply brief here, which resulted in considerable additional time spent by Plaintiffs counsel. While they would be entitled to do so, the Plaintiffs will not be filing an additional request for fees at this time.

As for Linebarger's second main argument—that Plaintiffs' counsel are charging for hours expended before they ever met either Plaintiff—this is simply factually inaccurate, as Brooke and Marico became Iowa Legal Aid clients on this and related issues on February 2018 and May 2019, respectively. Kornya Supp. Decl. ¶ 3-4.

Linebarger's argument is and has always been that the company is not accountable under the laws that govern others in the collections industry. Over the years, the risky business model employed by Linebarger has harmed hundreds of Iowa Legal Aid clients, eventually culminating in the resource-consuming necessity of filing this case. Kornya Decl., ¶ 15; Kornya Supp. Decl. ¶ 2. Despite the fact that this case has consumed critical resources for Iowans who lack access to civil justice due to Linebarger's actions, Linebarger accuses Plaintiffs' counsel of filing this case to "drive business." In reality, it is Linebarger's conduct over the years that drove the necessity of filing a complex and resource intensive case that sits at the intersection of consumer protection, criminal procedure, and civil rights law.

ARGUMENT

I. THIS CASE IMPLICATES COMPLEX AND NOVEL QUESTIONS OF LAW

Linebarger's first objection to this fee petition is that this case involves no novel or complex issues of law. Despite this unequivocal pronouncement, Linebarger could not point to any binding Supreme Court or Eighth Circuit precedent on any of the issues raised in this lawsuit. Instead, Linebarger attempts to equate the dollar-for-dollar fee charged back to indigent people for the services of appointed defense counsel with a fine or a tax. In so doing, Linebarger strings together a list of inapposite cases and mischaracterized facts in an attempt to paint an extremely complex interplay between consumer protection, criminal procedure, and civil rights law as a simple and easily disposed of set of so-called "simple truths." The real truth is more complex.

A. Appointed counsel fees are "debt" under the FDCPA

The Fair Debt Collection Practices Act (FDCPA) defines a "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes[.]" 15 U.S.C. 1692a(5). The phrase "personal, family, or household purposes" has generally been interpreted to mean not for commercial or business purposes. *See, e.g., First Gibraltar Bank, FSB v. Smith*, 62 F.3d 133, 135 (5th Cir. 1995); *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 698 F.3d 290 (6th Cir. 2012).

In Iowa, "court debt" is a broad term that encompasses a wide range of different kinds of debts imposed for very different purposes. Iowa Code § 602.8107(1)(a); *see also* Iowa Code 910.1(1)-(2) (listing the many different predicate obligations for "restitution"—*i.e.*, the term for a subset of court debt assessed after a conviction). The common conception many people have of court debt includes fines, a term of art meaning a financial sanction intended to punish, and victim restitution, imposed both to restore victims and rehabilitate people convicted of crimes.

But many jurisdictions—Iowa included—have introduced a number of fees over the years that are essentially payments for services provided during the course of litigation that mirror private market transactions. As relevant to the present case, Iowa recoups the costs expended from people who cannot afford defense counsel and subsequently accept the services of a lawyer appointed by the state. Iowa Code § 815.9.

The singular focus of this case is on these appointed counsel fees and associated collection fees, and thus the relief sought under the FDCPA was solidly grounded in an obligation arising from a consensual transaction for the services of defense counsel – i.e., a "debt" covered by the FDCPA. Linebarger is careful to refer to the Plaintiffs' debts with nondescriptive terms like "court-

imposed obligations," "money," and "fees, fines, and costs," in an attempt to obscure the true nature of this specific subset of the Plaintiffs' court debt. *See, e.g,* Opp. 4-5.

1. Appointed counsel fees are not a fine, nor are they analogous to a fine.

Linebarger cites cases from other circuits to argue that "the proposition that taxes and municipal fines are not 'debts' under the FDCPA because they are not consensual transactions is well settled." Opp. 1. Well settled as that principle may be in other circuits, it is also not relevant because appointed counsel fees are neither a fine nor a tax, but rather compensation for the services of appointed defense counsel.

The purpose and nature of different types of court debt result in different legal consequences and protections. These include which remedies the state can and cannot pursue for nonpayment, and the applicability of various consumer protection laws. For example, pretrial incarceration fees that are assessed as "civil debt" as part of a criminal sentence to avoid ability-to-pay reductions may be subject to bankruptcy discharge. *State v. Gross*, 935 N.W.2d 695, 703 – 704 (Iowa 2019). In the case of *In re Milan*, the Eighth Circuit Bankruptcy Appellate Panel held a jail fee imposed under Minnesota law in connection with a criminal conviction was not subject to the exception to bankruptcy discharge for a "fine, penalty, or forfeiture owing to a governmental unit," as the fee was strictly compensatory rather than punitive. *In re Milan*, 556 B.R. 922 (8th Cir. B.A.P. 2016). In the context of appointed counsel fees, the United States Supreme Court has held that depriving a debtor of the protections enjoyed by civil judgment debtors is a violation of equal protection. *James v. Strange*, 407 U.S. 128, 138 (1972); *see also State v. Rideau*, 943 So. 2d 559 (La. Ct. App. 2006) (extending this protection to jury fees); *Martin v. State*, 405 S.W.3d 944, 948 (Tex. App. 2013) (investigator fees); *State v. Diaz-Farias*, 362 P.3d 322 (Wash. Ct. App. 2015) (interpreter fees).

On the other hand, a "fine" is a specific term of art that describes a debt imposed to punish. In Iowa, a fine imposed by the state in a criminal case can only be imposed "[u]pon a verdict or plea of guilty of any public offense for which a fine is authorized[.]" Iowa Code § 909.1. Appropriate to its punitive function, the purpose of a fine is "to deter the defendant and to discourage others from similar criminal activity." *Id*. A fine does not arise out of a consensual transaction for goods or services and therefore is not a "debt" under the FDCPA. *Gulley v. Markoff & Krasny*, 664 F.3d 1073, 1075 (7th Cir. 2011). But neither Marico nor Brooke has ever argued that a fine is a "debt" for FDCPA purposes, as this case is about appointed counsel fees.

Appointed counsel fees are not a fine because it is not imposed as punishment. To accept the premise that these fees serve a punitive purpose is to say that a person is deserving of a higher degree of punishment not because of additional culpability, but rather because they are poor. Furthermore, if counsel fees are imposed for punitive reasons, it follows that the more work an indigent person's attorney puts into their case, the higher degree of punishment they should receive. This would be an absurd result, and such a paradigm would possibly even be fatally flawed on equal protection or other constitutional grounds. *See e.g. Williams v. Illinois*, 399 U.S. 235 (1970) (holding that a system that punished indigents as a class more harshly violates equal protection).

Rather, appointed counsel fees in Iowa are compensation for a consensual transaction that mirrors in many respects the direct purchase of an attorney's services from the private market by non-indigent people. These fees are recouped from indigent defendants on an hourly basis. *See* Iowa Code § 815.9(4) (providing for reporting of total hours and expenses incurred by appointed defense counsel to the court); Iowa Code § 815.9(5) ("[i]f the person receiving legal assistance is convicted in a criminal case, the total costs and fees incurred for legal assistance shall be ordered paid[.]"); *see also* Iowa Code § 815.9(6) (providing costs and fees to be paid by those who are

acquitted or is a party in a case other than a criminal case). While a waiver of the right to counsel must be intelligent, knowing, and voluntary, "the Constitution does not force a lawyer on a defendant" and the right to counsel can be waived. *Iowa v. Tovar*, 541 U.S. 77, 87–88 (2004) (internal citations omitted). To initiate the process of appointment, Brooke and Marico both signed and filed applications for appointment of counsel. Complaint Exh. 3; Complaint Exh. 9; Complaint Exh. 21. Each of these applications contained identical language near the signature block, saying: "I understand I may be required to repay the state for all or part of my attorney fees and costs, I may be required to sign a wage assignment[.]" *Id*.

In return for signing and submitting the application for appointed counsel, and voluntarily subjecting themselves to the possibility of repayment, Brooke and Marico transacted to receive the services of contract defense counsel. Either could have chosen to limit how much they received in legal services by choosing tactics that would minimize the work that needed to be performed or to assume the risk of a higher charge and pursue more time-intensive litigation tactics that may get them a better outcome. For all these reasons, the counsel fee obligation that arose from that transaction is a debt under the FDCPA.

2. Appointed counsel fees are not a tax, nor are they analogous to a tax.

Linebarger also makes a conclusory assertion that appointed counsel fees are "analogous to… a tax[,]" Opp. at 5, but then provides no authority or analysis as to why this would be true. While the Eighth Circuit has not directly addressed this question, the Third Circuit's analytical framework has been influential in other cases across the country addressing this definitional issue. In *Staub v. Harris*, the Third Circuit adopted a definition of "taxes" as "public burdens imposed generally upon the inhabitants of the whole state, or upon some civil division thereof, for governmental purposes, without reference to peculiar benefits to particular individuals or property." *Staub v. Harris*, 626 F.2d 275, 278 (3d. Cir. 1980). Based on this definition, a per capita tax

imposed to fund matters of general public good was held excluded from the FDCPA's definition of "debt." *Staub* at 279. When the Third Circuit revisited this issue again twenty years later, it applied *Staub* to also exclude property taxes from the FDCPA definition of "debt," *Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 401 (3d Cir. 2000). This was true even though these taxes were tied to a specific transaction, as they did not arise from the transaction itself but rather due to the fact of ownership. *Id*. But the same court also held that public utility charges *were* a "debt" under the FDCPA, as they were consensual transactions for water and sewer service. *Id*. at 400–401.

Appointed counsel fee recoupment is not a "tax" under the reasoning of *Staub* and its progeny because the counsel fee reimbursement was imposed not to pay for indigent defense generally, or because of some taxable event like ownership of property, but rather to compensate for the Plaintiffs' indigent defense specifically—*i.e.*, providing "peculiar benefits to particular individuals[.]" *Staub* at 278. In this way, it is more like a fee for utility services, which would be a debt under the FDCPA if incurred for personal, family, or household purposes.

3. Collection fees attributable to appointed counsel fees are also "debt" for FDCPA purposes.

Although not directly discussed in Linebarger's response, Brooke and Marico would point out that collection fees that derive from obligations which are "debts" under the FDCPA are also themselves "debts." *Volden v. Innovative Financial Systems*, 440 F.3d 947, 951 (8th Cir. 2006). To the extent that the 25% collection fees charged by Linebarger "arise from" appointed counsel fees, those fees too would be considered "debt" for FDCPA purposes.

B. Treating appointed counsel fees more harshly under the FDCPA than private market attorney fees would violate the Equal Protection Clause.

In addition to statutory construction and common sense, there are constitutional concerns raised by Linebarger's reading of the FDCPA regarding appointed counsel fees. To the extent the FDCPA's protections would apply to attorney fees accrued for personal services on the private

market, but not to someone who owed those fees to the state instead simply by virtue of their indigence, such a reading would violate equal protection.

In the 1972 case of *James v. Strange*, the United States Supreme Court held that someone who owes attorney fees to the state rather than a private party due to their indigence cannot be treated more harshly than an ordinary civil judgment debtor in the course of collecting that debt. *James v. Strange*, 407 U.S. 128, 138 (1972). Specifically, the *Strange* Court struck down a Kansas statute that imposed the costs of indigent defense as a civil judgment but denied the protection of state debtor's exemptions that would otherwise protect assets and income from involuntary collection of civil judgments. *Id*.

Like debtor's exemptions in *Strange*, the FDCPA is one of the most important defensive tools protecting vulnerable consumers from unduly harsh collection tactics. To deny the protections of the FDCPA solely to those who owe the State for legal services, while extending it to those who owe private-market attorneys for the same services, would deprive Brooke and Marico of the constitutional guarantee of equal protection laid out in *Strange* by "impos[ing] unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor." *Id*.

C. Appointed counsel fees also meet the IDCPA definition of "debt."

Linebarger spends very little time addressing the substantially different framework for determining whether an obligation is a "debt" under the Iowa Debt Collection Practices Act (IDCPA), a state analog to the FDCPA. While the definitions of "debt" under the FDCPA and IDCPA are different, the assertion by Linebarger that the underlying obligation is not "transactional" is incorrect for the same reasons laid out above.

Linebarger cites *Midwest Recovery Services v. Wolfe*, 463 N.W.2d 73 (Iowa 1990), a case where the Iowa Supreme Court found that there was insufficient evidence in the appellate record to find that check cashing was a "service" that would trigger the IDCPA. To find this case controlling, this Court would have to accept the premise that the work performed on a case by a defense attorney also does not constitute a service. This would be an absurd result, not to mention more than a touch ironic in the context of a contested fee petition such as this one.

D. Certiorari was not an available alternative to Section 1983

Linebarger argues that any issues raised by Brooke under Section 1983 were waived because, according to Linebarger, she should have sought review under certiorari instead, citing a North Dakota case about a fraudulent transfer in estate proceedings. Opp. at 6, (citing *Farstveet v. Rudolph,* 630 N.W.2d 24 (N.D. 2000) [sic]). It is not immediately clear what case Linebarger meant to cite. Regardless, their argument is off the mark.

LGBS appears to misunderstand the function and procedural limitations of certiorari. In the Iowa state court system, certiorari is a remedy that allows for review of judicial or quasi-judicial decisions. Certiorari may be sought in two contexts, neither of which applies here. The first context is in Iowa's appellate courts, as "[a]ny party claiming a district court judge, an associate district court judge, an associate juvenile judge, or an associate probate judge exceeded the judge's jurisdiction or otherwise acted illegally may commence an original certiorari action in the supreme court[.]" Iowa R. App. P. 6.107(1). In the appellate context, certiorari is essentially a discretionary form of review from a final decision of a district court from which there is no direct appeal of right, such as a review of contempt of court or denial of an expungement. *See, e.g., Ary v. Iowa Dist. Ct. for Benton County,* 735 N.W.2d 621 (Iowa 2007) (contempt); *Doe v. State,* 942 N.W.2d 605 (Iowa 2020) (denial of criminal records expungement).

Certiorari may also be used to seek review by a district court when "inferior tribunal, board, or officer, exercising judicial functions, or a judicial magistrate exceeded proper jurisdiction or otherwise acted illegally." Iowa R. Civ. P. 1.1401. In practice, certiorari is often used to challenge decisions of nonjudicial actors like boards or municipalities where there is no other right of judicial review. Certiorari can only be invoked, however, where there was a judicial or quasi-judicial function." *Wallace v. Des Moines Independent Community School Dist. Bd. of Directors*, 754 N.W.2d 854, 858 (Iowa 2008) (internal citations and quotations omitted). "[W]hen an activity appears to be judicial in nature, but in reality is not, it is termed quasi-judicial… [but] the mere exercise of judgment or discretion is not alone sufficient to characterize an act as quasi-judicial." *Id*. "[I]t is the nature of an act, not identity of the board or tribunal charged with its performance, which determines whether or not a function is judicial or quasi-judicial." *Buechele v. Ray*, 219 N.W.2d 679, 681 (Iowa 1974). Some functions may not be judicial or quasi-judicial because they are instead executive or legislative. *Id*. at 682 (a discretionary executive decision is neither judicial nor quasi-judicial, and so is not subject to certiorari review).

Certiorari was not available to Brooke because a key element, an underlying adjudication to review, was absent here. On the contrary, it was the *extrajudicial* imposition of this debt—a charge for transportation fees that no court ever ordered her to pay and that was added to her Linebarger-collected debt long after she had appeared in court (Complaint ¶¶ 70–71, 108–110)—that formed the crux of her Section 1983 claim. The sheriff was not exercising a judicial or quasi-judicial function in submitting the expense, nor was the clerk doing so in increasing Brooke's balance in Iowa Courts Online. There was no "proceeding" or "decision," nor was Brooke even given notice that the fee had been added to her account, let alone given opportunity to be heard to challenge the validity of the debt. Linebarger cannot point to a single case that even suggests that

Iowa courts have recognized the right to certiorari review of submission of a bill or clerical action, which seem best classified as lower level "executive functions." *Buechele* at 682. Certiorari is simply not available here.

More importantly, Brooke sought a remedy in Section 1983 for a distinct wrong: the *collection* of an invalid debt by a private actor that was not a party to any underlying judicial proceeding. Even if—*in arguendo*—the extrajudicial assessment of the debt was "quasi-judicial," Linebarger's collection of this debt was certainly not. Brooke does not and could not seek relief from Linebarger for the acts of sheriff and clerk of court. Rather, she seeks redress against Linebarger for what the law firm did: the collection of debt that, as a simple review of the file would have confirmed, was never rendered to judgment and therefore not validly collectible.

In addition, Linebarger seems to suggest without directly saying its merits arguments—that the appointed counsel fees it collected did not constitute a "debt" under the FDCPA and that Brooke's § 1983 claim fails—are wrong on the law. But because Linebarger elected to pursue a settlement rather than risk allowing this Court to decide the merits of Plaintiffs' claims, these questions are not properly before the Court. This is a dispute about Plaintiffs' entitlement to fees and costs. The inescapable conclusion here is that the claims alleged by these Plaintiffs were neither "well settled" nor "simple." Opp. 2, 5. Rather, they are precisely the kind of novel on complex claims that warrant compensation—particularly where, as here, Plaintiffs' counsel have already significantly cut both their hours and their hourly rates.

II. CONTRARY TO LINEBARGER'S BASELESS ACCUSATION OF "BUSINESS DEVELOPMENT," PLAINTIFFS' COUNSEL DEVELOPED THESE CLAIMS IN RESPONSE TO CONCERNS RAISED BY THESE TWO PLAINTIFFS AND MANY OTHERS IN 2018 & 2019.

Linebarger's assertion that Plaintiffs' attorneys are trying to create a claim to "drive business" is stated for dramatic effect in order to smear the motives of the counsel bring this case.

It has no foundation in fact. For example, Linebarger states in their response that "[t]his is not a case in which either of the Plaintiffs came to these lawyers with a problem to solve." Opp. 1. Linebarger further speculates that because the time records show work on this case began in November 2018 but the final representation agreement was not signed until June 2020, the claims were somehow crafted before contact was made with the Plaintiffs. These speculations are demonstrably inaccurate, as demonstrated by the supporting and supplemental declarations.

A. Plaintiffs Brooke Champagne and Marico Thomas came to Iowa Legal Aid for help with their Linebarger-collected court debt in 2018 and 2019—before Plaintiffs' counsel started developing the claims in this case.

Linebarger argues that Plaintiffs' counsel should not be allowed to recover fees for work they did prior to the execution of representation agreements with Brooke and Marico in June 2020 because, according to them, the work was done "before [Plaintiffs' counsel] ever knew of or represented either of the Plaintiffs" (Opp. 7) or even "knew the[ir] names" (*id.* at 9) and thus must have been for "business development and marketing" purposes (*id.* at 10). Contrary to Linebarger's specious accusations, both Brooke and Marico, like hundreds of others over the last few years, sought assistance from Iowa Legal Aid's Racial Equity Project with a host of issues related to civil collateral consequences of criminal justice involvement. Kornya Supp. Decl. ¶ 3-5.

Marico first contacted Iowa Legal Aid on February 1, 2018, and Brooke on May 2, 2019. *Id*. Both were represented by Iowa Legal Aid and received initial assistance at Expungement and Employment Barriers Clinics in Des Moines and Dubuque within a little over a month of making contact. *Id*. In the course of that work, Iowa Legal Aid identified the FDCPA and IDCPA issues facing each plaintiff, although of course there were hundreds of others who were similarly affected. *Id*. A significant period of time was needed to review thousands of records of low-income clients that Iowa Legal Aid already had formed a relationship with to identify those whose court debt had been referred to Linebarger for collections and who owed at least some of that debt for appointed

counsel fees, thus raising an FDCPA claim. *Id*. Unfortunately, many of the current and past Iowa Legal Aid clients identified through that process had legal constraints that complicated their ability to make claims in this case. *Id*. Others, despite having a good claim, lost access to phones and internet, or otherwise fell out of contact. *Id.* Such situations are not unfamiliar to attorneys who work to advance the rights of vulnerable populations.

Ultimately, the case proceeded with Brooke and Marico as the Plaintiffs. *Id*. In the meantime, the primary allegations and claims comprising the complaint were being drafted based on Linebarger's form letters—which, again, did not vary from debtor to debtor—and the thoroughly researched legal arguments and historical facts that constitute two thirds of the 63-page complaint. Plaintiffs' counsel's time records reflect this work, which is not at all unusual in a public interest case where an appeal is expected.

On another level, Linebarger's assertions are inaccurate in that this suit is a response to the frustrating and seemingly intractable situation that, over the years, had not been amenable to change through less onerous means. Kornya Supp. Decl. ¶ 3. Their refusal to acknowledge a duty under the FDCPA to employ basic controls over their communication and validation processes was a business decision that left people like the Plaintiffs with no other recourse to get relief.

Finally, Linebarger mystifyingly accuses Plaintiffs' counsel as bringing this case for a self-interested motive: to "drive business." Two of the three law firms bringing this case, Public Justice and Iowa Legal Aid, are nonprofit public interest legal advocacy organizations, and the other, Terrell Marshall, regularly partners with non-profit and legal aid groups to underwrite the prosecution of complex public interest cases where injustices might otherwise go unremedied. Iowa Legal Aid in particular has served between approximately 14,000 and 15,000 Iowans each year over the last five years, but has turned down approximately another 10,000 each year for lack

of resources. Kornya Supp. Decl. ¶ 2. The "business" of the organizations representing Plaintiffs is to achieve justice for vulnerable people, and unfortunately, there is more than enough "business" to go around. It is Linebarger's business model—not that of Plaintiffs' counsel—that created the necessity to develop and file this case.

B. Public interest litigation often requires substantial outlays of time and resources, and the time spent by plaintiffs' counsel was necessary to achieve justice in a complicated legal and factual situation created by Linebarger

Linebarger complains of duplicative and inefficient billing and demands a corresponding fee reduction. Their complaints completely overlook both the time-intensive nature of civil rights and public interest litigation, and neglect to discuss how their own actions precipitated the need to spend hours that could have otherwise been avoided.

To begin with, Linebarger criticizes the amount of time spent finalizing the settlement after the mediation conference. Plaintiffs agree that this is more time than should have been expended at this phase of the case, but unfortunately additional resources had to be wasted responding to Linebarger's own unreasonable post-settlement conduct. [redacted]

Plaintiffs' counsel also provided Linebarger with a detailed—though partially redacted—accounting of their time records on August 2, 2021, as part of the negotiation process. Kornya Supp. Decl. ¶ 6. Despite the generous amount of time Defendant and its counsel had to review these records, the first time they raised any of these objections was in response to the Plaintiffs' fee petition. Also, despite now claiming that the redactions obscure the purpose of certain time records related to research, no objection or request for clarification was ever made during the seven months that Linebarger had to review them. *Id*.

Redaction of time records to protect attorney-client privilege is commonplace and is not a basis for denying a petition for fees. *See, e.g., JP Morgan Chase Bank, N.A. v. Winget*, No. 08-13845, 2018 WL 339883, at *1, *4 (E.D. Mich. Jan. 9, 2018) (granting plaintiff's petition for over $2 million in attorney fees and noting that courts "often allow redaction of privileged material in fee petitions provided one is able assess the reasonableness of the requested fees" where the "redacted entries still provide a sufficient description of the tasks completed"). In addition, "[a] district court has the discretion to require in camera review of fee petitions . . . to protect and preserve the attorney-client privilege." *United States v. Petters*, No. CIV. 08-5348ADMJSM, 2009 WL 1922320, at *2 (D. Minn. June 30, 2009).

While the amount of damages awarded may be considered in an award of attorney fees, it is not required that fees be proportionate to damages awarded. *Riverside v. Rivera*, 477 U.S. 561 (1986). Nevertheless, Linebarger effectively proposes a proportionality analysis by saying that the "[t]his Court should be cognizant of the fact that the FDCPA and IDCPA identify statutory damages available for plaintiffs in the range of $1,000[,]" and in the next sentence states that the Plaintiffs' "damage claims are statutorily limited." Opp. 12. This is very misleading, because it incorrectly suggests that there is a $1,000 cap on *all* damages in an FDCPA or IDCPA case,

including actual damages. Only additional statutory damages are capped at $1,000 for both statutes; *actual* damages are not capped. 15 U.S.C. 1692k(a)(1); Iowa Code 537.5201(1)(a). Linebarger also ignores any damages that may have been awarded under 42 U.S.C. § 1988 for violations of § 1983, and then compounds this embarrassing legal error by using it as a basis to suggest improper motives for filing the case, stating: "it is fair for the Court to ponder whether this litigation was for the benefit of Ms. Champagne and Mr. Thomas or whether it was for the financial benefit of Plaintiffs' counsel[.]" Opp. 12. [redacted]

Linebarger also cites *Schultz v. Southwest Credit Systems*, No. 16-CV-2033-LRR, 2018 WL 9988204 (N.D. Iowa May 14, 2018), to bolster its apparent proportionality argument. [redacted] The task here was to investigate and pursue a well-founded case against an actor that has created an elaborate legal theory as to why it is entirely unaccountable under the FDCPA and thus did not need to even attempt compliance with the laws that constrain their peers like Southwest Credit Systems, the company from the *Schultz* case. In order to do this, it was essential to ensure that each Plaintiff had sufficient facts to prove the essential elements of the case and were otherwise ready for the rigors of litigation and to thoroughly research and explain how several complex areas of law fit together to form a viable theory of recovery. The Plaintiffs did so.

Linebarger also alleges that the Plaintiffs fees should be reduced because of duplication. "The use of more than one attorney in multiple party litigation has been recognized by courts, including our own, as both desirable and common." *A.J. by L.B. v. Kierst,* 56 F.3d 849 (8th Cir. 1995). Moreover, "[o]ne certainly expects some degree of duplication as an inherent part of the process… [t]here is no reason why the lawyer should perform this necessary work for free." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Plaintiffs' counsel took care to best utilize the various talents of the lawyers and staff involved to efficiently manage and prosecute this case. Nevertheless, in computing their lodestar amount, counsel carefully exercised billing judgment and made reductions where time arguably could have been more efficiently spent. *See* Marshall Decl. ¶ 26.

Linebarger's general allegations about overstaffing fail to withstand scrutiny. The primary focus of the allegations of duplicative effort seem to focus on three attorneys attending the mediation conference, and several weekly team calls ranging between 24 and 66 minutes. As an initial note, Linebarger also had three attorneys in attendance at the mediation conference, and so the Plaintiffs should not be penalized for being evenly matched – especially when their hourly rates are likely much lower. As for weekly team calls, it is to be expected that co-counsel working in several states will need to expend a reasonable amount of time to discuss, plan, and coordinate their work. The time claimed for this necessary coordination was reasonable.

CONCLUSION

"The amount of time expended by plaintiffs' counsel in conducting this litigation was clearly reasonable and necessary to serve the public interest as well as the interests of plaintiffs in the vindication of their constitutional [and consumer] rights," particularly in light of "the overall relief obtained" and the "level of success" achieved. *City of Riverside v. Rivera*, 477 U.S. 561, 572

(1986). Accordingly, counsel for the Plaintiffs are entitled to a "fully compensatory fee" in the amount of $232,112.45 in attorneys' fees and $1,978.42 in costs. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). The Court should grant Plaintiffs' fee petition.

Respectfully submitted,

BROOKE CHAMPAGNE & MARICO THOMAS, Plaintiffs

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