

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

DIANA MEY,

Plaintiff,

v.

CIVIL ACTION NO. 5:19-CV-185
Judge Bailey

CASTLE LAW GROUP, PC, a Tennessee Corporation, **JUDSON PHILLIPS**, Esq., an individual, **CASTLE VENTURE GROUP, LLC**, a Tennessee limited liability company, **CASTLE EQUITY GROUP, INC.**, a Tennessee Corporation, **CASTLE PARTNERS INC.**, a Tennessee Corporation, **TRISTAR CONSUMER GROUP**, a Tennessee Corporation, **MUSIC CITY VENTURES, INC.**, a Tennessee Corporation, **CAPITAL COMPLIANCE GROUP, CO.**, a Tennessee Corporation, **ADVOCUS LEGAL ORGANIZATION**, a Tennessee Corporation, **US CONSUMER ADVOCATES**, a Tennessee Corporation, **THACKER AND ASSOCIATES INTERNATIONAL, LLC**, a foreign limited liability company, **BRUYETTE AND ASSOCIATES, LLC**, a Florida Corporation, **WILLIAM MICHAEL KEEVER**, an individual, **ASHLEY R. KEEVER**, an individual, **STEVE HUFFMAN**, an individual, **JOHN PRESTON THOMPSON**, an individual, and **JOHN DOES 1-10**, corporate entities and individuals presently unknown,

Defendants.

ORDER AWARDING ATTORNEY FEES

Pending before this Court is plaintiff's Petition for Attorney's Fees and Costs and Incorporated Memorandum of Law [Doc. 274], filed on July 26, 2022. Defendants Judson Phillips and Capital Compliance Group, CO and Defendants Huffman, Thompson, and Music City Ventures filed separate yet identical objections to the Petition on August 1, 2022. See [Doc. 275 & 276]. Plaintiff filed an Omnibus Reply to Defendants' Objections to Plaintiff's Petition for Attorney Fees and Costs [Doc. 283] on August 8, 2022. Accordingly, this matter is ripe for adjudication. For the reasons contained herein, the Petition will be granted.

BACKGROUND

Following a flood of telemarketing phone calls concerning debt relief through lower interest rates on credit cards, plaintiff brought suit pursuant to the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, and the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W.Va. Code § 46A-6F-101 *et seq.*, against numerous defendants. [Doc. 1-1]. Over the course of the litigation, defendants failed, time and again, to respond fulsomely and accurately to discovery requests and to comply with the Orders of this Court pertaining to those requests. As a sanction for their repeated discovery violations, this Court entered default judgment against defendants. The decision to do so was not taken lightly, and it was ultimately affirmed by the United States Court of Appeals for the Fourth Circuit on June 23, 2023. [Doc. 291 & 292]. Currently, the only issue remaining before this Court is plaintiff's request for attorney's fees.

LEGAL STANDARD

Fee-shifting statutes such as the WVCCPA are designed to encourage private litigation of important rights without burdening either taxpayers or individuals whom the legislature intended to protect. **Bond v. Blum**, 317 F.3d 385, 399 (4th Cir. 2003) (purpose of fee-shifting statutes is “to enable potential plaintiffs to obtain the assistance of competent counsel in vindicating their rights”) (quoting **Kay v. Ehrler**, 499 U.S. 432, 437 (1991)); see also **Newman v. Piggie Park Enters., Inc.**, 390 U.S. 400, 402 (1968) (if “plaintiffs were routinely forced to bear their own attorney’s fees, few aggrieved parties would be in a position to advance the public interest.”). The Supreme Court of Appeals of West Virginia has similarly emphasized that statutory authorization for attorney’s fees represents a “recognition that, as a practical matter, ‘in many situations, the amount of damages under the [statute] will be so small that few attorneys will pursue his [or her] client’s case with diligence unless the amount of the fee be proportionate to the actual work required, rather than the amount involved.’” **Rice v. Mike Ferrell Ford, Inc.**, 187 W.Va. 757, 403 S.E.2d 774, n.7 (1991) (citation omitted), *superceded on other grounds*, **Hawkins v. Ford Motor Co.**, 211 W.Va. 487, 566 S.E.2d 624 (2002).

The WVCCPA specifically entitles prevailing plaintiffs to seek attorney fees and costs from violators: “In any claim brought under this chapter applying to illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, the court may award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the consumer.” W.Va. Code § 46A-5-104; see also **Quicken Loans, Inc. v. Brown**, 236 W.Va. 12, 29, 777 S.E.2d 581, 598 (2014) (“W.Va. Code § 46A-5-104 allows

a consumer to recover attorney fees in any action brought for illegal, fraudulent, or unconscionable conduct or any prohibited debt collection practice.”).

Courts routinely exercise discretion under this statute to award fees to consumers who prevail in WVCCPA cases. **Stottlemire v. Caliber Home Loans, Inc.**, 2017 WL 282419 (N.D. W.Va. Jan. 20, 2017) (Groh, C.J.); **Kelley v. Sallie Mae, Inc.**, 2015 WL 1650080, at *9 (N.D. W.Va. Apr. 14, 2015) (Stamp, J.) (“Under the WVCCPA, the award of fees is discretionary, and is not mandatory”); **Vanderbilt Mortg. & Fin., Inc. v. Cole**, 230 W.Va. 505, 516, 740 S.E.2d 562, 573 (2013) (finding no abuse of discretion when circuit awarded attorney fees despite victory on less than half of plaintiff’s claims, when plaintiff “prevailed, in part, on all four sections of the WVCCPA that she claimed Vanderbilt violated”); **Bostic v. American Gen. Finance, Inc.**, 87 F.Supp.2d 611 (S.D. W.Va. 2000) (Haden, C.J.). Fees and costs may also be separately available under the WVCCAA’s general relief clause. See W.Va. Code § 61-3C-16 (allowing compensatory and punitive damages and “such other relief . . . as the court may deem appropriate”).

Both federal and state law governing the determination of reasonable attorney fees is well-settled.¹ “In fashioning a reasonable award, the court begins by multiplying a reasonable number of hours by a reasonable hourly fee to arrive at the lodestar figure.” **West Virginias for Life, Inc. v. Smith**, 952 F.Supp. 342, 345 (S.D. W.Va. 1996) (Faber, J.). A “strong presumption arises that the lodestar represents a reasonable fee.” *Id.*

¹In WVCCPA cases where a federal court is sitting in diversity, “West Virginia law governs the question of whether attorney fees should be awarded and, if so, what a reasonable fee is,” though federal law should be “consulted to the extent it does not conflict with West Virginia’s jurisprudence interpreting reasonableness of attorney fees.” **Koontz v. Wells Fargo**, 2013 WL 1337260, at *2–3 (S.D. W.Va. Mar. 29, 2013) (Johnston, J.).

Similarly, the Supreme Court of Appeals of West Virginia has held that “[r]easonable attorneys’ fees’ should be determined by (1) multiplying the number of the hours reasonably expended on the litigation times a reasonable hourly rate—the lodestar calculation—and (2) allowing, if appropriate, a contingency enhancement.” **Shafer v. King’s Tire Service, Inc.**, 215 W.Va. 169, 177, 597 S.E.2d 302, 310 (2004) (quoting Syl. Pt. 3, **Bishop Coal Co. v. Salyers**, 181 W.Va. 71, 380 S.E.2d 238 (1989)). “The great weight of authority is that the lodestar calculation is the general rule in awarding attorney fees with occasional contingency enhancement.” **Bishop**, 181 W.Va. at 82, 380 S.E.2d at 249, n.10.

To determine whether plaintiff’s request for attorney’s fees is reasonable, this Court must apply the twelve-factor analysis provided by the United States Court of Appeals for the Fourth Circuit in **Robinson v. Equifax Information Services, LLC**, 560 F.3d 235 (4th Cir. 2009), patterned after the United States Court of Appeals for the Fifth Circuit’s decision in **Johnson v. Georgia Highway Express**, 488 F.2d 714 (5th Cir. 1974). These twelve factors are: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney’s opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney’s expectations at the outset of the litigation; (7) the time limitations imposed by the client or the circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys’

fees awards in similar cases. *Robinson*, 560 F.3d at 243–44. These factors need not be strictly applied in every case. *EEOC v. Serv. News Co.*, 898 F.2d 958, 965 (4th Cir. 1990).

DISCUSSION

Having reviewed the entirety of plaintiff’s Petition, defendants’ objections, and all applicable law, this Court finds plaintiff’s request for attorney’s fees to be entirely warranted in this case.

I. Plaintiff’s Lodestar Award Request

Plaintiff’s requested lodestar award stands as follows:

Timekeeper	Hours	Rate⁴	Total Fees
Sharon F. Iskra, attorney	796.00	\$450	\$358,200.00
Jonathan R. Marshall, attorney	17.4	\$450	\$7,830.00
Isabella Anderson, attorney	95.00	\$275	\$26,125.00
Christy Robinson, paralegal	282.2	\$200	\$56,440.00
Total	1190.6		\$448,595.00

See [Doc. 274 at 14].

II. Defendants’ Objections to the Lodestar Award Request

As an initial analytical matter, this Court will address defendants’ objections to plaintiff’s attorney’s fees request. None of the objections are well-taken.

A. Historical Billing Rates

First, to the extent defendants seek this Court to conduct a historical analysis of appropriate billing rates to address the fact that the work in this litigation began several years ago, this Court declines to conduct such an unnecessary undertaking. Instead, this approach would be misguided in light of the significant delay plaintiff's counsel has faced for receipt of these fees, because "an award based upon historic rates which does not take delayed payment into account will not be a fully compensatory fee." *Daly v. Hill*, 790 F.2d 1071, 1081 (4th Cir. 1986) (remanding for reconsideration or reasonableness of rates upon holding that district court erred in adopting historic rates without considering the effect of delay in payment on the value of the fee); *Reaching Hearts Int'l, Inc. v. Prince George's Cty.*, 478 F.App'x 54 (4th Cir. 2012) (affirming award of current rates rather than historical rates). Rather, "in order to provide adequate compensation where the services were performed many years before the award is made, the rates used by the court . . . should be 'current rather than historic hourly rates.'" *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (quoting *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989)). Accordingly, this Court will apply plaintiff's counsel's current rate as contained in the Petition in calculating the appropriate fee award.

B. Petition Untimeliness

Next, defendants argue that plaintiff's fee requests should be denied based on untimeliness. This is a pedantic contention unmoored to the Federal Rules of Civil Procedure. More specifically, this Court's Order directing that attorney's fees petitions must be submitted within twenty-one (21) days was dated July 5, 2022. See [Doc. 272].

Fed. R. Civ. P. 6 provides that in computing time, “When the period is stated in days . . . (A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period . . .”. *Id.* at 6(a)(1). Accordingly, plaintiff’s Petition, which was submitted on July 26, 2022, was timely filed.

C. Attorney’s Fee Basis

Defendants then contend that plaintiff is not entitled to any attorney’s fees because while she obtained penalties under both the WVCCPA and TCPA, the latter statute does not provide an independent basis for fees. Defendants then argue that fees should be parsed out for each theory of relief, awarded pro rate per defendant, or reduced by percentages. Like many of defendants’ dilatory and legally unsupported contentions throughout this litigation, defendants’s requests in this regard contain no precedent in support. As recognized by the Supreme Court of the United States, “the most critical factor” in calculating a reasonable fee award is the degree of success obtained. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Here, plaintiff prevailed on all her claims and secured a judgment exceeding \$800,000.00. And this Court agrees with plaintiff in that the facts giving rise to the WVCCPA and TCPA violations are the same to such an extent that it would not be feasible to separate and parse them. As indicated by the Fourth Circuit, when, as here, “all claims ‘involve a common core of facts . . . [m]uch of counsel’s time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis.” *Broziak v. Runyon*, 145 F.3d 194, 197 (4th Cir. 1998) (internal citation omitted); *see also Plyler v. Evatt*, 902 F.2d 273, 280 (4th

Cir. 1990) (“Certainly, where the issues presented . . . in separate claims involve the same common core of facts or related legal theories, the case ‘cannot be viewed as a series of discrete claims. Instead, the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.’ Ultimately, determinations of relatedness of claims and the quality of overall results are not reached through application of any precise rules or formulae, but rather through an equitable judgment of the district court . . .”). Based on this instruction, this Court finds it would likely be entirely appropriate to award plaintiff her attorney fees even if she had not prevailed on all her WVCCPA claims. See *Vanderbilt Mortg. and Finance, Inc. v. Cole*, 230 W.Va. 505, 516, 740 S.E.2d 562, 573 (2013) (“Ms. Cole prevailed on only thirteen of her fifty-seven claims; however, she prevailed, in part, on all four sections of the WVCCPA that she claimed Vanderbilt violated. Neither the WVCCPA nor our case law requires that Ms. Cole prevail on the majority of her claims in order to receive attorney fees Therefore, we find that the circuit court did not abuse its discretion by awarding attorney fees despite victory on less than half of Ms. Cole’s claims.”). Accordingly, the fact that the TCPA does not independently provide for fees is of no moment.

D. Pro Rata/Percentage Allocation

According to defendants, any award of attorney’s fees must be allocated pro rata or by percentage among joint enterprises and/or alter egos. This argument is unavailing. As noted by plaintiff, defendants’ conduct throughout this litigation predicated both the sanctions and default judgment. This Court specifically noted that defendants acted in bad faith and that their discovery abuse prejudiced plaintiff. [Doc. 251 at 5]. As a result, this

Court struck defendants' pleadings and defenses such that they were deemed joint enterprises and alter egos of one another as pled in plaintiff's operative complaint. Having been characterized as such, there is no reason to allocate pro rata shares or percentages across entities who are treated singularly as far as the law, and this Court, are concerned.

E. Fee Increases and Billing Practices

Defendants' arguments that plaintiff improperly enhanced fees and rates of billing are disingenuous and ironic considering substantial portions of plaintiff's billing reflects legal work prompted by defendants' blatant disregard for discovery in this matter. If defendants had answered discovery forthrightly, multiple motions to compel, amendments to pleadings, and sanctions-related motions would never had been necessary. Moreover, the fact that plaintiff prevailed on these motions further confirms that her positions were correct. The objection that plaintiff somehow "padded" billing in this litigation through meaningless filings is patently absurd.

Defendants' quibble with plaintiff's counsel's billing rates are similarly unpersuasive and disingenuous. More specifically, this Court finds no issue with a \$450.00 per hour billable rate for litigating this type of case from start to finish, especially considering the inter-corporate quagmire plaintiff's counsel had to wade through—a journey initiated and then stalled by the actions of non-compliant defendants who time and again shirked meaningful discovery. Upon review from this Court, plaintiff's billing entries appear entirely proper.

III. The Applicable Factors Necessitate an Award of Attorney's Fees

Having dispelled defendants' objections, this Court now turns to a specific examination of each of the twelve factors discussed in *Robinson v. Equifax Information Services, LLC*, 560 F.3d 235 (4th Cir. 2009). Consideration of the same leads this Court to conclude that each of the twelve factors supports an award of attorney's fees.

A. Time and Labor Expended

"The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The time records should state the date work was performed; a reasonable, specific description of work performed; and the time spent performing that work. *Bostic*, 87 F.Supp. 2d at 615. "[M]inutely detailed [time] records are not necessary." *Id.* A review of plaintiff's attached time records indicate to this Court that the bills generated in pursuit of this litigation were entirely reasonable and feasible.²

B. Novelty and Difficulty of Questions Presented

This litigation presented several instances of fact and labor intensive inquiries into not only the TCPA and WVCCPA, but also the issues presented by defendants' evasion of service, revolving and dissolving corporations, joint enterprise and alter ego liabilities, and default judgment as a discovery sanction under Fed. R. Civ. P. 37. These issues were complex and required extensive research and briefing, thereby warranting attorney's fees.

²In fact, a review of the exhibits provided by plaintiff in support of her Petition indicate that hours from four lesser contributing attorneys and staff members were cut by lead counsel in an effort to maintain a reasonable fee, and that paralegals were used at lower hourly rates. See [Doc. 274-3].

C. Skill Required to Perform Legal Services Rendered

This case was not easy, as is clearly indicated by even a cursory review of the pleadings filed throughout the course of litigation. The overall management of the litigation, which included strategic pleading, investigation of corporate forums and theories of liability, and all accompanying motion practice, demanded a relentless pursuit of discovery. This was no small task, even for a firm that routinely handles matters of the same case type.

D. Attorneys' Opportunity Costs

As with any contingency fee case this size, the costs of pursuing this litigation are self-evident. Plaintiff's counsel clearly took a gamble in litigating this case from start to finish, as every hour spent on this years-long case was an hour not spent on other litigation, including cases wherein plaintiff's counsel could have been being paid on an hourly basis rather than a contingency fee.

E. The Customary Fee for Like Work

The "customary" fee is simply the fee the lawyer in question, or a lawyer similarly situated, would ordinarily receive from a paying client. "In addition to the attorney's own affidavits, the fee applicant must produce satisfactory specific evidence of the prevailing market rates in the relevant community for the type of work for which he seeks an award." *Plyler*, 902 F.2d at 277 (internal quotation marks omitted). Thus, "[t]he market rate should be determined by evidence of what attorneys earn from paying clients for similar services in similar circumstances, which, of course, may include evidence what the plaintiff's attorney actually charged his client." *Depaoli v. Vacation Sales Assocs., L.L.C.*, 489

F.3d 615, 622 (4th Cir. 2007) (internal quotations and citations omitted). Examples of the type of specific evidence that have been held sufficient to verify prevailing market rates include affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community. *Plyler*, 902 F.2d at 278 (“[A]ffidavits testifying to [the fee applicants’] own rates, experience, and skills as well as affidavits of South Carolina lawyers who were familiar both with the skills of some of the applicants and more generally with civil rights litigation in South Carolina . . . was sufficient evidence of the prevailing market rates to support the hourly rates fixed by the district court . . .”). Plaintiff’s exhibits entirely support the reasonableness of plaintiff’s request for \$450 per hour for Ms. Iskra, \$450 per hour for Mr. Marshall, \$275 per hour for Ms. Anderson, and \$200 per hour for paralegal Christy Robinson, as these rates all lie within the range of prevailing market rates for substantially similar litigation in West Virginia. See [Docs. 274-1 through 274-10].

F. Attorneys’ Expectations at the Outset of Litigation

This factor generally refers to the attorneys’ “fee expectations” at the time of acceptance of the case. *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 718 (th Cir. 1974) (considering “[w]hether the fee is fixed or contingent” in determining this factor). Here, plaintiff’s counsel undertook representation on a contingent-fee basis, with a fair risk of non-payment in the event of a loss. And even after prevailing on the merits of the litigation, there is still a substantial risk (based on defendants’ behavior to this point) that defendants may attempt to squander or surreptitiously transfer assets to avoid payment of judgment. These considerations lean in favor of a fee award.

G. Time Limitations Imposed

While not particularly relevant as a factor here, this Court does consider the fact that time limitations were imposed, in essence, by defendants' dilatory discovery evasion, which pushed back an award of attorney's fees substantially.

H. The Amount in Controversy and the Results Obtained

This factor is "entitled to significant weight." *Bostic*, 87 F.Supp.2d at 616 (awarding attorney fees for successful WVCCPA claims, amongst other things). This litigation represents a major victory for plaintiff's counsel as throughout its course, plaintiff's counsel achieved win after win. This pattern of successes culminated in this Court's award of \$828,801.36 (exclusive of post-judgment interest and any fee award).

I. The Experience, Reputation, and Ability of the Prevailing Attorneys

This Court has already spoken to each of these considerations. This factor strongly supports a full, compensatory award.

J. The Undesirability of the Case within the Legal Community in which the Suit Arose

While perhaps not initially any more undesirable than any other case involving substantially similar legal issues, this case, very quickly, morphed into an undesirable litigation based almost entirely on the actions of defendants following initiation of suit. Plaintiff's counsel warded off baseless Rule 11 threats, and navigated through defendants' discovery deceptions and corporate shell games ultimately obtaining the aforementioned judgment on plaintiff's behalf. Based on defendants' actions up to this point, this Court believes this factor strongly supports a fee award.

K. The Nature and Length of the Professional Relationship between Attorneys and Client

Plaintiff's counsel routinely represents her in similar matters. However, each instance of representation is undertaken pursuant to separate contingent fee agreements for each action, such that fees are individualized to each matter. This supports a fee award.

L. Attorney's Fee Awards in Similar Cases

The rates requested by plaintiff's counsel are consistent with rates awarded by this very Court in similar cases brought on a contingent-fee basis under a fee-shifting statute. In addition to fees for the substance of the litigation, West Virginia law permits an attorney to recoup fees for time expended proving the reasonableness of his or her fee. *Hollen v. Hathaway Elec., Inc.*, 213 W.Va. 667, 584 S.E.2d 523 (2003).

CONCLUSION

For the reasons contained herein, plaintiff's Petition for Attorney's Fees and Costs and Incorporated Memorandum of Law [Doc. 274] is **GRANTED** in its entirety. Accordingly, plaintiff's counsel are hereby awarded **\$448,595.00** in attorney's fees and costs associated with this matter. Furthermore, plaintiff's counsel is hereby **INSTRUCTED** to file a supplemental statement of the fees and costs associated with bringing this Petition **within fourteen (14) days** of the entry of this Order. Defendants may file any objections to the supplemental statement **within seven (7) days** following receipt of the same.

It is so **ORDERED**.

The Clerk shall transmit copies of this Order to all counsel on record.

DATED: June 29, 2023.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE