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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**ROBERT D. BYRNE**, *et al.*,

Plaintiff,

VS.

**OREGON ONE, INC.**,

Defendant.

Case No.: 3:16-cv-01910-SB

**CLASS COUNSEL'S MOTION FOR AN  
AWARD OF ATTORNEY FEES,  
EXPENSES, AND CLASS  
REPRESENTATIVE SERVICE  
AWARD AND MEMORANDUM IN  
SUPPORT OF MOTION**

**Hearing Date:** December 10, 2018

**Time:** 10:00 a.m.

**Judge:** Honorable Magistrate Judge  
Stacie F. Beckerman

**MOTION FOR FEES, EXPENSES, AND SERVICE AWARD**

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### **LOCAL RULE 7-1(a) CERTIFICATION**

Class Counsel have conferred with counsel for defendant by phone and email regarding the matters raised in this Motion, and this Motion is required to be filed pursuant to the parties' agreement and by order of the Court. Defendant does oppose the filing of this Motion, but plaintiff understands that defendant may oppose the amount of fees and costs requested by Class Counsel in this Motion, because there is no agreement between the parties as to the amount of fees and costs requested in this Motion. Defendant does not oppose the request for an award of a service fee to the named plaintiff and class representative Robert D. Byrne ("Plaintiff" or "Class Representative").

### **MOTION**

Plaintiff and Class Counsel move this Court to award Class Counsel \$108,059.00 for their lodestar attorney fees and \$4,703.17 for expenses in this action and to approve a service award of \$3,500. In support of this Motion, Class Counsel submit the following memorandum along with the Declaration of Kelly D. Jones ("Jones Decl."), the Declaration of Bret A. Knewtson ("Knewtson Decl."), the Declaration of Michael Fuller ("Fuller Decl."), and the Declaration of Justin M. Baxter ("Baxter Decl.>").

### **MEMORANDUM IN SUPPORT OF MOTION**

#### **1. Preliminary Statement**

On September 29, 2016, Plaintiff filed his complaint alleging statutory damages only, under the Fair Debt Collection Practices Act ("FDCPA"); 15 U.S.C. § 1692, *et seq.*, on behalf and similarly situated Oregon consumers. Doc. #1. The complaint alleged that defendant, a debt collector under the FDCPA, attempted to collect consumer debts from Plaintiff and the Class Members by sending an initial collection letter, based on a common template, that omitted and

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overshadowed important rights and utterly failed to provide required information about the debts mandated by the FDCPA. *Id.* Moreover, defendant sent subsequent collection letters to Plaintiff and the Class Members that stated that interest was accruing, but did not state the amount or rate of the interest. *Id.* Defendant's violations of the FDCPA, as clearly alleged in the complaint, were numerous and readily ascertainable from the face of the collection letters and the applicable case law. *Id.* Despite these clear-cut facts, rather than conceding liability and attempting to work out a settlement to provide fair compensation for the harm that it caused, defendant adopted a scorched-earth litigation strategy for most of the last two years.

Defendant's first attempt to avoid compensating Plaintiff and the Class Members was to file a Federal Rule of Civil Procedure ("FRCP") 12(b)(1) Motion, arguing that Plaintiff did not have standing to bring his claim because the Supreme Court's decision in *Spokeo v. Robins* meant the Court had no jurisdiction to adjudicate the case. *See* Doc. #8. This attempt to avoid liability failed, as this Court denied defendant's FRCP 12(b)(1) Motion. Doc. #22. Defendant then objected to this Court's Findings and Recommendations ("F&R") but the F&R was adopted in full by Judge Brown. Doc. #27.

Defendant's second attempt to avoid liability and fair compensation for Plaintiff and the Class Members was to file a motion to compel private arbitration of Plaintiff's claim. Defendant filed its Motion to Stay the Case Pending Arbitration ("Motion to Compel Arbitration") 1.5 years after this action was filed. *Id.* In an attempt to prove its theory that it could invoke private arbitration of Plaintiff's claim against it, defendant conducted numerous third-party depositions and filed declarations of numerous other third parties in support. *Id.* Plaintiff had to respond to the Motion to Compel Arbitration and participate in the third-party depositions and investigate the allegations and the voluminous documents contained in the third-party declarations.

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Of course, all of this was in addition to Plaintiff and Class Counsel having to work toward gathering evidence and ultimate proof of Plaintiff's claim and obtaining certification of the putative Class. Moreover, the FDCPA has a unique class statutory damages provision limiting class statutory damages to the lesser of 1% of the defendant's net worth or \$500,000. 15 U.S.C. § 1692k(a)(2)(B). Thus, in order to obtain any damages at all for the Class Members Class Counsel had to do rigorous discovery to ascertain and verify defendant's net worth. *See Tourgeman v. Nelson & Kennard*, No. 16-56190, 2018 U.S. App. LEXIS 23101, at \*1 (9th Cir. Aug. 20, 2018) (upholding district court's dismissal of FDCPA statutory-damages-only class action, although liability had been established as a matter of law, because plaintiff was unable to carry the burden at trial of producing evidence of a defendant's net worth). Nor could Class Counsel accomplish their due diligence in reaching any class settlement without ascertaining and verifying defendant's true net worth.

Eventually, after many months and many hours spent defeating defendant's FRCP 12(b)(1) motion through objections to this Court's F&R, researching for and briefing defendant's Motion to Compel Arbitration, participating in defendant's third-party discovery, conducting discovery to ascertain and verify defendant's true net worth and to aid in class certification, including a lengthy FRCP 30(b)(6) deposition, and participating in in-depth settlement negotiations, Class Counsel were able to finally able to negotiate a conditional class settlement ("Settlement") with defendant. *See* Doc. #74-1. Class Counsel drafted and submitted a lengthy Unopposed Motion For Order Preliminarily Approving Class Action Settlement, Conditionally Certifying Proposed Settlement Class, Directing Notice, and Setting Hearing on Final Approval of Settlement ("Motion for Preliminary Approval"). *Id.* The Motion for Preliminary Approval was granted by this Court, and an Order preliminarily approving class action settlement, conditionally certifying proposed

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settlement class, directing notice, and setting hearing on final approval of settlement for Monday, December 10, 2018, was entered on August 6, 2018. Doc. #79.

All of this work that Plaintiff and Class Counsel had to perform was done on a contingency basis, all the while advancing the costs and expenses, without any guarantee of any ultimate compensation. *See* Jones Decl. ¶ 1. In doing this work, Class Counsel, as they should, put the interests of the Class, and the goal of securing just compensation within the statutory limits, above their own interests, in seeking secured compensation for these many hours spent and costs incurred. This is evident in that Class Counsel not only negotiated and secured relief for the Class before negotiating any compensation for themselves, as they must, but Class Counsel never reached any agreement with the defendant to compensate Class Counsel from the common fund created by the Settlement. Nor has there been any agreement as to fees to date.

Thus Class Counsel respectfully request that this Court award their reasonable fees for time spent performing the many tasks stated above and for helping create a settlement common fund that will pay Class Members more than 88% beyond what they could have been awarded at trial for their statutory damages given the FD CPA's statutory cap on statutory damages available in a class action, and that will provide significant additional benefits in the form of satisfaction of existing judgments and the cessation of collection of any debts that defendant was collecting upon that were owed by the Class Members. Class Counsel request their fees be based on the lodestar—awarding Class Counsel fees calculated by multiplying the number of hours Class Counsel reasonably expended on this litigation by their reasonable hourly rates. Especially given the unique facts and circumstances of this case, the statute under which Plaintiff and the Class brought their claim, and that the Settlement does not include any agreement that Class Counsel's fees will be paid from the common fund, awarding fees based on percentage of the common fund would

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produce an unjust and unreasonable result. Class Counsel also request reimbursement of their costs and expenses incurred, and Plaintiff requests a modest class representative service award as agreed to by the parties in the Settlement.

## 2. Class Counsel are entitled to an award of reasonable attorney fees

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” FRCP 23(h). The right to attorney fees in a class action is based on, *inter alia*, (1) fee-shifting that is expressly authorized by the governing statute; (2) the creation of “a common fund<sup>[1]</sup> for recovery” or the extension “of a substantial benefit to a class”; or (3) sometimes both. *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 941 (9th Cir. 2011) (“*In re Bluetooth*”) (internal quotation marks omitted) (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc.*, 421 U.S. 240 (1975) (Brennan, J., dissenting)).

The FDCPA contains a fee-shifting prevailing party attorney fee provision providing that “any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of the costs of the action, together with reasonable attorney’s fee as determined by the court.” 15 U.S.C. § 1692k(a)(3). As a “private attorney general” fee-shifting statute this provision of the FDCPA is interpreted as allowing fees for a “prevailing plaintiff” and “makes an award of fees mandatory.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).

“[A] plaintiff ‘prevails’ when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s

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<sup>1</sup> The common-fund exception to the “American Rule” allowing a court to award attorney fees to class counsel is not derived, or dependent upon, the parties’ agreement that Class Counsel’s fees may be paid *from the common fund*, but rather from the concept that Class Counsel *helped to create the common fund* for the benefit of the Class; thus principles of common law and equity allow class counsel to be compensated from that fund.

behavior in a way that directly benefits the plaintiff.” The Court explained that “a material alteration of the legal relationship occurs [when] the plaintiff becomes entitled to enforce a judgment, consent decree, or settlement against the defendant.” In these situations, the legal relationship is altered because the plaintiff can force the defendant to do something he otherwise would not have to do.

*Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1118 (9th Cir. 2000) (quoting *Farrar v. Hobby*, 506 U.S. 103, 111-12, 113 (1992)). There can be no doubt that Plaintiff and the Class are the prevailing party here.

### **3. The “lodestar” method should be used to assess Class Counsel’s fees**

In common-fund cases, district courts can assess proposed fee awards under either the “lodestar” method or the “percentage of the fund” method. *See Fischel v. Equitable Life Assurance Soc’y of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *see also Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 739 (9th Cir. 2016) (“[T]he choice to apply the lodestar method, rather than the percentage-of-fund method, was well within the district court’s discretion.”). “[E]ither method may, depending upon the circumstances, have its place in determining what would be reasonable compensation for creating a common fund.” *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). However, “[r]easonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion.” *Fischel*, 307 F.3d at 1007 (internal quotation marks and citation omitted). The Sixth Circuit has also eloquently summarized the concepts behind these two methods of assessing fees in a class case, finding that

When awarding attorney’s fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved. These two measures of the fairness of an attorney’s award—work done and results achieved—can be in tension with each other. The lodestar method of calculating fees better accounts for the amount of work done, whereas the percentage of the fund method more accurately reflects the results achieved.

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As the two methods measure the fairness of the fee with respect to different desired outcomes, it is necessary that district courts be permitted to select the more appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them. District court decisions must include a clear statement of the reasoning used in adopting a particular methodology and the factors considered in arriving at the fee in order to allow effective appellate review for abuse of discretion. This court has noted that there are advantages and drawbacks to each method.

*Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016) (internal quotation marks and citations omitted).

Here the sole claim brought in this action, and supported by the facts, was for defendant's violations of the FDCPA. "[C]ongress chose a 'private attorney general' approach to assume enforcement of the FDCPA," and it is a consumer fee-shifting consumer protection statute. *Camacho*, 523 F.3d at 979 (quoting *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991)). The Ninth Circuit has held that the lodestar method is "appropriate in class actions brought under fee-shifting statutes...where the legislature has authorized the award of fees to ensure compensation for counsel undertaking socially beneficial litigation" and when the fees are not being paid from the common fund. *In re Bluetooth*, 654 F.3d at 941; *see also In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) ("Courts generally regard the lodestar method, which uses the number of hours reasonably expended as its starting point, as the appropriate method in statutory fee shifting cases. Because the lodestar award is de-coupled from the class recovery, the lodestar assures counsel undertaking socially beneficial litigation (as legislatively identified by the statutory fee shifting provision) an adequate fee irrespective of the monetary value of the final relief achieved for the class.").

In the case at hand, attorney fees will not be paid from the common fund; thus fees awarded to Class Counsel by the Court will not reduce or effect the amount that the Class Members receive.

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Nor have Class Counsel reached any agreement in the Settlement, or otherwise, with defendant regarding fees to be paid outside the common fund. Class Counsel have done what Class Counsel believe they should have done—secure as much compensation as they could based on the particular limitations of the claim and statute providing for the claim—and only then worry about their own interests in securing compensation for the work and expense that they invested to obtain the benefits for Plaintiff and the Class.<sup>2</sup>

The FDCPA is unique in that class members’ statutory damages are capped at 1% of a defendant’s net worth. *See* 15 U.S.C. § 1692k(a)(2)(B). As was set forth in the previous filings, and as verified through discovery and confirmed by defendant, defendant’s net worth was assessed at no more than \$350,000. 1% of \$350,000 is \$3,500. Class Counsel helped secure a \$13,000 common fund (with no portion of this common fund going to pay Class Counsel’s fees) to be paid to the Class Members, including Class Representative’s \$1,000 statutory damages payment<sup>3</sup> and proposed \$3,500 representative service award. *See* Doc. #74-1. Thus, even assuming that at the time of trial defendant’s net worth was \$350,000, the maximum that could be awarded to Plaintiff and the Class Members for the damages they are seeking in this case would be \$4,500: \$3,500 for class statutory damages and \$1,000 for Plaintiff’s statutory damages. \$8,500 of the common fund will be paid to the Class Members in the form of guaranteed payments. *See* Doc. #74-1.

In light of the class statutory damages cap, Class Counsel negotiated a class settlement that will provide not only the maximum amount of statutory damages that could have been recovered

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<sup>2</sup> FRCP 23(g)(4) states “Duty of Class Counsel. Class counsel must fairly and adequately represent the interests of the class.”

<sup>3</sup> As the named Plaintiff, Plaintiff would be able to, and through the Settlement will, recover \$1,000 for his statutory damages, independent of the class statutory damages cap. *See* 15 U.S.C. § 1692k(a)(2)(B)(i).

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for the Class Members based upon this statutory cap, but a recovery that equates to 1.8 x or 88 % more than what a jury could have awarded the Class Members at trial given this statutory cap.

Additionally, through the Settlement, Class Counsel secured more than just the \$10,500 in direct economic benefits in the form of statutory damage payments to the Class Members including the Representative Plaintiff (not including the representative service award). The Settlement also provides that the defendant will vacate any judgment that was obtained against any Class Member that has not already been fully satisfied. Even further, the Settlement also provides that defendant will cease in the further collection of any debts still allegedly owed by any Class Member, if the debts were not already reduced to judgment. Although Class Counsel are unable to calculate the exact additional monetary relief that these provisions will provide to the Class Members,<sup>4</sup> there can be no doubt that this is a significant added benefit that Plaintiff and Class Counsel helped secure, which would not be reflected in a percentage-based fee award.

Class Counsel should not be unfairly penalized because Congress decided to cap the class members' total statutory damages to the lesser of 1% of a defendant's net worth or \$500,000. Congress opted to cap class statutory damages, not attorney fees for obtaining those damages. And even having to work within these confines, Class Counsel were able to obtain relief equating to 88% more than the maximum of what the jury *could* have awarded through class settlement—without the risk and expense of trial. As the Ninth Circuit has held in the context of an FDCPA statutory damages claim and proportionality of the requested attorney fees:

Moreover, although Evon settled the case for a relatively small amount (\$1,010.99), she recovered the full amount of allowable statutory damages. This represents a complete recovery under the statutory scheme. In *Joe v. Payco-General Am. Credits*, No. 94-15338, 1994 U.S. App. LEXIS 23900, 1994 WL 465841, (9th

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<sup>4</sup> Apparently, defendant does not keep consistent or verifiable records of amounts paid on judgments and thus Class Counsel were unable to calculate the monetary benefits of these additional benefits to (some of) the Class Members.

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Cir. 1994), an unpublished disposition, Payco-General appealed the district court's award of reasonable attorney's fees and costs for an FDCPA violation. Payco-General argued that because Joe only won a nominal award (\$1,001), reasonable attorney's fees were not warranted. 1994 U.S. App. LEXIS 23900, [WL] at \*1. The court disagreed stating that Joe “was completely successful in this action to hold Payco-General responsible for its [statutory] violations” and was thus the “prevailing party” and entitled to reasonable attorney’s fees. *Id.* (emphasis added).

Furthermore, while the amount of damages recovered is relevant to the amount of attorney's fees awarded, it is only one of several factors that a court must consider in determining the fee award. *See City of Riverside v. Rivera*, 477 U.S. 561, 574, 106 S. Ct. 2686, 91 L. Ed. 2d 466 (1986). We have specifically instructed that “courts should not reduce lodestars based on relief obtained simply because the amount of damages recovered on a claim was less than the amount requested.” *Quesada v. Thomason*, 850 F.2d 537, 539 (9th Cir. 1988). Moreover, in *City of Riverside*, the Supreme Court, in the context of civil rights statutes, expressly rejected the proposition that fee awards must be in proportion to the amount of damages recovered. *See City of Riverside*, 477 U.S. at 574 (affirming fee award of \$245,456.25 when damages recovered were \$13,300). The same is true in consumer protection cases: where the monetary recovery is generally small, requiring direct proportionality for attorney’s fees would discourage vigorous enforcement of the consumer protection statutes.

Lastly, while the award here was small, that is not necessarily controlling because “an award of nominal damages can represent a victory in the sense of vindicating rights even though no actual damages are proved.” *Farrar v. Hobby*, 506 U.S. 103, 121, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992) (O’Connor, J., concurring). That the lawsuit spurred Mickell to cease unlawful conduct is an important consideration, *see id.*, that the district court failed to recognize.

*Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1033 (9th Cir. 2012).

The Sixth Circuit has also recently expounded on the importance of a district court awarding reasonable fees to class counsel in consumer protection cases, despite that the damages obtained for the class may be relatively small:

Consumer class actions, furthermore, have value to society more broadly, both as deterrents to unlawful behavior—particularly when the individual injuries are too small to justify the time and expense of litigation—and as private law enforcement regimes that free public sector resources. If we are to encourage these positive societal effects, class counsel must be adequately compensated—even when significant compensation to class members is out of reach (such as when contact information is unavailable, or when individual claims are very small).

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*Gascho*, 822 F.3d at 287.

The potential negative effect of damage to a fee proportionality-heavy assessment of attorney fees in a class action is even more harmful because in pursuing class relief, consumer attorneys, like Class Counsel have done here, take on even more financial risk and must devote significantly more time to the augmented complexities of class issues in anticipation of certification of the putative class—long before moving for certification. Moreover, long after a class is certified, through settlement or otherwise, Class Counsel will continue to work to answer questions from Class Members, to help in the administration of the certified class, and to continue to protect the interest of the Class Members.

The standard “benchmark” percentage of the common fund in the Ninth Circuit is 25%. *See Stanger*, 812 F.3d at 738. In this case 25% of the common fund (\$13,000) would equate to \$3,500 in attorney fees if a percentage-of-the-fund method was utilized. Even 30% of the common fund would only equate to \$3,900. Utilizing the percentage-of-the-fund method of approving class counsel fees in a FDCPA statutory-damages-only case, when the 1% of the defendant’s net worth of the defendant keeps the class damages low, akin to the facts of this case would certainly discourage vigorous enforcement of the FDCPA by disincentivizing consumer attorneys from taking on any FDCPA class action seeking statutory damages against all but the largest corporate debt collectors. The result would be that smaller and mid-size debt collectors, like defendant, would avoid having to provide relief to the vast majority of consumers they have harmed. Congress’s goal was “to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e). As a “broad remedial statute,” the FDCPA must be

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liberally construed in favor of the consumer in order to effectuate this goal of eliminating abuse. *Gonzales v. Arrow Financial Services, LLC*, 660 F.3d 1055, 1060 (9th Cir. 2011); *see also Clark v. Capital Credit & Collection Servs.*, 460 F.3d 1162, 1176 (9th Cir. 2006).

The facts of this case, and the particular statutory scheme at issue, are a perfect example of why the Ninth Circuit has continuously held that the court has discretion to award class counsel’s fees based the “lodestar” or percentage-of-the-common-fund method, depending on the unique facts of each case. Although percentage-of-the-common-fund method is currently the most common, and often most reasonable, method of determining class counsel’s fees, this is one of the more atypical cases where it is not reasonable. For these reasons, the Court should exercise its discretion in line within these principles and guideposts and assess attorney fees under the “lodestar” method, because, given the facts of this case, a “mechanical or formulaic application of [the percentage-of-the-common-fund] method” would surely yield an unreasonable and unjust result. *Fischel*, 307 F.3d at 1007 (internal quotation marks and citations omitted).

#### **4. Class Counsel’s requested “lodestar” fees are reasonable**

“Under the lodestar method, the Court multiplies a reasonable number of hours by a reasonable hourly rate.” *Id.* at 1006. “Because there is a strong presumption that the lodestar amount represents a reasonable fee, adjustments to the lodestar are the exception rather than the rule.” *Id.* at 1007 (internal quotation marks and citation omitted). Pursuant to Ninth Circuit precedent, in a class action, the district court is encouraged to use a cross-check by another method, but that comparison is not required and is completely discretionary, particularly when “classwide benefits are not easily monetized.” *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 547 (9th Cir. 2016). “District courts have the discretion to compensate plaintiff’s attorneys for a delay in payment by either applying the attorneys’ current rates to all hours billed during the course of the

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litigation or using the attorneys' historical rates and adding a prime rate enhancement." *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007).

To date, Class Counsel have currently spent more than 251.90 hours on this case. *See* Jones Decl.; Knewton Decl.<sup>5</sup> Class counsel estimate that they will spend at least a combined 15 more hours on tasks in this case assuming final judgment is granted after the fairness hearing on the preliminarily approved settlement, including time spent attending the fairness hearing, fielding questions or any objections from the Class Members, and helping to administer the Class. Jones Decl. ¶ 2. Thus, Class Counsel's total lodestar hours are 251.90. Class Counsel have incurred out-of-pocket expenses of \$4,703.17. *Id.* Thus, Class Counsel respectfully request a total lodestar attorney fee award of \$108,059.00 and an award of \$4,703.17 for reimbursable costs, and a subsequent judgment in those amounts.

The following table summarizes Class Counsel's hours to date, estimated future hours, their rates, and their lodestars:

<b>Attorney</b>	<b>Current hrs.</b>	<b>Estimated future hrs.</b>	<b>Rate</b>	<b>Lodestar</b>
Kelly D. Jones	173.90	10.0	\$410	\$75,399.00
Kelly D. Jones	2.70	—	*\$200	\$540.00
Bret A. Knewton	75.30	5.0	\$400	\$32,120.00
<b>Total</b>	251.90	15.0	—	\$108,059.00

#### **4.1. Class Counsel's requested hourly rates**

A reasonable hourly rate is determined by evidence of the "rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986). "[T]he

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<sup>5</sup> \*Mr. Jones spent 2.7 hours designing and drafting the substantive content on the class notice website OregonOneSettlement.com., as requested by defendant and as specified in the Settlement. *See* Jones Decl., Ex. A. Because this time/task may be considered not purely attorney time, Mr. Jones applied a reduced "hybrid" rate of \$200 per hour for these tasks.

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burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney’s own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” *Camacho*, 523 F.3d at 980. Courts in this District rely heavily on the prevailing rates in the most current Oregon State Bar Economic Survey, which was most recently issued in 2017, containing data assembled in 2016. *See, e.g., Wilson v. Decibels of Or., Inc.*, No. 1:16-cv-00855-CL, 2018 U.S. Dist. LEXIS 137141, at \*4 (D. Or. Aug. 14, 2018).<sup>6</sup>

#### **4.1.1. Kelly D. Jones’ requested hourly rate**

Class Counsel Kelly D. Jones (“Mr. Jones”) relies on his own Jones Decl., the Fuller Decl., and the Baxter Decl. in support of his hourly rate. Mr. Jones requests an hourly rate of \$410 for this case. Jones Decl. ¶ 3. Mr. Jones has been a practicing attorney for 11 years. The 2017 Oregon State Bar Economic Survey indicates that Portland attorneys with 10-12 years of practice, like Mr. Jones, have reported an hourly rate ranging from \$283 to \$410 per hour. According to this survey, Mr. Jones’ current rate of \$410 per hour would put him in the 95th percentile of those attorneys surveyed. As demonstrated by the facts in the Jones Decl., the Fuller Decl., and the Baxter Decl., Mr. Jones’ current rate of \$410 per hour is reasonable and supported by the current market rate in Portland for comparable attorneys with his extensive experience.

#### **4.1.2. Bret A. Knewtson’s requested hourly rate**

Class Counsel Bret A. Knewtson (“Mr. Knewtson”) relies on his own Knewtson Decl. in support of the requested rate of \$400 per hour, which is well within the range of Portland attorneys with 13-15 years of experience. Mr. Knewtson is highly specialized in consumer collection issues

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<sup>6</sup> The 2017 Oregon State Bar Economic Survey is available at [http://www.osbar.org/\\_docs/resources/Econsurveys/17EconomicSurvey.pdf](http://www.osbar.org/_docs/resources/Econsurveys/17EconomicSurvey.pdf).



and their related FDCPA claims. The risks involved in such work is evidenced by the number of appeals Mr. Knewtson's clients have filed and the reversal of losses at the trial level. Class action cases are far more likely to involve complicated issues such as standing, arbitration, and issues of foreign law related to consumer credit transactions. Those challenges and the fact that the reward is simply recovery of an hourly rate make this practice area highly disfavored. Mr. Knewtson has demonstrated success in this area as evidenced in his declaration listing the cases he has litigated and the issues involved. An award at a rate of approximately 85% of the Portland attorneys surveyed in the 13-15 years of practice window is reasonable.

#### **4.2. Class Counsel's reasonable time spent**

“Once the lodestar has been calculated, ‘the court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of reasonableness factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.’” *Stanger*, 812 F.3d at 740 (quoting *In re Bluetooth*, 654 F.3d at 941). “In statutory fee cases, federal courts, including our own, have uniformly held that time spent in establishing the entitlement to and amount of the fee is compensable.” *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659-60 (9th Cir. 1985). This principle is important because “it would be inconsistent to dilute a fees award by refusing to compensate attorneys for the time they reasonably spent in establishing their rightful claim to the fee.” *Camacho*, 523 F.3d at 981.

Class Counsel are not requesting any upward enhancement of their lodestar, just the reasonable time that they spent litigating the case and securing the settlement for Plaintiff and the Class Members and a low estimate of time to be spent on this case and in continued protection of the interests of the Class. In regard to the quality of representation that Class Counsel provided, this factor should weigh in favor of awarding Class Counsel's time. Both attorneys are very

#### **MOTION FOR FEES, EXPENSES, AND SERVICE AWARD**

experienced consumer protection attorneys, especially FDCPA claims. *See* Jones Decl.; Knewton Decl. Class Counsel had to defend against defendant's attack on this Court's Article III jurisdiction and ability to grant relief to Plaintiff and the Class resulting from defendant's violations of a federal statute. Class counsel succeeded in obtaining more than the maximum relief allowed by the unique net worth limitations applicable to FDCPA statutory class action damages. Class Counsel also had to prepare for and brief against defendant's attack on Plaintiff's Seventh Amendment right to a jury trial, when defendant filed its Motion to Compel Arbitration arguing that Plaintiff had somehow agreed to waive his right to a jury trial and to litigate his case in this Court because he agreed to arbitrate his claim against defendant and not participate in a class action. However, Class Counsel worked hard and overcame these challenges and came away with a class settlement that will provide actual checks to the Class Members and Plaintiff.

In regard to the complexity of the legal issues presented, defendant's attempt to dismiss Plaintiff's claim because the Court supposedly lacked Article III jurisdiction and could provide no relief was based upon a recent Supreme Court decision in *Spokeo v. Robins*, 136 S. Ct. 1540 (2016). This Supreme Court case presented a novel and complex issue both because it was newly decided, because the legal underpinnings of Article III standing jurisprudence is nuanced, and because there was a split of authority applying the *Spokeo* decision to the FDCPA and other consumer protection statutes. Nonetheless, Plaintiff and Class Counsel prevailed in this attack by researching and applying a myriad of cases in their briefing and at oral argument. Defendant's second attack on the Class was the attempt to compel private arbitration of Plaintiff's FDCPA claim. Arbitration issues are complex, because they necessitate knowledge and interpretation of consumer banking contractual terms and conditions, issues regarding waiver, contract formation, and conflict of laws, and resisting a motion to compel arbitration is often an uphill battle given the presumptions and

**MOTION FOR FEES, EXPENSES, AND SERVICE AWARD**

preemptive characteristics of the Federal Arbitration Act. Class Counsel fully researched and briefed Plaintiff's Response to Defendant's Motion to Compel Arbitration, but the Motion was stayed pending class settlement. *See* Doc. #64.

With regard to the risk of nonpayment factor, Class Counsel accepted this case and fully litigated this case on a contingency basis. Jones Decl. ¶ 1. The risk that Class Counsel would never be compensated for their time spent and costs incurred on this case was, and still is, very real. Class Counsel have advanced the expenses incurred while litigating this case, have received no compensation during the more the approximately two years that this litigation has been pending, and have taken the risk of nonpayment in litigating for the benefit of the Class. A determination of a fair fee should include consideration of the contingent nature of the fee, the amount of work and the financial outlay necessary to prosecute the case, and the ultimately successful outcome. Class Counsel have chosen to devote their careers to protecting consumers, most recently in class litigation as well as individual cases. *See* Jones Decl.; Knewton Decl. But they have to keep the lights on too and deserve to be fairly compensated for their efforts in enforcing a "private attorney general" federal consumer protection statute.

Much has already been said *regarding* the benefit obtained for the Class. But in summary, given that the Class claim was solely requesting statutory damages, the 1%-net worth-of-defendant-cap on class statutory damages in the FDCPA, and defendant's verified net worth of no more than \$350,000, Class Counsel obtained 1.8 X and 88% more than the maximum that a jury could have awarded if the case had gone to trial. And Class Members who have yet unsatisfied judgments or debts still owing that defendant was collecting will obtain significant additional relief, although it is difficult if not impossible to quantify monetarily. Although the Class Fund is by no means large, given the statutory limitations and the fact that \$8,500 in actual checks will be

**MOTION FOR FEES, EXPENSES, AND SERVICE AWARD**

sent to the Class Members and their judgments and debts wiped out, the results that Class Counsel achieved for the Class in the Settlement are exceptional.

For all these reasons, the time spent by Class Counsel on this case as set forth above is more than reasonable.

#### **5. Class Counsel’s request for costs and expenses**

Plaintiff and Class Counsel are also entitled to reimbursement of reasonable out-of-pocket expenses pursuant to FRCP 23(h) and 54(d)(1). *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (plaintiff’s counsel can recover reasonable expenses that would typically be billed to paying clients in non-contingency representation); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving reasonable costs in a class action settlement). Costs compensable under FRCP 23(h) include “nontaxable costs that are authorized by law or by the parties’ agreement.” FRCP 54(d)(1) provides, in part: “Unless a federal statute, these rules or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.” In addition, the terms of the Trust Agreement, discussed above, authorizes the Trustees to recover the costs of this litigation. Although the court has discretion to deny costs, FRCP 54(d)(1) “creates a presumption in favor of awarding costs to the prevailing party.” *Goldberg v. Pac. Indem. Co.*, 627 F.3d 752, 758 (9th Cir. 2010).

Class Counsel respectfully request an award of \$4,703.17 for reimbursable costs, and a subsequent judgment incorporating this amount. The table below summarizes Class Counsel’s costs and expenses:

<b>Cost-expense</b>	<b>Amount</b>
FRCP 30(b)(6) deposition reporter and transcript fees	\$2,996.47
Deposition transcripts (defendant’s third-party depositions) used by Plaintiff in Response to Motion to Compel Arbitration	\$1306.70
Filing fee	\$400.00
<b>Total</b>	<b>\$4,703.17</b>

#### **MOTION FOR FEES, EXPENSES, AND SERVICE AWARD**

**6. The requested service fee award is justified**

Class Counsel also seek a very modest service award of \$3,500 to named Plaintiff and Class Representative Robert D. Byrne. Service awards are “fairly typical” in class action cases. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Although discretionary, *see In re Meگو Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000), “courts have provided incentive awards” with “increased frequency” in recent years.

District courts evaluate the propriety and amount of the service awards based on individual factors: the financial or other risk to class representatives; notoriety or personal difficulties encountered by class representatives; time and effort spent by class representatives; duration of litigation; and the personal benefit enjoyed by class representatives as result of the litigation. *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). Declarations by counsel are sufficient to support the analysis; declarations by the named plaintiffs themselves are not necessary. *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at \*17 (N.D. Cal. Jan. 26, 2007), *aff’d*, 331 F. App’x 452 (9th Cir. 2009).

Courts frequently have approved service awards much larger than the award requested here. *See, e.g., Hughes v. Microsoft Corp.*, No. C93-0178C, 2001 WL 34089697, at \*12-13 (W.D. Wash. Mar. 26, 2001) (approving incentive awards of \$7,500, \$25,000, and \$40,000); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1330 (W.D. Wash. 2009) (awarding \$7,500 each to four named plaintiffs); *Glass*, 2007 WL 221862, at \*16-17 (\$25,000 to each of four representatives from \$45 million settlement); *Van Vranken*, 901 F. Supp. at 299-300.

In this case, the requested service award of \$3,500 is well within the norm of, and indeed well below, service awards granted in this and other districts across the country in complex class action litigation. This modest service award is justified by Plaintiff’s willingness to assume the

**MOTION FOR FEES, EXPENSES, AND SERVICE AWARD**

risks of litigation and step forward to assert the rights of absent Class Members, his commitment of time and energy to the case (including appearing at an intensive all-day mediation), his production of documents regarding defendant's letters and communication with defendant, completing and answering defendant's discovery requests, participation in settlement discussions, and, ultimately, the very beneficial result obtained for the Class. Jones Decl. ¶ 9.

### CONCLUSION

For all the reasons above, this Court should grant this Motion and award Class Counsel \$108,059.00 for their lodestar attorney fees and \$4,703.17 for expenses in this action and approve a service award of \$3,500.

Dated this 5<sup>th</sup> day of October 2018.

By: s/ Kelly D. Jones  
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Kelly D. Jones, Attorney at Law  
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Facsimile: (503) 715-0524  
[kellydonoanjoness@gmail.com](mailto:kellydonoanjoness@gmail.com)

**MOTION FOR FEES, EXPENSES, AND SERVICE AWARD**

**CERTIFICATE OF SERVICE**

I hereby certify that the above CLASS COUNSEL’S MOTION FOR AN AWARD OF ATTORNEY FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARD AND MEMORANDUM IN SUPPORT OF MOTION will be delivered to the following parties via the Court’s ECF system:

Jeffrey I. Hasson  
Hasson Law, LLC  
[hasson@hassonlawllc.com](mailto:hasson@hassonlawllc.com)  
Attorney for defendant, Oregon One, Inc.

A copy of this Motion will also be available on <https://oregononesettlement.com/> for review by the Class Members.

DATED this 5th day of October, 2018.

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**MOTION FOR FEES, EXPENSES, AND SERVICE AWARD**

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Attorneys for Plaintiff/Class Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

ROBERT D. BYRNE, *et al.*,  
Plaintiff,  
VS.  
OREGON ONE, INC.,  
Defendant.

Case No.: 3:16-cv-01910-SB

**DECLARATION OF KELLY D.  
JONES IN SUPPORT OF CLASS  
COUNSEL'S MOTION FOR AN  
AWARD OF ATTORNEY FEES,  
EXPENSES, AND CLASS  
REPRESENTATIVE SERVICE  
AWARD AND MEMORANDUM IN  
SUPPORT OF MOTION**



I, Kelly D. Jones, declare under penalty of perjury and in accordance with the laws of the State of Oregon and the United States that:

1. I am the owner and sole proprietor of the Law Office of Kelly D. Jones. I am lead counsel for Plaintiff in the above-captioned case, and I, along with co-counsel Bret A. Knewton, was appointed by the Court as Class Counsel. I accepted this case on a contingency basis, have advanced all costs, and have received no compensation for any of my time or costs incurred in this matter to date.

2. Throughout the course of this lawsuit, I kept contemporaneous records of the time I spent on this case via my electronic time-keeping software. I have reviewed those records and the total amount of hours that I have recorded for work performed on this matter through October 5, 2018, which amounts to 176.60 hours. Attached and filed herewith as Exhibit 1 are my time records, with a detailed listing of tasks performed on this case to date. In addition, I advanced \$4,703.17 in costs and expenses, including \$2,996.47 for the FRCP 30(b)(6) deposition reporter and transcript fees, \$1,306 for deposition transcripts (defendant's third-party depositions) used for the Response to Motion to Compel Arbitration, and the \$400 court filing fee to lodge the complaint. Given my past experience in a certified class case, I estimate that I will spend at least 10 more hours of my time, and Mr. Knewton will spend at least five hours of his time, if this settlement class is certified, in attending the fairness hearing, helping to administer the case, and

continuing to protect the interests of the Class. These estimated amounts are likely a very low estimate of the time that Class Counsel will actually spend.

3. My current 2018 usual and customary hourly rate for billing is \$410. I review and typically adjust my hourly rates annually or semi-annually. I do so based on a number of factors, including my experience, skill, and sophistication in the types of matters I handle, and the rates customarily charged in the market in which I practice.

4. Virtually my entire legal career has been spent representing consumers and prosecuting violations of federal and state consumer collection statutes. The Federal Fair Debt Collection Practices Act (“FDCPA”) has been a particular focus of mine over the years, and I was certified as Class Counsel in *Liberty Villanueva v. Liberty Acquisitions Servicing, LLC*, 319 F.R.D. 307, 312 (D. Or. 2017), a certified FDCPA class action case that established and distributed a common fund of over \$2 million to consumers across the country.

5. I have been invited to speak about consumer protection statutes and consumer litigation to lawyers and the public many times over the course of my career. I have also authored several chapters of the OSB Bar Books pertaining to multiple consumer law topics, including consumer arbitration issues and the Fair Credit Billing Act. I have also authored multiple articles in various legal publications on various consumer protection and debtor topics.

6. I have been, or am, lead or co-counsel in dozens of consumer protection litigation cases filed in Oregon State courts and in this District, many of which are putative class action cases, almost all of which either have resulted in fair compensation for my clients or are still pending, including:

*Thurman et al. v. West Asset Management, Inc. et al.*, No. 3:2012cv01756 (2013)  
*Knotts v. Bonneville Billing and Collections, Inc.*, No. 3:2013cv01005 (2013).  
*Cavendish v. Unifund CCR LLC, et al.*, No. 3:2013cv01516 (2013).  
*Test v. Cascade Credit Consulting, Inc.*, No. 3:2013cv01822 (2013).  
*Villanueva v. Liberty Acquisitions Servicing, LLC et al.*, No. 3:2014cv01610 (2017).  
*Thurman v. Synchrony Bank*, No. 3:2014cv01752 (2015).  
*Jimenez v. Rivermark Community Credit Union et al.*, No. 3:2015cv00128 (2015).  
*Campos v. Bluestem Brands, Inc. et al.*, No. 3:2015mc00140 (2015).  
*Campos v. Bluestem Brands, Inc. et al.*, No. 3:2015cv00620 (2016).  
*Tran v. Wells Fargo Bank, N.A.*, No. 3:2015cv00979 (2018).  
*Kale v. Oregon Credit & Collections Bureau, Inc.*, No. 6:2016cv02339 (2017).  
*Sprayberry v. Portfolio Recovery Associates LLC*, No. 3:2017cv00111 (2017).  
*Sprayberry v. Portfolio Recovery Associates LLC*, No. 3:2017cv00112 (2017).  
*Estrella v. Convergent Outsourcing, Inc.*, No. 3:2017cv00117 (2018).  
*Silva v. Unique Beverage Company, LLC*, No. 3:2017cv00391 (2018).  
*Pelke v. Patenaude & Felix, A.P.C.*, No. 6:2017cv00497 (2018).  
*McAdory v. M.N.S & Associates, LLC et al.*, No. 3:2017cv00777 (2017).  
*McManus v. Jefferson Capital Systems, LLC*, No. 6:2017cv00835 (2017).  
*Meier v. Patenaude & Felix, A.P.C.*, No. 3:2017cv00848 (2017).  
*Rutherford v. Ray Klein Inc.*, No. 6:2017cv00856 (2017).  
*Charles v. Portfolio Recovery Associates LLC*, No. 3:2017cv00955 (2017).  
*Cobb v. Columbia Recovery Group, LLC et al.*, No. 6:2017cv01044 (2017).  
*Wright v. DeVos*, No. 3:2017cv01066 (2017).  
*Bowman v. Todd, Bremer & Lawson, Inc.*, No. 3:2017cv01092 (2017).  
*Kennedy v. A & G Rental Management, LLC*, No. 3:2017cv01175 (2018).  
*deVries v. Vivint, Inc.*, No. 3:2017cv01286 (2017).  
*Bradley v. Energy Events LLC*, No. 3:2017cv01291 (2018).  
*Bartel v. Showtime Networks, Inc.*, No. 3:2017cv01331 (2017).  
*McHill et al. v. Equifax Inc.*, No. 3:2017cv01405 (2017).  
*Setzer v. I.Q. Data International, Inc.*, No. 1:2017cv01683 (2017).  
*McKinley v. Quick Collect, Inc.*, No. 3:2017cv01720 (2018).  
*Walton v. Telecomputer Services, Inc. et al.*, No. 3:2017cv01795 (2018).

*Block v. Future Income Payments, LLC*, No. 3:2017cv01808 (2017).  
*Zook v. Equifax Information Services LLC et al.*, No. 3:2017cv02003 (2018).  
*Jackson v. Alteryx, Inc.*, No. 3:2017cv02021 (2018).  
*Sponer v. Equifax Information Services LLC et al.*, No. 3:2017cv02035 (2017).  
*Collis v. Rushmore Loan Management Services LLC*, No. 6:2017cv02062 (2017).  
*Gould v. Equifax Information Services LLC et al.*, No. 3:2018cv00001 (2018).  
*Mann v. Intel Corporation*, No. 6:2018cv00028 (2018).  
*Fowles v. Equifax Information Services LLC*, No. 3:2018cv00164 (2018).  
*Smith v. Verizon Wireless (VAW) LLC*, No. 3:2018cv00291 (2018).  
*Boe v. Garten Services, Inc.*, No. 3:2018cv00327 (2018).  
*Chase et al. v. Gordon, Aylworth & Tami, P.C. et al.*, No. 3:2018cv00568 (2018).  
*Ayala v. Oregon One, Inc. et al.*, No. 3:2018cv00793 (2018).  
*Bushway v. Bayview Loan Servicing, LLC*, No. 3:2018cv00826 (2018).  
*Vincenzi et al. v. Marylhurst University*, No. 3:2018cv00958 (2018).  
*Gilberto v. Walgreen Co.*, No. 3:2018cv01003 (2018).  
*Spencer v. International Dairy Queen, Inc.*, No. 3:2018cv01252 (2018).  
*Solano et al. v. The Kroger Co.*, No. 3:2018cv01488 (2018).  
*York v. SRA Associates LLC*, No. 3:2018cv01750 (2018).

7. I have been a practicing attorney for 11 years. The 2017 Oregon State Bar Economic Survey indicates that Portland attorneys with 10 to 12 years of experience, as I have, reported an hourly rate ranging from \$283 to \$410 per hour. According to this survey, my current rate of \$410 per hour would put me in the 95th percentile of those attorneys surveyed.

8. Many other firms have requested that I co-counsel cases with them, including highly reputed attorneys with more years of practice, because of my unique experience and skill set, and because I am one of a handful of consumer protection specialist and class action attorneys in Portland. I believe that I am in the 95th percentile of Portland attorneys in the 10- to 12-year practice window in the 2017 Oregon State Bar Economic Survey. As such, I believe that my current rate, and the rate I am requesting in this case, of \$410 per hour is reasonable and

supported by the current market rate in Portland for attorneys with comparable level of experience and skill.

9. Plaintiff and Class Representative, Robert D. Byrne, spent many hours contributing to this litigation and always put the interests of the Class over his own. Plaintiff attend an all-day mediation, completed all of defendant's extensive discovery, kept apprised of all of the events in the case, and was instrumental in obtaining a beneficial settlement for the Class.

10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that this declaration is true and correct.

Dated: October 5, 2018.

RESPECTFULLY SUBMITTED BY,

**s/ Kelly D. Jones**

Kelly D. Jones, OSB No. 074217

kellydonovanjones@gmail.com

503-847-4329

## EXHIBIT 1

**Kelly D. Jones, Attorney at Law**  
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 Portland 97214  
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## INVOICE

Robert D. Byrne

Invoice 20013

PRE-BILL

<b>Date</b>	Oct 05, 2018
<b>Service Thru</b>	Oct 05, 2018

## In Reference To: Byrne v. Oregon One, Inc. (Task)

Date	By	Services	Hours	Rates	Amount
05/12/2016	KDJ	<b>Meeting:</b> Meeting with Dennis Byrne (client) to do final review of Oregon One letters and call, explain class rep and case, execute agreement, etc.	0.80	\$ 410.00/hr	\$ 328.00
08/19/2016	KDJ	<b>Research:</b> Initial research case law in support of claims (1692g, 1692e, and 1692f)	1.80	\$ 410.00/hr	\$ 738.00
08/20/2016	KDJ	<b>Research:</b> Continue research case law in support of claims (1692g, 1692e, and 1692f)(including updates as to class certification letter cases, standing, and research on D)	0.80	\$ 410.00/hr	\$ 328.00
08/24/2016	KDJ	<b>Research:</b> Continue research case law in support of claims (1692g, 1692e, and 1692f)(including updates as to class certification letter cases, standing, and research on D)	1.60	\$ 410.00/hr	\$ 656.00
08/25/2016	KDJ	<b>Draft:</b> Draft outline of issues/claims/class allegations etc. for drafting of complaint	0.80	\$ 410.00/hr	\$ 328.00
08/25/2016	KDJ	<b>Draft:</b> Begin first draft of class complaint	1.10	\$ 410.00/hr	\$ 451.00
08/26/2016	KDJ	<b>Draft:</b> Finish first draft of class complaint	1.60	\$ 410.00/hr	\$ 656.00
08/26/2016	KDJ	<b>Correspondence:</b> Email B. Knewtson (co-counsel) with first draft of class complaint and pertinent docs for his amendments	0.10	\$ 410.00/hr	\$ 41.00
08/31/2016	KDJ	<b>Phone Call:</b> Phone call with B. Knewtson RE my first draft of class complaint; discuss claims set forth/additional claims, discuss fact record, adding alias as D?, he will review and send back amended complaint	0.80	\$ 410.00/hr	\$ 328.00

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<b>Date</b>	Oct 05, 2018
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09/02/2016	KDJ	<b>Phone Call:</b> Phone call with B. Knewton RE discuss his substantive amendments to complaint draft, discuss facts and need for phone call, any potential certification issues, etc.	0.80	\$ 410.00/hr	\$ 328.00
09/02/2016	KDJ	<b>Correspondence:</b> Email from B. Knewton RE his amendments to draft of class action complaint	0.10	\$ 410.00/hr	\$ 41.00
09/02/2016	KDJ	<b>Correspondence:</b> Email client RE need facts of phone call to Oregon One for complaint, tell him to request credit reports, and update on progress	0.20	\$ 410.00/hr	\$ 82.00
09/06/2016	KDJ	<b>Meeting:</b> In office meeting with client RE: transfer of clients recording of phone call with Oregon One; discuss draft of complaint and fact issues for complaint; status of filing case	0.60	\$ 410.00/hr	\$ 246.00
09/15/2016	KDJ	<b>Draft:</b> Second draft of Class Complaint incorporating B. Knewton's amendments and facts RE phone call and second letter	0.60	\$ 410.00/hr	\$ 246.00
09/15/2016	KDJ	<b>Correspondence:</b> Email to client and B. Knewton RE second draft of class complaint; request client approval/edits for final version	0.10	\$ 410.00/hr	\$ 41.00
09/23/2016	KDJ	<b>Phone Call:</b> Phone call from client RE reviewed draft complaint, suggest small edits	0.20	\$ 410.00/hr	\$ 82.00
09/27/2016	KDJ	<b>Draft:</b> Make amendments (add interest rate claims to claim and class definition) to class complaint; edits, and send to B. Knewton for his final edits before filing	0.70	\$ 410.00/hr	\$ 287.00
09/28/2016	KDJ	<b>Phone Call:</b> Phone call with B. Knewton RE: recent interest rate case; additional class claim/definition 1692e/f for all letters sent that don't specify amount for interest or rate of interest; propose final amendments to class complaint	0.40	\$ 410.00/hr	\$ 164.00
09/29/2016	KDJ	<b>Draft:</b> Make final substantive amendments to class action complaint and file with court (ECF)	0.30	\$ 410.00/hr	\$ 123.00

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<b>Date</b>	Oct 05, 2018
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09/29/2016	KDJ	<b>Draft:</b> Draft letter to Oregon One RE Preservation of docs/ESI enclosed with notice of lawsuit/waiver of service forms and initial court case assignment/discovery order (send USPS certified/Priority)	0.60	\$ 410.00/hr	\$ 246.00
09/29/2016	KDJ	<b>Draft:</b> Draft Notice of Lawsuit/Waiver of Service of Summons docs to be sent to Oregon One	0.30	\$ 410.00/hr	\$ 123.00
09/29/2016	KDJ	<b>Correspondence:</b> Email client and B. Knewtson RE attach copies of court-certified class action complaint, letter sent to Oregon One, and discuss next steps	0.20	\$ 410.00/hr	\$ 82.00
10/03/2016	KDJ	<b>Correspondence:</b> Emails from F. Cann (D's counsel) (2) RE notice of representation wants to know main contact point and if individual settlement is possibility, (1) response RE contact me and client is intent on obtaining relief on class basis	0.10	\$ 410.00/hr	\$ 41.00
10/04/2016	KDJ	<b>Phone Call:</b> Phone call with Bret Knewtson RE response to opposing counsel emails and strategy	0.20	\$ 410.00/hr	\$ 82.00
10/04/2016	KDJ	<b>Correspondence:</b> Email response to F. Cann RE client is dedicated to obtaining relief for class members not just for himself, etc.; Email from F. Cann with request to call him	0.10	\$ 410.00/hr	\$ 41.00
10/04/2016	KDJ	<b>Phone Call:</b> Phone call to F. Cann at his request to discuss his limited/temp. representation (may retain other class counsel), cannot yet give dates for proposed Rule 26 conference; ind. settlement (not likely)	0.20	\$ 410.00/hr	\$ 82.00
10/11/2016	KDJ	<b>Phone Call:</b> Phone call to F. Cann at his request RE: proposed stipulation for subpoena to Citi before Rule 26f conf, his provisional class assessment, questions about class definition/explanation; potential for stip of class cert., arbitration clause etc.	0.30	\$ 410.00/hr	\$ 123.00



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**Robert D. Byrne**

**Invoice 20013**

# PRE-BILL

<b>Date</b>	Oct 05, 2018
<b>Service Thru</b>	Oct 05, 2018

10/11/2016	KDJ	<b>Phone Call:</b> Email from F. Cann RE request to call him before 2 pm to discuss issues	0.10	\$ 410.00/hr	\$ 41.00
10/11/2016	KDJ	<b>Phone Call:</b> Phone call with B. Knewton RE discuss phone call with F. Cann and proposal to begin discovery before Rule 26f (subpoena) and other matters discussed with F. Cann; discuss strategy and anticipate response to D's assertion of potential arbitration clause, commonality issues, and potential for settlement of class pre-discovery (no), will respond that Rule 26f conference should happen asap prior to discovery	0.70	\$ 410.00/hr	\$ 287.00
10/12/2016	KDJ	<b>Correspondence:</b> Email from (1) and to client RE: update on progress/developments including opposing counsel's interest in discovering arb clause in contract with Citi and potential for stip. motion for class cert/settlement	0.10	\$ 410.00/hr	\$ 41.00
10/12/2016	KDJ	<b>Correspondence:</b> Email from F. Cann RE wants to send subpoena to Citi in attempt to get contract for purposes of assessing arb clause/class waiver, etc.	0.10	\$ 410.00/hr	\$ 41.00
10/13/2016	KDJ	<b>Phone Call:</b> Phone conference with B. Knewton RE: discuss F. Cann's desire to send subpoena and initiate discovery before Rule 26 conference (arbitration clause) and potential MTC as well as his discussions re settling class. Agree that Rule 26f conference needs to happen before discovery, I will start drafting proposed R 26 report	0.30	\$ 410.00/hr	\$ 123.00
10/13/2016	KDJ	<b>Phone Call:</b> Email to F. Cann F. RE need to schedule Rule 26 conference before discovery including subpoena is sent, I will start drafting proposed R 26 report, can he please suggest dates fro 26f, I can have P's FRFP done by 26f, etc.	0.20	\$ 410.00/hr	\$ 82.00
10/13/2016	KDJ	<b>Phone Call:</b> Email from F. Cann, requests PRFP etc. before 26f and requests rule 26 report draft	0.10	\$ 410.00/hr	\$ 41.00

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10/14/2016	KDJ	<b>Draft:</b> Draft working draft of proposed joint R. 26 report to send to F. Cann, with proposed dates for pleadings/discovery plan and P's agreements (magistrate/waive initial disclosures)	0.70	\$ 410.00/hr	\$ 287.00
10/14/2016	KDJ	<b>Phone Call:</b> Phone call with B. Knewton RE proposed R 26f report (dates, P's positiosn on waiver of initial disclosures/consent to magistrate, etc.); strategy	0.30	\$ 410.00/hr	\$ 123.00
10/14/2016	KDJ	<b>Correspondence:</b> Email to F. Cann with requested/atched proposed joint R 26 report, need to do R 26 conference before discovery, please provide available dates/times (again), need to file his notice of representation, etc.	0.10	\$ 410.00/hr	\$ 41.00
10/17/2016	KDJ	<b>Correspondence:</b> Email from F. Cann RE still wants informal discovery before Rule 26! Set forth reasons why it would somehow be more efficient (no)	0.10	\$ 410.00/hr	\$ 41.00
10/17/2016	KDJ	<b>Correspondence:</b> Email to F. Cann explain again the we just need to do the R 26 conference as it can't be waived and all these issues can be hammered out there and then we can begin discovery; if he refuses to conduct the Rule 26 he can set conference with the court	0.10	\$ 410.00/hr	\$ 41.00
10/17/2016	KDJ	<b>Phone Call:</b> Phone conference with B. Knewton RE discuss F. Cann's refusal to do Rule 26 conference despite many attempts to request dates/times, need to do that then discovery can start and issues can be addressed, etc.. agree that if he wants to do discovery first then he can request from teh court but R 26 conference can't be waived	0.30	\$ 410.00/hr	\$ 123.00

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10/18/2016	KDJ	<b>Correspondence:</b> Email from (1) F. Cann with attachments of alleged assignments/bills of sale relating to alleged debt (many); numerous questions about admissions, proof, etc., and email to (1) F. Cann RE told him again that these issues should all be discussed at R 26 and he can send outline of issues he would like to discuss at the conference, another request to send dates and times for 26 phone call	0.10	\$ 410.00/hr	\$ 41.00
10/18/2016	KDJ	<b>Review:</b> Review assignments/bill of sale documents sent by F. Cann (via email attachments) RE alleged chain of title of debt (6 separate assignments)	0.40	\$ 410.00/hr	\$ 164.00
10/21/2016	KDJ	<b>Review:</b> Receive/review official notice of appearance of D's counsel (F. Cann) as filed ECF	0.10	\$ 410.00/hr	\$ 41.00
10/26/2016	KDJ	<b>Correspondence:</b> Email (.1) from Mark Matthews, senior claims specialist at Nationwide RE request info on defense counsel as they received complaint from Oregon One w/o any notice of defense counsel; respond to email by forwarding to F. Cann (.1)	0.20	\$ 410.00/hr	\$ 82.00
10/28/2016	KDJ	<b>Phone Call:</b> Phone call with B. Knewston RE lawsuits filed by Oregon One and standing/Spokeo.	0.80	\$ 410.00/hr	\$ 328.00
10/31/2016	KDJ	<b>Phone Call:</b> Rule 26(f) teleconference with J. Hasson and F. Cann	1.00	\$ 410.00/hr	\$ 410.00
10/31/2016	KDJ	<b>Phone Call:</b> Phone conference with B. Knewtson RE continue discuss outline and issues and P's positions for Rule 26(f) teleconference with J. Hasson and F. Cann	0.90	\$ 410.00/hr	\$ 369.00
10/31/2016	KDJ	<b>Phone Call:</b> Phone conference with B. Knewtson RE discuss Rule 26(f) teleconference with J. Hasson and F. Cann and follow up positions/issues for draft of joint Rule 26 report	0.40	\$ 410.00/hr	\$ 164.00

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10/31/2016	KDJ	<b>Draft:</b> Draft outline for positions/issues RE Rule 26f conference to share with B. Knewton in advance of and preparation for today's Rule 26 teleconference	0.30	\$ 410.00/hr	\$ 123.00
10/31/2016	KDJ	<b>Draft:</b> Make amendments to B. Knewton's draft Rule 26 joint report before sending to opposing counsel and email back	0.30	\$ 410.00/hr	\$ 123.00
11/01/2016	KDJ	<b>Phone Call:</b> Phone call with B. Knewton RE strategy of whether to amend complaint RE Spokeo/standing to strengthen complaint facially give opposing counsel's anticipated MTD re Spokeo/standing; discuss issues RE discovery plan to be submitted to opposing counsel tomorrow	0.50	\$ 410.00/hr	\$ 205.00
11/15/2016	KDJ	<b>Correspondence:</b> Email from (1) and to (1) Fred Cann RE respond to his request about filing of Rule 26 report	0.10	\$ 410.00/hr	\$ 41.00
11/15/2016	KDJ	<b>Correspondence:</b> Phone conference with B. Knewton RE discovery plan (RFP topics), Rule 26 disclosures prep, review and assessment of collection letters sent by third parties and chain of title issues (for pending MTCA)	0.90	\$ 410.00/hr	\$ 369.00
11/19/2016	KDJ	<b>Draft:</b> finish draft of Plaintiff's Rule 26 disclosures to be sent to B. Knewton	0.40	\$ 410.00/hr	\$ 164.00
11/19/2016	KDJ	<b>Correspondence:</b> Send draft of Plaintiff's Rule 26 disclosures to be sent to B. Knewton for review	0.10	\$ 410.00/hr	\$ 41.00
11/19/2016	KDJ	<b>Correspondence:</b> email from B. Knewton RE edits to Plaintiff's Rule 26 disclosures (include defendant docs and knowledge upon information and belief)	0.10	\$ 410.00/hr	\$ 41.00
11/20/2016	KDJ	<b>Correspondence:</b> Email to client to ensure that he does not have any further documents/items not already submitted for Rule 26 disclosures, update on case developments, etc.	0.20	\$ 410.00/hr	\$ 82.00

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11/21/2016	KDJ	<b>Draft:</b> Finalize Plaintiff's Rule 26 disclosures (incorporate B. Knewtsons' edits)	0.30	\$ 410.00/hr	\$ 123.00
11/21/2016	KDJ	<b>Correspondence:</b> Email Plaintiff's Rule 26 disclosures to opposing counsel	0.10	\$ 410.00/hr	\$ 41.00
11/21/2016	KDJ	<b>Correspondence:</b> Email from J. Hasson RE mistake/confusion did not send D's Rule 26 disclosures- will send	0.10	\$ 410.00/hr	\$ 41.00
11/22/2016	KDJ	<b>Correspondence:</b> Email from J. Hasson RE D's Rule 26 disclosures	0.10	\$ 410.00/hr	\$ 41.00
11/22/2016	KDJ	<b>Correspondence:</b> Review D's Rule 26 disclosures	0.30	\$ 410.00/hr	\$ 123.00
11/22/2016	KDJ	<b>Phone Call:</b> Phone call from F. Cann RE conferral on D's anticipated motion (SMJ-Spokeo-injury in fact) said he may file same time as answer (we do not agree)	0.10	\$ 410.00/hr	\$ 41.00
11/22/2016	KDJ	<b>Phone Call:</b> Email from F. Cann RE solidify phone conferral on D's anticipated motion (SMJ-Spokeo-injury in fact) said he may file same time as answer (we do not agree)	0.10	\$ 410.00/hr	\$ 41.00
11/28/2016	KDJ	<b>Review:</b> Receive and do initial read of D's 12(b)(1) motion to dismiss (MTD) and dec. in support	0.30	\$ 410.00/hr	\$ 123.00
11/29/2016	KDJ	<b>Phone Call:</b> Phone call with B Knewtson D's legal issues and analysis and need for extension	0.30	\$ 410.00/hr	\$ 123.00
11/30/2016	KDJ	<b>Correspondence:</b> Email to F. Cann RE he wants extension for reply for holiday travel so suggest new briefing schedule please	0.10	\$ 410.00/hr	\$ 41.00
12/01/2016	KDJ	<b>Correspondence:</b> Email from F. Cann RE yes he would like date for reply until after holiday plus 14 days	0.10	\$ 410.00/hr	\$ 41.00

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12/02/2016	KDJ	<b>Correspondence:</b> Email to F. Cann RE propose new dates for MTD briefing as requested ( Plaintiff's response to D's MTD is due 1/9/17 and D's reply is due 1/23/17)	0.10	\$ 410.00/hr	\$ 41.00
12/02/2016	KDJ	<b>Correspondence:</b> Email from F. Cann re accepts dates for new schedule for MTD but uploads incorrect form and court clerk already stated email/informal request ok, email response RE paste message from court clerk and ask him to send email to her with dates	0.10	\$ 410.00/hr	\$ 41.00
12/02/2016	KDJ	<b>Draft:</b> Begin drafting of outline of issues for response to MTD (D's arguments and cases in support)	0.50	\$ 410.00/hr	\$ 205.00
12/05/2016	KDJ	<b>Draft:</b> Finish drafting of outline of issues for response to MTD (D's argument and cases in support)	0.60	\$ 410.00/hr	\$ 246.00
12/05/2016	KDJ	<b>Research:</b> Begin research for response to MTD- read Spokeo v. Robbins and other Supreme cases cited therein for concrete injury, congressional-elevated injury in fact, intangible injuries, and risk of harm (add to outline)	0.90	\$ 410.00/hr	\$ 369.00
12/06/2016	KDJ	<b>Research:</b> Continue research for response to MTD RE post-Spokeo FDCPA cases: Church v. A. Health (11th Cir), and all fed district court cases following Church (see response for list of cases researched)	0.80	\$ 410.00/hr	\$ 328.00
12/07/2016	KDJ	<b>Research:</b> Continue research for response to MTD RE post-Spokeo FDCPA cases: Church v. A. Health (11th Cir), and all fed district court cases following Church (see response for list of cases researched)	0.90	\$ 410.00/hr	\$ 369.00
12/13/2016	KDJ	<b>Research:</b> Continue research for response to MTD RE post-Spokeo FDCPA cases: Church v. A. Health (11th Cir), and all fed district court cases following Church (see response for list of cases researched)	0.60	\$ 410.00/hr	\$ 246.00

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12/17/2016	KDJ	<b>Research:</b> Continue research for response to MTD RE post-Spokeo FDCPA cases: Church v. A. Health (11th Cir), and all fed district court cases following Church (see response for list of cases researched)	0.70	\$ 410.00/hr	\$ 287.00
12/18/2016	KDJ	<b>Draft:</b> Continue to draft outline of issues for use in drafting response to MTD- include cases to cite in support of P's argument and lay out principle arguments	0.80	\$ 410.00/hr	\$ 328.00
12/19/2016	KDJ	<b>Draft:</b> Begin drafting response to MTD- introduction and Spokeo/Artcile III overview	1.30	\$ 410.00/hr	\$ 533.00
12/20/2016	KDJ	<b>Draft:</b> Continue drafting response to MTD- Begin Argument A (1692g claims and Church- allegations of violations of 1692 are infringement of substantive rights elevated by congress as injury in fact)	0.90	\$ 410.00/hr	\$ 369.00
12/21/2016	KDJ	<b>Draft:</b> Continue drafting response to MTD- Finish Argument A (1692g claims and Church - allegations of violations of 1692 are infringement of substantive rights elevated by congress as injury in fact) add in detailed excerpts of Allah-Mensah v. Law Office of Patrick M. Connelly, P.C. and many other district court decisions following Church and in support of argument A	0.70	\$ 410.00/hr	\$ 287.00
12/21/2016	KDJ	<b>Phone Call:</b> Phone call w/ B. Knewton RE discuss new district court cases for inclusion into MTD response and factual vs. facial 12(b)6 challenge, etc.	0.40	\$ 410.00/hr	\$ 164.00
12/22/2016	KDJ	<b>Draft:</b> Continue drafting response to MTD- Argument A(2) (1692e and f claims and Tourgeman/Church - allegations of violations of 1692e and f are also infringement of substantive rights elevated by congress as injury in fact) cite numerous cases in support isolated to 1692e and f for this argument	1.40	\$ 410.00/hr	\$ 574.00

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01/03/2017	KDJ	<b>Draft:</b> Continue drafting response to MTD- begin Argument 1(B) even if concrete harm without additional facts then facts of this case = material risk of harm and/or intangible harm	0.80	\$ 410.00/hr	\$ 328.00
01/04/2017	KDJ	<b>Review:</b> Review alleged arbitration agreement sent by F. Cann (Citibank)(.3); emails to and from F. Cann by B. Knewtson RE supporting docs for authentication/evidence (.1)	0.40	\$ 410.00/hr	\$ 164.00
01/04/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knewtson RE CitiBank subpoena response and docs	0.30	\$ 410.00/hr	\$ 123.00
01/04/2017	KDJ	<b>Draft:</b> Continue drafting response to MTD- finish Argument 1(B) even if concrete harm without additional facts then facts of this case = material risk of harm and/or intangible harm	0.70	\$ 410.00/hr	\$ 287.00
01/05/2017	KDJ	<b>Draft:</b> Continue drafting response to MTD- Argument II cases that Oregon One cites in support of its argument are inapposite, unpersuasive, and easily-distinguishable (analysis of Perry, Jackson, and other cases in D's motion). Even under those cases P has established concrete injury in fact in this case	1.60	\$ 410.00/hr	\$ 656.00
01/06/2017	KDJ	<b>Research:</b> Update research to capture district court cases decided since last research cut off date (cases coming out weekly at least) in support of arguments (.6)(see cases in response); include cases excerpts in response itself (.3)	0.90	\$ 410.00/hr	\$ 369.00
01/06/2017	KDJ	<b>Correspondence:</b> Email from F. Cann RE conferral/request for relief from page/word count for response to MTD ASAP (D has no objections/stipulates to extension)	0.10	\$ 410.00/hr	\$ 41.00
01/06/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knewtson to discuss his substantive edits and final comments before filing	0.30	\$ 410.00/hr	\$ 123.00



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01/06/2017	KDJ	<b>Draft:</b> Continue drafting response to MTD- Argument III Byrne does not need to establish that the putative class members have standing to bring their claims, only that he does.	1.80	\$ 410.00/hr	\$ 738.00
01/07/2017	KDJ	<b>Correspondence:</b> Email from F. Cann RE conferral/request for relief from page/word count for response to MTD ASAP (D has no objections/stipulates to extension)	0.10	\$ 410.00/hr	\$ 41.00
01/09/2017	KDJ	<b>Correspondence:</b> Email to and from Ms. Williams (court clerk) RE unopposed request for relief from page/word count for response to MTD ASAP; ECF filing RE extension granted	0.20	\$ 410.00/hr	\$ 82.00
01/09/2017	KDJ	<b>Correspondence:</b> Email from B. Knewton RE edits/amendments to Response to MTD	0.10	\$ 410.00/hr	\$ 41.00
01/09/2017	KDJ	<b>Draft:</b> Finalize response to MTD- incorporating substantive edits/comments from B. Knewton (file ECF)	1.30	\$ 410.00/hr	\$ 533.00
01/09/2017	KDJ	<b>Draft:</b> Continue drafting response to MTD- Table of contents and table of authorities; cite checks	1.60	\$ 410.00/hr	\$ 656.00
01/15/2017	KDJ	<b>Correspondence:</b> Email to client RE attach copy of our Response to D's MTD for client filed/review, explain time line and next steps	0.20	\$ 410.00/hr	\$ 82.00
01/23/2017	KDJ	<b>Review:</b> Review Reply to Motion to Dismiss for Lack of Jurisdiction [8] Oral Argument requested. Filed by Oregon One, Inc.. (Cann, Frederic)(.3); research and outline new cases cited in reply (non-FDCPA cases) (.4)	0.90	\$ 410.00/hr	\$ 369.00
01/29/2017	KDJ	<b>Correspondence:</b> Email from client RE client read response to MTD and is very happy with it	0.10	\$ 410.00/hr	\$ 41.00

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02/07/2017	KDJ	<b>Correspondence:</b> Email to court clerk RE availability for oral argument - Plaintiff's counsel is available for all of the three dates Mr. Hasson is available (March 6, 7, or 13).	0.10	\$ 410.00/hr	\$ 41.00
02/07/2017	KDJ	<b>Correspondence:</b> Review email from F. Cann RE memos of supplemental authorities, etc. (.1) and court clerk's response email RE motion for leave to file supplemental briefing, identifying the new case law the party would like to address (but not submitting the supplemental briefing until the Court grants leave) (.1)	0.20	\$ 410.00/hr	\$ 82.00
02/07/2017	KDJ	<b>Review:</b> SCHEDULING ORDER regarding Defendant's Motion to Dismiss for Lack of Jurisdiction [8]. Oral Argument is set for Monday, March 6, 2017 at 10:00 AM in Portland Courtroom 9B before Magistrate Judge Stacie F. Beckerman. Ordered on 2/7/2017 by Magistrate Judge Stacie F. Beckerman. (gw)	0.10	\$ 410.00/hr	\$ 41.00
02/19/2017	KDJ	<b>Review:</b> Review SCHEDULING ORDER regarding Defendant's Motion to Dismiss for Lack of Jurisdiction [8]. Oral Argument is set for Monday, March 6, 2017 at 10:00 AM in Portland Courtroom 9B before Magistrate Judge Stacie F. Beckerman. Ordered on 2/7/2017 by Magistrate Judge Stacie F. Beckerman. (gw)	0.10	\$ 410.00/hr	\$ 41.00
02/19/2017	KDJ	<b>Correspondence:</b> Email to client RE status update (oral argument on MTD scheduled for March 6); attach unauthenticated docs sent by F. Cann (alleged CitiGoodyear agreement and application) for client's review/records	0.20	\$ 410.00/hr	\$ 82.00
03/08/2017	KDJ	<b>Correspondence:</b> Email from F. Cann (to court) RE deadline for motion supplemental authorities	0.10	\$ 410.00/hr	\$ 41.00

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03/10/2017	KDJ	<b>Correspondence:</b> Email from court RE response to F. Cann's ? about motion/supplemental authorities- submit list of cases decided since parties submissions but NO argument- by 3/15 at noon	0.10	\$ 410.00/hr	\$ 41.00
03/14/2017	KDJ	<b>Phone Call:</b> Phone call w/ B. Knewton RE discuss need for filing supplemental (post-response brief) by tomorrow's deadline per court clerk email (yes-at least 9th circ. post Spokeo TCPA case decided late Jan 2017); discuss strategy for oral argument (MTD-standing on 3/21)	0.50	\$ 410.00/hr	\$ 205.00
03/14/2017	KDJ	<b>Correspondence:</b> Research RE supplemental authorities- applicable case law since response filed (Thomas v. Youderian, No. 2:16-CV-01408-KM-MAH, 2017 U.S. Dist. LEXIS 16585 (D.N.J. Feb. 3, 2017); Fausz v. NPAS, Inc., No. 3:15-cv-00145-CRS-DW, 2017 U.S. Dist. LEXIS 24306 (W.D. Ky. Feb. 21, 2017); Masson v. Pioneer Credit Recovery, Inc., No. 16-1887, 2017 U.S. Dist. LEXIS 29505 (E.D. La. Mar. 1, 2017)	0.60	\$ 410.00/hr	\$ 246.00
03/15/2017	KDJ	<b>Research:</b> Research RE supplemental authorities- applicable case law since response filed (Van Patten v. Vertical; Reed v. IC Sys., etc.)	0.60	\$ 410.00/hr	\$ 246.00
03/15/2017	KDJ	<b>Draft:</b> Draft PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITIES IN RESPONSE TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO FRCP 12B(1) FOR LACK OF FEDERAL JURISDICTION	0.50	\$ 410.00/hr	\$ 205.00

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03/15/2017	KDJ	<b>Correspondence:</b> emails to and from F. Cann (4) RE exchange supplemental authorities filed with court in response to MTD; alert Mr. Cann that he exceeded court's instructions as he set forth arguments in his submission	0.20	\$ 410.00/hr	\$ 82.00
03/16/2017	KDJ	<b>Correspondence:</b> Review cases (attachments to supplemental briefing to MTD) remitted by F. Cann in support of MTD (Standing) in preparation of oral argument	0.90	\$ 410.00/hr	\$ 369.00
03/20/2017	KDJ	<b>Draft:</b> Review Motion/response/authorities (.7) and draft outline (.8) for oral argument on D's MTD (standing) in preparation for 3/21/17 oral argument on motion	1.50	\$ 410.00/hr	\$ 615.00
03/21/2017	KDJ	<b>Review:</b> Prep for oral argument on D's MTD (standing) at fed court (cafe)	0.50	\$ 410.00/hr	\$ 205.00
03/21/2017	KDJ	<b>Court Time:</b> Appear and argue at oral argument for D's Motion to dismiss with J. Beckerman	1.60	\$ 410.00/hr	\$ 656.00
03/22/2017	KDJ	<b>Meeting:</b> Meeting with B. Knewton after oral argument on D's motion to dismiss to assess hearing, D's arguments, and next steps/strategy (need scheduling order/discovery)	0.40	\$ 410.00/hr	\$ 164.00
03/22/2017	KDJ	<b>Correspondence:</b> Emails (4) to and from from client RE inquire as to oral argument on 3/21/17; give assessment of hearing and next steps, etc.	0.20	\$ 410.00/hr	\$ 82.00
05/11/2017	KDJ	<b>Review:</b> Receive and initial review D's RFA sent via email	0.40	\$ 410.00/hr	\$ 164.00
05/11/2017	KDJ	<b>Correspondence:</b> Emails to and from F. Cann RE expired initial discovery order, request to pull back RFA and wait until court's decision on MTD and then request Rule 16 conference to solidify new discovery order and issues RE stay	0.30	\$ 410.00/hr	\$ 123.00

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05/15/2017	KDJ	<b>Phone Call:</b> Phone call with B Knewtson RE D's RFA's and responses and discovery path	0.40	\$ 410.00/hr	\$ 164.00
05/16/2017	KDJ	<b>Phone Call:</b> Phone call from F. Cann RE expired initial discovery order, request to pull back RFA and wait until court's decision on MTD and then request Rule 16 conference to solidify new discovery order and issues RE stay- he refuses to do so (see emails)	0.20	\$ 410.00/hr	\$ 82.00
05/16/2017	KDJ	<b>Phone Call:</b> emails (2) to and from Fred Cann- refuses to pull back RFA even though no discovery order in place, no ruling on D's MTD, and no motion to compel filed	0.10	\$ 410.00/hr	\$ 41.00
05/17/2017	KDJ	<b>Correspondence:</b> Emails to and from F. Cann (3) RE continued refusal to pull back RFAs, he suggests extension request but not the point, need rule 16 conference, etc.	0.20	\$ 410.00/hr	\$ 82.00
05/24/2017	KDJ	<b>Meeting:</b> Meet with B. Knewtsen downtown to discuss strategy and review D's RFAs and responses to RFAs, along with generic agreements and bills of sale etc., attached to RFAs	1.00	\$ 410.00/hr	\$ 410.00
05/26/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knewtson RE discuss D's unwillingness to pull back RFAs even though no discovery plan in place/expired and his motion to compel not decided; discovery plan- I will email parties RE email to court per Rule 83 (reminder re MTD decision as required) and to request Rule 16 conference- new discovery schedule, etc.	0.40	\$ 410.00/hr	\$ 164.00
05/30/2017	KDJ	<b>Correspondence:</b> Email to opposing counsel confer on email to court RE LR 83-13 reminder to court (proposed text of email to court) and also request for rule 16 conference to set new discovery schedule; refusal to pull back RFAs	0.20	\$ 410.00/hr	\$ 82.00
05/31/2017	KDJ	<b>Draft:</b> Begin drafting P's responses to D's first RFAs	0.70	\$ 410.00/hr	\$ 287.00

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05/31/2017	KDJ	<b>Draft:</b> Phone call with client RE P's responses to D's first RFAs (set meeting for in office appointment for client to review RFAs and provide responses)	0.30	\$ 410.00/hr	\$ 123.00
05/31/2017	KDJ	<b>Draft:</b> Phone call with B. Knetwson RE P's responses to D's first RFAs, P's requests, and Rule 16 conference request emails to court; discovery strategy and timelines.	0.30	\$ 410.00/hr	\$ 123.00
06/01/2017	KDJ	<b>Correspondence:</b> emails (4) to and from opposing counsel RE text LR 83-13 joint email to court and email to court RE Rule 16 conference	0.20	\$ 410.00/hr	\$ 82.00
06/01/2017	KDJ	<b>Correspondence:</b> Emails (2) the court RE joint LR 83-13 reminder to court and email RE parties request for Rule 16 conference to set new discovery/deadline schedule	0.20	\$ 410.00/hr	\$ 82.00
06/07/2017	KDJ	<b>Meeting:</b> Meet with Client to review D's First RFA and get client's initial responses to RFAs (60+ RFAs)	1.20	\$ 410.00/hr	\$ 492.00
06/08/2017	KDJ	<b>Draft:</b> Emails to and from B. Knewtson (6 total emails) RE his amendments to initial draft of responses RFAs	0.40	\$ 410.00/hr	\$ 164.00
06/08/2017	KDJ	<b>Correspondence:</b> Email client RE appointment to come in on weekend to review completed responses to RFAs and execute	0.10	\$ 410.00/hr	\$ 41.00
06/11/2017	KDJ	<b>Draft:</b> Finish final draft of RFAs incorporating B. Knewtson's amendments	0.80	\$ 410.00/hr	\$ 328.00
06/11/2017	KDJ	<b>Meeting:</b> Meet with client to review and execute final draft of responses to D's first RFAs (60+ requests)	1.30	\$ 410.00/hr	\$ 533.00
06/11/2017	KDJ	<b>Correspondence:</b> Email opposing counsel attaching service of P's responses to D's first RFAs	0.10	\$ 410.00/hr	\$ 41.00
06/12/2017	KDJ	<b>Correspondence:</b> Email from F. Cann re "understand" but "do not agree" with RFA with no formal discovery schedule/deadlines expired	0.10	\$ 410.00/hr	\$ 41.00

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08/18/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knetwson RE Rule 16 conference and issues with opposing counsel RE discovery	0.10	\$ 410.00/hr	\$ 41.00
08/23/2017	KDJ	<b>Phone Call:</b> Phone call wit B. Knewtson RE communications with opposing counsel RE discovery issues	0.20	\$ 410.00/hr	\$ 82.00
08/23/2017	KDJ	<b>Correspondence:</b> Emails to and from opposing counsel RE new deadlines discovery order and need for Rule 16 conference	0.40	\$ 410.00/hr	\$ 164.00
08/23/2017	KDJ	<b>Phone Call:</b> Phone call with client RE notify of J. Brown upholding F&R, status of case, next steps, expectations, etc.	0.60	\$ 410.00/hr	\$ 246.00
08/24/2017	KDJ	<b>Phone Call:</b> Phone call wit B. Knewtson RE discover issues -premature and status strategy to deal with opposing counsel RE repsentations	0.20	\$ 410.00/hr	\$ 82.00
08/24/2017	KDJ	<b>Correspondence:</b> Multiple emails to and from opposing counsel RE new deadlines discovery order and need for Rule 16 conference	0.20	\$ 410.00/hr	\$ 82.00
08/24/2017	KDJ	<b>Correspondence:</b> Emails to court and opposing counsel RE scheduling Rule 16 conference	0.30	\$ 410.00/hr	\$ 123.00
08/30/2017	KDJ	<b>Court Time:</b> Attend and participate in Rule 16 conference in Judge's chambers	0.60	\$ 410.00/hr	\$ 246.00
09/12/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knewtson RE discuss Answer and potential MTS RE substance of Aff defenses and (no) applicability to claim or case	0.60	\$ 410.00/hr	\$ 246.00
09/12/2017	KDJ	<b>Review:</b> Review D's Answer	0.40	\$ 410.00/hr	\$ 164.00
10/14/2017	KDJ	<b>Draft:</b> Draft of P's First Request for Production of Docs	1.60	\$ 410.00/hr	\$ 656.00
10/15/2017	KDJ	<b>Draft:</b> Draft P's First Set of Interrogs	1.10	\$ 410.00/hr	\$ 451.00

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10/17/2017	KDJ	<b>Draft:</b> Rework (draft) P's FRFP and First Interrogatories based on suggestions and edits on edits sent by B. Knewton	0.80	\$ 410.00/hr	\$ 328.00
10/18/2017	KDJ	<b>Draft:</b> Finish drafting final versions of P's FRFP and First Interrogatories (.7) and email (.1) to opposing counsel with scrubbed word docs	0.90	\$ 410.00/hr	\$ 369.00
10/20/2017	KDJ	<b>Review:</b> review emails from J. Hasson RE potential pre-cert settlement and proposed protective order	0.20	\$ 410.00/hr	\$ 82.00
10/20/2017	KDJ	<b>Review:</b> Compose lengthy email response emails from J. Hasson RE potential pre-cert settlement RE need for discovery and certification, etc.	0.30	\$ 410.00/hr	\$ 123.00
10/20/2017	KDJ	<b>Review:</b> Review proposed protective order drafted and sent by J. Hasson	0.30	\$ 410.00/hr	\$ 123.00
10/20/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knewton RE substance of D's responses to requests	0.20	\$ 410.00/hr	\$ 82.00
10/20/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knewton RE substance of D's responses to requests	0.20	\$ 410.00/hr	\$ 82.00
10/24/2017	KDJ	<b>Correspondence:</b> Phone conference with opposing counsel as requested by opposing counsel RE: discuss protective order and contentious issues, discuss request/motion to extend time to file MTC arb, discuss possibility of settlement/mediation	0.90	\$ 410.00/hr	\$ 369.00
10/24/2017	KDJ	<b>Phone Call:</b> Phone conference with B. Knewton RE D's (allegedly low) net worth issues and corresponding FDCA class issues, potential settlement numbers, discovery, protection order disputes, information learned from opposing counsel, OR One judgments	0.80	\$ 410.00/hr	\$ 328.00
10/30/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knewton RE potential settlement factors and issues	0.30	\$ 410.00/hr	\$ 123.00



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10/30/2017	KDJ	<b>Review:</b> Review documents provided by D (via DropBox and email) RE partial RFP response docs including tax returns, docs relating to Byrne and debts, some putative class info/lists, alleged arbitration (Citi) docs	0.90	\$ 410.00/hr	\$ 369.00
10/30/2017	KDJ	<b>Correspondence:</b> Review and respond to email sent by J. Hasson RE review of docs he sent and ready to stipulate to net worth (insufficient docs-need more discovery, depo, etc.)	0.30	\$ 410.00/hr	\$ 123.00
10/31/2017	KDJ	<b>Phone Call:</b> Phone call with B. Knewtson RE D's extension of file MTC Arb	0.10	\$ 410.00/hr	\$ 41.00
10/31/2017	KDJ	<b>Review:</b> Review D's motion for extension of time to file MTC Arb and declaration and exhibit in support (opposed)	0.20	\$ 410.00/hr	\$ 82.00
11/01/2017	KDJ	<b>Correspondence:</b> Emails to and from opposing counsel RE 30(b)(6) depo topics, motion for extension to file Motion to compel arb,our client's unredacted driver's license number filed as exhibit with court, etc.	0.20	\$ 410.00/hr	\$ 82.00
11/01/2017	KDJ	<b>Correspondence:</b> Email to Ms. Williams court clerk RE Plaintiff's have decided not to file response in opposition to D's motion for extension of time to file motion to compel arb	0.10	\$ 410.00/hr	\$ 41.00
11/16/2017	KDJ	<b>Correspondence:</b> Emails to and from opposing counsel RE wants extension of discovery response deadlines until 11/22 (ok)	0.10	\$ 410.00/hr	\$ 41.00
11/20/2017	KDJ	<b>Correspondence:</b> Emails to and from opposing counsel RE now needs almost 2 more week extension to answer discovery responses until 12/1 (ok again); we request extension of scheduling order deadlines especially motion for amendments/adding additional parties given delay, arb issues, etc.	0.30	\$ 410.00/hr	\$ 123.00

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11/21/2017	KDJ	<b>Correspondence:</b> follow up email RE on to opposing counsel RE requested redaction of sensitive personal info submitted by D in ex to dec of Fred Cann	0.20	\$ 410.00/hr	\$ 82.00
11/22/2017	KDJ	<b>Phone Call:</b> Pone call with B. Knewtson RE discovery issue and strategy and discovery and potential for settlement	0.30	\$ 410.00/hr	\$ 123.00
12/01/2017	KDJ	<b>Correspondence:</b> emails (3) to and from J. Hasson RE discovery docs in Dropbox and request for another extension; parties need to extend discovery and PTO deadlines need agreement asap first	0.20	\$ 410.00/hr	\$ 82.00
12/06/2017	KDJ	<b>Review:</b> Review email from J. Hasson RE discovery responses (FRFP and Roggs)- first review of responses and initial review of docs	0.60	\$ 410.00/hr	\$ 246.00
12/06/2017	KDJ	<b>Draft:</b> Draft proposed joint/stipulated motion to extend discovery and PTO deadlines to be reviewed by opposing counsel (.6); email to opposing counsel for review	0.70	\$ 410.00/hr	\$ 287.00
12/08/2017	KDJ	<b>Correspondence:</b> Email to and from opposing counsel RE proposed joint/stipulated motion to extend discovery and PTO deadlines need approval amendments to file ASAP-approved to file by J. Hasson (.2); file and email to Ms. Williams court clerk (.1)	0.30	\$ 410.00/hr	\$ 123.00
12/10/2017	KDJ	<b>Correspondence:</b> Email from F. Cann RE sent to court RE redaction of improper info on dkt. 35	0.10	\$ 410.00/hr	\$ 41.00
01/02/2018	KDJ	<b>Phone Call:</b> Call with B. Knewtson RE protective order issues as applied to anticipated discovery in this case	0.10	\$ 410.00/hr	\$ 41.00
01/04/2018	KDJ	<b>Review:</b> Review D's second RFA, 1st RFP, and 1st Roggs for drafting responses	0.60	\$ 410.00/hr	\$ 246.00
01/04/2018	KDJ	<b>Draft:</b> Begin drafting of responses to D's 2nd RFA	0.60	\$ 410.00/hr	\$ 246.00

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01/04/2018	KDJ	<b>Draft:</b> Begin drafting of responses to D's 1st Roggs	0.90	\$ 410.00/hr	\$ 369.00
01/05/2018	KDJ	<b>Draft:</b> In-office meeting with client to finish drafting of responses to D's 1st Roggs and 2nd RFP and review D's 1st RFP and gather and review documents in our possession	2.80	\$ 410.00/hr	\$ 1,148.00
01/05/2018	KDJ	<b>Draft:</b> Begin drafting responses to D's 1st RFP	1.10	\$ 410.00/hr	\$ 451.00
01/06/2018	KDJ	<b>Draft:</b> Continue drafting responses to D's 1st RFP	0.80	\$ 410.00/hr	\$ 328.00
01/08/2018	KDJ	<b>Draft:</b> Finalize responses to D's 2nd RFA, 1st RFP, and 1st Roggs (.4); email to opposing counsel (.1)	0.50	\$ 410.00/hr	\$ 205.00
01/17/2018	KDJ	<b>Correspondence:</b> Emails to oc RE confirmation of date/time and meeting place (video) for D's depositions of Citi and Goodyear	0.10	\$ 410.00/hr	\$ 41.00
01/17/2018	KDJ	<b>Phone Call:</b> Phone conference with B. Knewton RE D's upcoming deposition of Citi/Goodyear strategy and initial review of all of D's production docs in Drop Box	0.40	\$ 410.00/hr	\$ 164.00
01/17/2018	KDJ	<b>Correspondence:</b> Email to OC RE availabel dates for P's depo and request for dates for D's 30(b)(6)	0.10	\$ 410.00/hr	\$ 41.00
01/22/2018	KDJ	<b>Deposition:</b> Attend and cross D's deposition of Goodyear at oc's office downtown	2.30	\$ 410.00/hr	\$ 943.00
01/22/2018	KDJ	<b>Deposition:</b> Prepare for cross/rebuttal D's deposition of Goodyear at oc's office downtown	0.60	\$ 410.00/hr	\$ 246.00
01/22/2018	KDJ	<b>Draft:</b> Prepare for (questions) cross/rebuttal of D's depo of Citibank tomorrow	0.70	\$ 410.00/hr	\$ 287.00
01/23/2018	KDJ	<b>Deposition:</b> Attend D's deposition of Citibank-participate cross/rebuttal of Citibank deponent	5.90	\$ 410.00/hr	\$ 2,419.00
01/25/2018	KDJ	<b>Draft:</b> Draft Notice of 30(b)(6) deposition of Oregon One (1.3); email to opposing counsel (.1)	1.40	\$ 410.00/hr	\$ 574.00

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01/25/2018	KDJ	<b>Correspondence:</b> Emails to and from Fred Cann (4) RE conferral on another requested extension for deadline to submit MTC Arb	0.20	\$ 410.00/hr	\$ 82.00
01/29/2018	KDJ	<b>Phone Call:</b> Phone call from J. Hasson RE needs to change Byrne's depo date for eye surgery; discuss discovery; objections to 30(b)(6) topics; possible settlement; etc.	0.20	\$ 410.00/hr	\$ 82.00
01/29/2018	KDJ	<b>Review:</b> Review D's motion to extend time to file MTC Arb and Court's minute order granting	0.20	\$ 410.00/hr	\$ 82.00
01/29/2018	KDJ	<b>Review:</b> Review email with letter attached from J. Hasson RE objections to subjects notice for 30(b)(6) depo	0.20	\$ 410.00/hr	\$ 82.00
01/30/2018	KDJ	<b>Phone Call:</b> Phone conference with B. Knewtson RE address OC objections to 30 (b)(6) depo topics deposition; strategy and topics for depo, and division of labor for depo prep	1.00	\$ 410.00/hr	\$ 410.00
02/06/2018	KDJ	<b>Review:</b> Initial review of D's Motion for Stay Pending Arbitration	0.30	\$ 410.00/hr	\$ 123.00
02/08/2018	KDJ	<b>Draft:</b> Draft Stipulated Motion to Extend Case Deadlines (.4); email to OC for review/acceptance (.1)	0.50	\$ 410.00/hr	\$ 205.00
02/12/2018	KDJ	<b>Correspondence:</b> Emails from OCs RE Stipulated Motion to Extend Case Deadlines OK to file (.1)	0.20	\$ 410.00/hr	\$ 82.00
02/12/2018	KDJ	<b>Review:</b> Review deposition notice for plaintiff sent by D	0.20	\$ 410.00/hr	\$ 82.00
02/16/2018	KDJ	<b>Draft:</b> Draft letter to D RE Response to January 29, 2018 Letter from Jeffrey Hasson RE Objections to Plaintiff's Notice of FRCP 30(b)(6) Deposition Notice (.7); email to oc (.1)	0.80	\$ 410.00/hr	\$ 328.00

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02/17/2018	KDJ	<b>Draft:</b> Prep for Oregon One 30(b)(6) depo: research OECl and review and pull OR ONE Jane Jones cases and docs to be used at deposition (.7); insert docs and questions relating to Jane Jones into deposition outline (.2)	0.90	\$ 410.00/hr	\$ 369.00
02/17/2018	KDJ	<b>Draft:</b> Prep for Oregon One 30(b)(6) depo: Begin drafting deposition prep outline RE timeline, class definition; rules of road; OR one background; letter 1 and 2 and phone call from plaintiff; Jane Jones identity -court filings by OR One using Jane Jones	0.80	\$ 410.00/hr	\$ 328.00
02/18/2018	KDJ	<b>Draft:</b> Prepare and draft outline for 30(b)(6) deposition of D (begin drafting of actual deposition outline RE rules of road, basic OR 1 and deponent info, complaint, Jane Jones alias, discovery response questions)	1.60	\$ 410.00/hr	\$ 656.00
02/20/2018	KDJ	<b>Draft:</b> Finish drafting outline and choose and prepare exhibits in preparation of OR One 30(b)(6) depo (26 potential exhibits)	4.80	\$ 410.00/hr	\$ 1,968.00
02/21/2018	KDJ	<b>Deposition:</b> Attend and conduct 30(b)(6) depo of OR One at Fred Cann's office downtown	6.50	\$ 410.00/hr	\$ 2,665.00
02/27/2018	KDJ	<b>Phone Call:</b> Phone call with J. Hasson RE mediation, etc.	0.20	\$ 410.00/hr	\$ 82.00
02/27/2018	KDJ	<b>Correspondence:</b> emails to and from J. Hasson (7) RE mediation with Susan Hammer	0.30	\$ 410.00/hr	\$ 123.00
02/28/2018	KDJ	<b>Correspondence:</b> email from L. Dusky (Hasson) RE cancellation of P's scheduled depo	0.10	\$ 410.00/hr	\$ 41.00
03/01/2018	KDJ	<b>Correspondence:</b> Email from Susan Hammer RE mediation set for 4/18/18 etc.	0.10	\$ 410.00/hr	\$ 41.00
03/06/2018	KDJ	<b>Research:</b> Research for response to MTC Arb (formation-OR law-standards-presumptions)	1.90	\$ 410.00/hr	\$ 779.00

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03/07/2018	KDJ	<b>Research:</b> Research for response to MTC Arb (non-signatory to agreement- party to agreement-scope issues-mailbox rule-IMPLIED-IN-FACT k and acceptance through conduct)	1.70	\$ 410.00/hr	\$ 697.00
03/07/2018	KDJ	<b>Draft:</b> Draft outline for response to MTC Arb	1.30	\$ 410.00/hr	\$ 533.00
03/07/2018	KDJ	<b>Draft:</b> Begin drafting response to MTC Arb (introduction and standards/law)	2.50	\$ 410.00/hr	\$ 1,025.00
03/08/2018	KDJ	<b>Draft:</b> Continue drafting response to MTC Arb ("no formation" of arb agreement argument)	2.10	\$ 410.00/hr	\$ 861.00
03/08/2018	KDJ	<b>Meeting:</b> Meeting with client to draft and execute his decl. for response to MTC arb; review status of case	0.70	\$ 410.00/hr	\$ 287.00
03/09/2018	KDJ	<b>Draft:</b> Finish drafting response to MTC Arb (no formation, no assignment of arb rights, scope, conclusion)	4.20	\$ 410.00/hr	\$ 1,722.00
03/09/2018	KDJ	<b>Draft:</b> Draft supporting docs (decl. and exhibits) for MTC Arb	1.80	\$ 410.00/hr	\$ 738.00
03/23/2018	KDJ	<b>Draft:</b> Review D's reply to MTC Arb and make outline of all issues and cases to research as used in support of motion	0.90	\$ 410.00/hr	\$ 369.00
03/28/2018	KDJ	<b>Review:</b> Review supplemental discovery sent by D; assess/outline what has not been produced per previous discovery and what has still not been produced that has been requested, what is needed, and incongruous responses by D	0.80	\$ 410.00/hr	\$ 328.00
03/28/2018	KDJ	<b>Correspondence:</b> Draft in-depth email to oc- RE request supplemental response to P's discovery request RE 30(b)(6) depo testimony incomplete or contradictory testimony compared to responses; request to reset deadline RE amend pleadings to add additional parties and or claims	0.30	\$ 410.00/hr	\$ 123.00

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04/10/2018	KDJ	<b>Draft:</b> Draft Mediation Statement requested by mediator Susan Hammer for 4/28/18 mediation date (.7); email to S. Hammer with attached docs (.1)	0.90	\$ 410.00/hr	\$ 369.00
04/15/2018	KDJ	<b>Review:</b> review email and attached production docs sent by oc (new spreadsheet with putative class members) (.6), and response email to oc RE missing information (.1)	0.70	\$ 410.00/hr	\$ 287.00
04/16/2018	KDJ	<b>Phone Call:</b> Phone call from Susan Hammer (mediator) RE upcoming mediation	0.30	\$ 410.00/hr	\$ 123.00
04/18/2018	KDJ	<b>Meeting:</b> Prep and attend mediation with Susan Hammer with client	8.40	\$ 410.00/hr	\$ 3,444.00
04/27/2018	KDJ	<b>Phone Call:</b> Phone conference with J. Hasson, Susan Hammer (mediator), and B. Knewtson RE settlement, class members-size new data spreadsheets produced by D, remaining terms	1.40	\$ 410.00/hr	\$ 574.00
04/27/2018	KDJ	<b>Review:</b> Review all new spreadsheets sent by OR 1/Hasson RE new class member lists and info on judgments/debts etc. and cross check with each spreadsheet and discover documents (1.3); draft outline of issues and questions for Hasson during phone conference (.4)	1.20	\$ 410.00/hr	\$ 492.00
04/30/2018	KDJ	<b>Correspondence:</b> Phone call from Hasson RE OR 1 accepts forgiveness of class members debts in addition to satisfactions; etc.	0.10	\$ 410.00/hr	\$ 41.00
05/03/2018	KDJ	<b>Correspondence:</b> emails (4) with client RE update of progress of settlement negotiations and answer client questions	0.20	\$ 410.00/hr	\$ 82.00
05/07/2018	KDJ	<b>Correspondence:</b> Emails (2) to and from client update on potential settlement progress	0.20	\$ 410.00/hr	\$ 82.00

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05/10/2018	KDJ	<b>Correspondence:</b> Emails (2) to and from J. Hasson update on potential settlement draft agreement progress (being drafted by J. Hasson said he has tomorrow off to draft)	0.20	\$ 410.00/hr	\$ 82.00
05/21/2018	KDJ	<b>Phone Call:</b> Phone conference with J. Hasson RE issues to be resolved with settlement, motion for prelim, motion to compel arb, Magsitrate Judge consent for class settlement, etc.	0.20	\$ 410.00/hr	\$ 82.00
05/22/2018	KDJ	<b>Phone Call:</b> Phone conference with court RE stay of deadlines, class settlement, magistrate consent questions, motion to compel arb issues, etc.	0.30	\$ 410.00/hr	\$ 123.00
05/30/2018	KDJ	<b>Correspondence:</b> Email from and to client RE current progress of final settlement and timeline	0.10	\$ 410.00/hr	\$ 41.00
06/01/2018	KDJ	<b>Phone Call:</b> Phone call with Bret Knewtson RE discovery plaintiff's requests to D	0.30	\$ 410.00/hr	\$ 123.00
06/04/2018	KDJ	<b>Draft:</b> Begin drafting preliminary motion for class settlement approval/certification (Class Motion)(intro and procedural history)	1.30	\$ 410.00/hr	\$ 533.00
06/12/2018	KDJ	<b>Draft:</b> Review assembled/past settlement agreements and model/examples for cross check (.5); Review substantive law on class settlements (NCLC Digital Library) to ensure terms are legally compliant and match with best practices (.8); then Make substantive edits to settlement agreement, notice exhibits and proposed order (1.4), and send to co-counsel for his edits (.1)	2.80	\$ 410.00/hr	\$ 1,148.00
06/13/2018	KDJ	<b>Correspondence:</b> Email edits to settlement agreement and class notice exhibits and proposed order to J. Hasson (request Ex c-postcard notice)	0.20	\$ 410.00/hr	\$ 82.00
06/14/2018	KDJ	<b>Draft:</b> Review EX C sent by J. Hasson (postcard class notice), make edits, and send to co-counsel for his edits/approval, and send back to J. Hasson	0.50	\$ 410.00/hr	\$ 205.00



**Kelly D. Jones, Attorney at Law**  
 819 SE Morrison St.  
 Suite 255  
 Portland 97214  
 Phone: 503-847-4329  
 Email: kellydonovanjones@gmail.com

# INVOICE

**Robert D. Byrne**

**Invoice 20013**

# PRE-BILL

<b>Date</b>	Oct 05, 2018
<b>Service Thru</b>	Oct 05, 2018

06/23/2018	KDJ	<b>Draft:</b> Continue drafting of Prelim. Class Motion (settlement process and Susan Hammer)	0.90	\$ 410.00/hr	\$ 369.00
06/25/2018	KDJ	<b>Research:</b> Continue drafting of Class Motion (applicable law)(.8); research settlement standards from cases and Rule 23 cases and NCLC Digital Library (.9)	1.70	\$ 410.00/hr	\$ 697.00
06/26/2018	KDJ	<b>Draft:</b> Review settlement agreement and exhibits edits (on plaintiff's edits) sent by J. Hasson (.3), and make final plaintiff edits (.4); email final edits to J. Hasson (.1)	0.60	\$ 410.00/hr	\$ 246.00
06/26/2018	KDJ	<b>Correspondence:</b> Emails (5) with client RE client review of final settlement agreement; questions and responses; authority to sign	0.30	\$ 410.00/hr	\$ 123.00
06/27/2018	KDJ	<b>Draft:</b> Continue drafting of Class Motion (settlement terms and fairness standard application)	0.80	\$ 410.00/hr	\$ 328.00
06/27/2018	KDJ	<b>Correspondence:</b> Emails (2) with J. Hasson RE execution of final settlement agreement; clerical modifications to exhibits; no relationship with cy pres	0.20	\$ 410.00/hr	\$ 82.00
06/28/2018	KDJ	<b>Draft:</b> Continue drafting of Class Motion (Rule 23(a) factors and application)	1.20	\$ 410.00/hr	\$ 492.00
07/02/2018	KDJ	<b>Draft:</b> Continue drafting of Class Motion (declaration of Kelly Jones)	0.70	\$ 410.00/hr	\$ 287.00
07/04/2018	KDJ	<b>Draft:</b> Draft proposed declaration for GCG and send to GCG rep	0.60	\$ 410.00/hr	\$ 246.00
07/10/2018	KDJ	<b>Draft:</b> finish drafting of Class Motion for approval add in Knewtson declaration cites and table of authorities and TOC and finalize all exhibits (1.5); send email to J. Hasson with motion and all exhibits and declarations for review (.1)	1.60	\$ 410.00/hr	\$ 656.00

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07/13/2018	KDJ	<b>Draft:</b> Make final amendments to Class Motion-adding in new cites for new Shwartz (GCG) declaration as new deponent; finalize for filing	0.50	\$ 410.00/hr	\$ 205.00
07/13/2018	KDJ	<b>Review:</b> Review final of declaration of Schwartz (GCG) declaration to be filed in support of prelim motion of approval	0.20	\$ 410.00/hr	\$ 82.00
08/07/2018	KDJ	<b>Correspondence:</b> (9) email to and from A. Lee and J. Hasson RE class admin, notices, website, phone numer, verification of class member info sent by D, etc.	0.30	\$ 410.00/hr	\$ 123.00
08/07/2018	KDJ	<b>Draft:</b> Design Byrne v. OR I Class Action Webiste at oregononesettlement.com (home page and begin building pages)	1.10	\$ 200.00/hr	\$ 220.00
08/10/2018	KDJ	<b>Draft:</b> Continue Design of Byrne v. OR I Class Action Website at oregononesettlement.com (FAQ, Notice, and Other info pages)	1.60	\$ 200.00/hr	\$ 320.00
08/13/2018	KDJ	<b>Correspondence:</b> (4) emails to and from client RE Court prelim. approves settlement, attach order, explain order and next steps	0.30	\$ 410.00/hr	\$ 123.00
08/23/2018	KDJ	<b>Correspondence:</b> Email from A. Lee (CGC) with "final" draft of class notices for counsel's review	0.10	\$ 410.00/hr	\$ 41.00
08/26/2018	KDJ	<b>Review:</b> Review "final" versions of class notices and docs to go out sent by A. Lee (CGC)(.5); make substantive edits (.3); and email edits back to A. Lee and J. Hasson for inclusion into docs (.1)	0.90	\$ 410.00/hr	\$ 369.00
08/27/2018	KDJ	<b>Review:</b> Email with FINAL version of class notice and docs incorporating my amendments from A. Lee (CGC) (.1); do final review (.2); respond all looks good to Class counsel (.1)	0.40	\$ 410.00/hr	\$ 164.00

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# PRE-BILL

<b>Date</b>	Oct 05, 2018
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08/27/2018	KDJ	<b>Correspondence:</b> Email to J. Hasson RE discrepancy in order RE time to file response but date certain says 10/5	0.10	\$ 410.00/hr	\$ 41.00
08/28/2018	KDJ	<b>Correspondence:</b> Email from J. Hasson RE agrees that fee motion due by 10/5	0.10	\$ 410.00/hr	\$ 41.00
08/30/2018	KDJ	<b>Correspondence:</b> Email from A. Lee (CGC) re admin: We received data for 158 class members. We've run them through the USPS NCOA database for updated addresses, and will be sending postcard notice on 9/5.	0.10	\$ 410.00/hr	\$ 41.00
08/31/2018	KDJ	<b>Correspondence:</b> Respond to A. Lee (CGC) email RE confirm class notice and website url, etc.	0.10	\$ 410.00/hr	\$ 41.00
08/31/2018	KDJ	<b>Correspondence:</b> email to J. Hasson D respond to his query: "Sounds good. Fee app due 10/5/18, any response due 10/19/18, any reply due 11/2/18."	0.10	\$ 410.00/hr	\$ 41.00
09/30/2018	KDJ	<b>Research:</b> Research for fee motion RE case law on awarding lodestar on fee-shifting class stat damages (FDCPA and other) when no fees from common fund (.8); outline for motion (.3)	1.10	\$ 410.00/hr	\$ 451.00
10/01/2018	KDJ	<b>Draft:</b> Begin drafting fee motion: lodestar vs. percentage of common fund and FDCPA right to fees (fee-shifting, proportionality, etc.)	1.20	\$ 410.00/hr	\$ 492.00
10/05/2018	KDJ	<b>Draft:</b> Continue drafting Motion for fees, costs, and service award and declaration in support	1.80	\$ 410.00/hr	\$ 738.00

<b>Total Hours</b>	176.60 hrs
<b>Total Task</b>	\$ 71,839.00
<b>Total Invoice Amount</b>	\$ 71,839.00
<b>Previous Balance</b>	<b>\$ 0.00</b>

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<b>Date</b>	Oct 05, 2018
<b>Service Thru</b>	Oct 05, 2018

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**Balance (Amount Due)      \$ 71,839.00**

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**Attorneys for Plaintiff**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

ROBERT D. BYRNE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

OREGON ONE, INC., an Oregon Corporation,

Defendant.

Case No.: 3:16-cv-01910-SB  
DECLARATION OF BRET KNEWTSON IN  
SUPPORT OF PLAINTIFF'S PETITION FOR  
ATTORNEY FEES

I, Bret Knewtson, under penalty of perjury under the laws of the United States, declare as follows:

1. The total time spent is 90.30. Knewtson has identified 15 hours of time spent conferring with co-counsel. After deducting that time 75.30 hours remain. At the rate of \$400/hour the lodestar award would be \$30,120.

2. I am one of Robert Byrne's attorney's in this case. I make this declaration based on my personal knowledge.
3. Attached as Exhibit 1 is the time record for my work in this case. I recorded the time by running a timer using Amicus Attorney time tracking software when executing the task.
4. I have been practicing law full time since my admission to the bar in 2003 (fifteen years). I have developed a unique practice area that focuses on assisting primarily consumer clients with debt collection problems. I began my practice by doing bankruptcy and tenant work. I primarily did consumer bankruptcy work from 2003 to 2011 with bankruptcy work tapering off thereafter. Since 2007 I have been active in debt collection and FDCPA work. In the last five years of my practice 50% of my work is defending collection suits, 50% is plaintiff FDCPA type cases and a nominal number of bankruptcy cases. Currently my time is primarily spent on plaintiff FDCPA litigation work, some debt defense work and no bankruptcy work. There is some overlap between these areas so the percentages are approximate.
5. I say with a high degree of confidence that I am now one of two lawyers in Oregon<sup>1</sup>, currently practicing, that substantively defends collection lawsuits as a primary practice area. Economically this is a very difficult practice area. It is essentially contingent hourly work involving cases that take 1-3 years to resolve. Few are settled. Most clients are poor and cannot pay for representation or even costs. Those that can pay something cannot afford to

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<sup>1</sup> Around 2017, Chris Mertens began substantively defending collection lawsuits. Prior to that the only person I am aware of who did substantive collection work was Danny Gerlt who died in 2010. James MacAfee, in Salem, has regularly represented collection defendants but my understanding of his work is that he rarely litigates those cases to a final decision, if ever, and generally settles the case by payment to the collection plaintiff.

pay for the kind of defense that it takes to prevail on a substantive issue that has not been developed in our local jurisdiction.

6. All of my work since 2017 is litigation with about five bankruptcy cases. The issues typically involve the debtor/creditor and credit/banking laws of other states, consumer protection statutes, and credit regulation. The entities and people that I litigate against are far better funded and are among the best in their fields.
7. All of my FDCPA cases are filed in Portland. The majority of my collection defense clients reside in Multnomah County or Washington County.
8. When I started defending collection lawsuits around 2006 or 2007 it was commonplace for lawyers to allege a right to high interest rates and attorney fees. I can say with sincerity, even if based on anecdotal evidence, that as a direct result of my defense work that today's standard credit card collection lawsuit does not allege a right to interest or attorney fees. Which may have saved Oregon consumers millions of dollars and prevented many bankruptcies. Those numbers can only be calculated by the debt buyer industry. That result was only possible by both defending and utilizing the enforcement right of the FDCPA. I am certain that my efforts have resulted in more consumer protection than the Oregon Department of Justice has accomplished. Every one of my client's appeal of a substantive collection issue serves as a significant benefit to credit card collection defendants because those decisions clarify the law. The guidance of the Court of Appeals in turn, gives those consumer collection defendants better access to justice as clarity of law makes representation more feasible and affordable and protects the integrity of our legal system by ensuring accurate outcomes in collection cases.

9. Within my peer group I am the leader in developing case law that benefits the consumer collection class of client. This is verifiable by the appellate decisions, obtained in Capital One Bank v. Fort, 242 Ore. App. 166, 255 P.3d 508, 2011 (established VA law did not exclude operation of ORS 20.096 in making one sided attorney fee right, reciprocal in credit card agreement), CACV of Colo., LLC v. Stevens, 248 Ore. App. 624, 274 P.3d 859, 2012 (a win on establishing debt buyer not able to invoke credit card attorney fee clause pursuant to DE law and a loss on applying the DE shorter statute of limitations as a result of the effect of tolling, but a seminal case providing guidance on many choice of law issues), PRA LLC, v. Jason Sanders, 14CVO5489, A159821 (remand on issue of whether credit card periodic statements sent by Capital One could evidence an account stated, pretty unlikely) and Brian Carlos v. Patenaude & Felix APC, No. 15-35986, 14-cv-00921-MO (reversed summary judgment for PnF and remanded for jury trial on issue of whether debt was time barred under VA statute of limitations and if PnF is liable under FDCPA for suing on the debt, class case). Aside from my cases there are almost no Oregon consumer credit finance creditor vs debtor appellate decisions in the last 30 years<sup>2</sup>.
10. Mark Passannante and I prevailed in one of the very few FDCPA jury trials in State court (Boitz v McGavic et al Mult Cnty 120100746). The decision in that case was a great leap forward as well in advancing the statute of limitations defense in Capital One credit card cases. That issue is still being contested in *Carlos*. Supra. Other significant cases are Lorie Wilson v NACM et al, 12-cv-01515-ST, which established possibility of award of statutory damages per defendant rather than per case, and Rigoberto Porras v Vial Fotheringham LLP

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<sup>2</sup> Citibank S. Dakota N.A. v. Santoro, 210 Or App 344, 347, 150 P3d 429, 431 (2006), *rev den*, 342 Or 473 (2007) might be the only other contemporary appeal of a consumer debtor/creditor issue.



et al, 3:13-cv-0699 in which District Court Judge Brown determined that lawyers collecting for HOA's are subject to the FDCPA. That case was fiercely contested and opens the door to much needed enforcement action in the area of HOA collections.

11. I have had several significant decisions in defense of collection cases as well. Judge Kantor granted an ORCP 21 motion to dismiss on the basis that a debt arising from a car repossession was subject to the four year UCC statute of limitations. First Commerce of America Inc. v Justin Needham, Multnomah Cnty 131116074 (fees were awarded but the plaintiff has eluded payment). My client prevailed on the argument that the UCC limitation applies to a store dedicated charge card such as a Home Depot card. Midland Funding LLC v Tana Spencer, Washington Cnty C151074CV. Counsel has also blocked debt collectors from relying on statutory pre-suit interest in credit card debt collection cases. Unifund CCR LLC v Christine Corbett, Multnomah 130201887 (no written decision). That case likely has resulted in collection lawsuits being filed for the amount of the debts at charge off and zero percent interest which is a just and significant benefit to consumer collection defendants.

12. Chris Mertens, Kelly Jones, and Mark Passannante aside, Counsel is certain that there are no lawyers in Oregon who have the knowledge or even the will it takes to operate in the area of consumer debt collection law. Resolving these substantive issues on appeal takes years and the only significant income of counsel is obtained by prevailing on these contested issues. Taking on these issues which typically involve unresolved substantive issues involving foreign law is extremely risky.

#### **PRIOR AWARDS OF TIME**

Knewton Fee Awards (not all but those which involved some identified result in recorded in an order):

Investment Retrievers v Witrick; Multnomah County Case #0705-05456.

Delaware SOL of three years applied to credit card debt. Judge Michael Marcus awarded 2007 hourly rate of \$200 and full request of time (45.40 hrs) was granted as a reasonable fee after a fee hearing in the case.

Unifund CCR Partners v Deboer; Clackamas County LV08030148

Delaware three year SOL applied to credit card debt. Reversed on appeal. Judge Breithaupt awarded counsel the hourly rate \$250 and all of the requested time of 95.4 hours in a contested fee hearing in April of 2010.

Unifund CCR Partners v Porras; Washington County C092570CV

Delaware three year SOL applied to credit card debt. Reversed on appeal. On April 19th, 2011, after a contested hearing on fees, Judge Bailey in Washington County awarded an hourly rate of \$275.

Capital One Bank v. Fort, 242 Or. App. 166, 255 P.3d 508 (2011) Applied Virginia three year SOL to Capital One debt, fees denied because contract did not provide right to card holder to fees. Prevailed on appeal and established Oregon law give card holder right to fees. The Oregon Court of Appeals awarded Mr. Knewtson a rate of \$275/hr, and full request of time, for a successful appeal in, in July 2011

LVNV Funding LLC v Kim Nyguen, Multnomah County #1004-06383

Identity theft case collection case. Judge Jones in Multnomah County, awarded the rate of \$225/h, and the requested time of 20.2 hrs, without discussion, as reasonable fee in, August of 2011.

Salzer v Griggs, 3:11-cv-007-BR.

Bad, bad debt collector, default judgment, judgment never collected. Dist. Crt. Judge Brown awarded the rate of \$275/hr, April of 2012.

Nguyen v LVNV et al, 1104-05373

FDCPA claim, settled with offer of judgment. Judge Sky awarded the rate of \$225/hr in, July 2012.

Blalock v Maximum Security Alarm, Inc, 3:11-cv-00720-MO

FDCPA claim. Dist. Crt. Judge Mossman awarded the rate of \$225/hr for an total award of \$37,440 in November of 2012,

Campista v Creditors Financial Group LLC., 3:13-cv-00640-SI, in January of 2014.

FDCPA claim, settled with offer of judgment. Dist. Crt Judge Simon awarded the rate of \$300/hour.

First Commerce of America Inc, v Justin Needham, Multnomah County 131116074, May 2014. Established UCC four year SOL applied to auto deficiency. Circuit Court Judge Kantor awarded the rate of \$300/hour and requested time.

Jason Sanders v Portfolio Recovery Associates LLC 3:15-cv-01289-BR

Unlawful interest being added by debt collector to account. Offer of judgment accepted by plaintiff. Judge Brown awarded the rate of \$300/hour on 1/12/2016.

Harrison v Portfolio Recovery Associates LLC, 15cv0454-PK  
Dist Crt Judge Papak awarded rate of \$300/hour on March 3, 2016. Co-counsel with Mark Passannante.

Brian Carlos v Patenaude & Felix, 3:14-cv-00921-MO  
Class action, on appeal. Dist Crt Judge Mosman awarded rate of \$300/hour March 18, 2016. Co-counsel with Mark Passannante.

Cascade Capital LLC v. Michael Kaiser, Washington County 15CV22866  
Established UCC four year SOL applied to auto deficiency. Judge Waller awarded rate of \$300/hour and 30.8 of 35.7, reduction for time spent on issue the parties agreed to suspend and raise anew had Cascade requested a trial de novo. May 5, 2016

Midland Funding LLC v Tana Spencer, Washington County C151074CV  
Established UCC four year SOL applied to Home Depot store charge card. Judge Butterfield awarded rate of \$300/hour and requested time of 68.3 hours and time 7.3 hours responding to objections. Hearing held May 9, 2016

Portfolio Recovery Associates LLC v Trisha Sprayberry, Washington County C160844CV  
PRA dismissed after answer filed. Award of \$300/hour and all requested time, 11.40 hours by Judge Butterfield. Hearing held March 9, 2017.

Portfolio Recovery Associates LLC v Kirk Nyberg, Washington County C152085CV  
PRA lost collection case for account stated at jury trial. Contested rate of \$350/hour awarded. Total award \$53,696, debt was \$843. Mark Passannante assisted at trial. Judge Upton. Hearing held March 9, 2017.

Alexander Egan v. Midland Funding LLC, GAT 16CV01847-PK  
FDCPA case for misleading representations in State court collection action. Co-counsel with Mark Passannante. Dist Crt Judge Papak awarded rate of \$300/hour and \$23,810. Findings and recommendations adopted by Judge Mosman November 14, 2017.

Portfolio Recovery Associates LLC v Kirk Nyberg, A162536. Appeal of C160844CV  
PRA appealed the loss at jury trial and dismissed appeal. Award of requested rate of \$350/hour and all fees petitioned for in statement of fees, \$7,722. Order entered on December 19, 2017.

Teri Loan Holdings, LLC, v. Joseph Broderick, Washington County 17CV26736, 17CV26739, 17CV26740  
Three student loan collection cases dismissed by plaintiff. Contested rate of \$375/hour awarded. \$27,040.50 awarded. Co-counsel with Chris Mertens. Judge Simms. Hearing on April 30, 2018.

#### **OTHER RELEVANT CASES ESTABLISHING EXPERIENCE AND APTITUDE**

### BENCH TRIALS<sup>3</sup>

Portfolio Recovery Associates LLC v Erica Hafen, Washington County C127811CV. Plaintiff prevailed (loss). PRA waived claim of statutory pre-judgment interest at bench trial.

Unifund CCR LLC v Christine Corbett, Multnomah County 130201887. Plaintiff prevailed (loss) but Unifund denied statutory pre-judgment interest of 9% when contract evidenced agreement on interest. Shortly after that case trend of alleging pre-judgment interest on credit card debt collection lawsuits tapered off and now pre-judgment interest is never alleged (except by a few collectors operating in small claims court).

### JURY TRIALS

CACV of Colorado LLC v Gloria Stevens, C075265CV Washington County. Debt collection case. Defendant/consumer lost. On appeal defendant/consumer established plaintiff, a debt buyer, not entitled to attorney fees under the contract and attorney fees capped by Delaware law. Result was factor in debt collectors not seeking attorney fees in consumer credit card debt collection cases.

Chris Boitz v. Daniel Wilkinson et al., Multnomah County 120100746. FDCPA case and Plaintiff/consumer prevailed (win).

Portfolio Recovery Associates LLC v Kirk Nyberg, Washington County C152085CV. Defense directed verdict for defendant/consumer (win). Plaintiff sued on theory of account stated to collect a Capital One credit card debt.

### APPEALS

Capital One Bank v. Fort, 242 Or. App. 166, 255 P.3d 508 (2011) established right to attorney fees under ORS 20.096 despite Virginia choice of law because of Oregon's dominant public policy of making attorney fees reciprocal. Collection lawsuit defeated by applying Virginia statute of limitations pursuant to Virginia choice of law provision.

CACV of Colo., LLC v. Stevens, 248 Or. App. 624, 274 P.3d 859 (2012) established debt buyer not entitled to fees under the CHA attorney fee clause as a matter of Delaware law. Lost issue of applying Delaware statute of limitations (3 years) because of tolling for non-resident. No award of fees or costs to client therefore no compensation for counsel.

Unifund CCR Partners v. Porras, 249 Or. App. 169, 275 P.3d 992 (2012) same issues as CACV of Colo., LLC v. Stevens. No award of fees or costs to client therefore no compensation for counsel.

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<sup>3</sup> More losses than wins which reflects the difficulty of this practice area as well as that some issues, such as illegal interest rates, do not result in wins for the defendant/consumer but in order to resolve the substantive issue a final decision is required, which is usually in favor of the creditor. Those decisions result in counsel not being compensated but by resolving the substantive issue it ultimately prevents overstating of debts.

Unifund CCR Partners v. Deboer, 249 Or. App. 136, 277 P.3d 562 (2012) same issues as CACV of Colo., LLC v. Stevens. No award of fees or costs to client therefore no compensation for counsel.

Portfolio Recovery Associates LLC v Kirk Nyberg, A162536. Appeal of C160844CV PRA appealed the loss at jury trial and dismissed appeal.

PRA LLC, v. Jason Sanders, 14CVO5489, A159821, COA's Oregon. whether in the ordinary course of business the sending of periodic statements is sufficient evidence to support claim of Account Stated. Sanders identified as prevailing party, case remanded to trial court for resolving fact issue.

Brian Carlos v. Patenaude & Felix APC, No. 15-35986, 14-cv-00921-MO, Appeal of class action alleging PnF engaged in unlawful debt collection by overstating Capital One debt and suing past the statute of limitations. Carlos identified as prevailing party on appeal, case remanded back to trial court for resolving fact issues.

### **PENDING APPEALS**

Kirk Nyberg v. PRA LLC., No. 17-35315, 16-cv-00733-PK Appeal of denial of claims and class certification of FDCPA violations related to collecting credit card debt by asserting an account stated claim.

#### **CLE'S Knewton has presented at**

9.8.2016 Access To Justice Forum, (OSB, Supreme Court of Oregon, Campaign for Equal Justice, Oregon Law Foundation) spoke on progress achieved in collection defense.

11.19.2015 Consumer Debt Collection Defenses (OSB Consumer Law CLE),

4.9.2012 Debt Defense Updates (OTLA Consumer Law CLE),

2012 Secured debt and Means Testing (ORCBA),

10.25.2011 Defending a debt collection case (Pro Bono Fair),

2011 Social Security Income and the Means test (ORCBA),

6.30.2010 Bankruptcy Basics, Consumer Claims in Bankruptcy (OSB Consumer Law Section),

1.13.2010 Defending debt collection lawsuits (WACBA),

2009 Representing Debtors (Multnomah Bar Association),

4.29.2009 Debt Collection Defense (OSB Consumer Law Section).

I have also updated the OUDCPA and FCBA chapters of the most recent OSB Consumer Law Barbook (2012).

### **MARTINDALE PEER REVIEW**

**4.7/50 (51 reviews) last checked 10.03.2018**

**<https://www.martindale.com/organization/law-office-of-bret-knewtson-7901236/>**

### **LEADERSHIP POSITIONS IN OSB SECTIONS OR CONSUMER LAW ORGANIZATIONS**

OSB, Consumer Law Section, Chair 2009

National Association of Consumer Attorneys (NACA), Chair Oregon Chapter 2008-2013

Washington County Bar Association, Treasurer 2008-2010

Oregon Consumer Bankruptcy Association, Moderator 2007-Present

### **OSB FEE SURVEY APPLICATION**

**The survey results are generally unsound.**

The 2017 OSB survey is not reliable evidence of a reasonable hourly rate. It is the best information available but one has to be careful in considering the conclusions. If one was to apply the OSB fee survey for a 2003 admittee such as Knewtson the requested rate of \$400/hour for a lawyer with 13-15 years would fall into the 95% (\$410/hour) for the *Tri-county* area. Exhibit 5, 2017 OSB fee survey, Table 36. On the other hand, it would be much closer to the 75% of the *Portland* area 13-15 year practitioners (\$375/hour) than the 95% (\$460/hour). The survey does not explain how there can be such a divergent result between attorneys with the same experience who have offices in the same economic area. In this modern age of litigation, and even before then, a potential client has a realistic market choice of a downtown lawyer or a Hillsboro lawyer. The point at which a lawyer is not willing to take a remote case is the point at which that potential client is geographically isolated from other markets. Knewtson would and has taken clients in the Eugene area and even Coos Bay. Technology and the legal systems

increased willingness to allow counsel to appear by phone for non-substantive hearings has negated any meaningful distinction of rates based on geographic area.

This is further illustrated by the contrary results in the survey. There is zero correlation between physical location and hourly rate. The notion is ridiculous. If the survey has any significance it has to support the inference that good lawyers are compensated at higher rates than their more mediocre colleagues. The fact that good lawyers tend to be located in the Portland metro area does not support the conclusion that everyone outside of Portland is a lesser lawyer. For instance, the 75% of 10-12 year lawyers in the Tri-county is \$350/hour vs. \$340/hour for Portland. That would seemingly prove that Tri-county 10-12 year lawyers are better and can charge more than their Portland peers. The same would be true of the 25% of 13-15 year Tri-county who charge \$245/hour vs their Portland peers who charge \$180/hour. If being located in Portland makes a lawyer more valuable on the market, then Portland lawyers should have higher rates than the comparable Tri-county lawyers in every category.

Even within a purported geographic market the numbers are unreliable. Are 10-12 year Tri-county lawyers statistically better lawyers than 13-15 year Tri-county lawyers such that the 10-12's can charge on average \$288/hour vs. 13-15's charging, on average \$256/hour? No. Those same lawyers will be 13-15 year Tri-county lawyers in one to three years and the inference of the survey is that despite the increase in expertise and experience, on average, they will be 12% less valuable on the market than when they were 10-12's. There might be an anomaly in which an individual makes a career change and lacks the expertise and value of her new peers but a valid sample size would not be skewed by that anomaly. That is the entire premise of surveys. Clearly the 2017 survey and other editions which have similar inconsistencies are relying on an inadequate sample size. Even if counsels' market rate could be

determined by a survey one cannot say the rates of the Tri-county 13-15 year lawyers are more likely than not represented by the survey results.

**The survey supports a rate of \$400/hour for Knewtson**

If the survey is accurate at all it is as a reflection of more traditional and conservative practices as the vast majority of the bar is engaged in far less challenging and risky endeavors than FDCPA Class lawyers. That rules out application of a rate reflecting the 50% of respondents in any category. That range logically reflects a market that is well represented and not engaged in high risk low return practice areas. The 75% is also not relevant as that range reflects “C” grade lawyers. The last contested awarded rate for Knewtson was \$375/hour on April 30, 2018. Teri Loan Holdings, LLC, v. Joseph Broderick, 17CV26736, a Washington County collection defense case. The 2017 survey reflects a rate of \$300/hour for the 75<sup>th</sup> percentile and a rate of \$410/hour at the 95 percentile. The rate of \$375/hour would therefore be in the 85<sup>th</sup> to 90<sup>th</sup> percentile.

The recent decision in *Demmings, et al v. KKW Trucking, Inc.*, 3:14-cv-0494-SI applied the 95% rates by years of experience category for a consumer FCRA class case despite criticism of the lawyers as having failed to submit documentation and some other substantive issues and identifying that the case did not involve any novel issues of law or extraordinary effort such as litigating an appeal. The rate of \$460/hour was applied to a lawyer with significant experience in complex consumer litigation and 13-15 years of practice. The rate of \$410/hour was applied to a lawyer with 10-12 years experience. The rate of \$400/hour for Knewtson is well within that range for the work done in this case which is also a Portland consumer protection class case. Knewtson has been peer reviewed by 51 lawyers whose ratings of his work average out to 4.7/5.0. Which translates into the 94%.



Application of the Portland rates is appropriate because the case was litigated in Portland. The Portland market also reflects the most accurate rate for fully employed private practice attorneys as it presumably includes a higher percentage of lawyers paying for an office vs the greater possibility of Tri-County “full time” lawyer working from a home office as a result of not having sufficient work to support overhead. The Portland rates also have a bigger sample size than the Tri-County rates for 13-15 year lawyers (26 vs. 17).

Knewton has offered evidence that his skills are unique and necessary for the prosecution of these FDCPA claims. In this case the liability issue was overwhelmed by the far more complicated and esoteric arguments made by defendant’s attempt to block the class claim on the grounds of standing and arbitration. The preponderance of the evidence supports a finding that Knewton is at least in the 80% of Portland lawyers with 13-15 years of practice and as such the rate of \$400/hour is reasonable.

**Pursuant to 28 USC § 1746, I declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.**

Respectfully submitted on October 5, 2018

/s/ Bret Knewton  
Bret Knewton, OSB 03355

Service by ECF:  
Boyd W. Gentry bgency@boydgentrylaw.com

Bret A. Knewton bknewton@yahoo.com

Jeffrey I. Hasson hasson@hassonlawllc.com, april@hassonlawllc.com,

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Kelly D. Jones kellydonovanjones@gmail.com

*Knewton*

**Bret Knewton's  
Time Entry Report for Selected File**

Byrne, Robert (Denis) v Oregon One Class 2016

Client ID:

Matter ID:

Mon. Oct 5, 2015 to Fri. Oct 5, 2018

Date	Task / Activity Code	Task/Activity Description	Time (hrs)
Fri. Oct 5, 2018		Draft declaration in support of fees.	2.00
Wed. Sep 26, 2018		Review time.	0.40
Sat. Jul 7, 2018		Redline motion for preliminary approval and class cert.	1.60
Fri. Jul 6, 2018		Review and edit motion to certify class approve settlement.	1.10
Thu. Jun 14, 2018		Review NACA class notice guidelines and Edit Ex C.	0.50
Tue. Jun 12, 2018		Review settlement agreement, redline.	0.90
Tue. Jun 12, 2018		Draft how amount of class fund was calculated provision in notice documents.	0.50
Fri. May 11, 2018		Quick review of class release, and related docs and comments to co-counsel.	0.70
Fri. Apr 27, 2018		Review 158 class members facts to confirm accurate to class (1.60). Conference call with OC on establishing members of class and terms (1.5).	3.10
Tue. Apr 17, 2018		Review case for mediation.	0.20
Wed. Feb 21, 2018		Oregon One corp designee deposition -	7.00
Tue. Feb 20, 2018		Drafting depo outline for net worth and arbitration issues.	2.40
Mon. Feb 19, 2018		Work on net worth depo outline.	1.60
Mon. Feb 19, 2018		Research on Or1 and related entities for deposition on net worth topic. Document review, taxes, judgments, all in aid of drafting net worth depo outline.	7.80
Thu. Feb 15, 2018		Research class statutory damages and draft outline for depo.	3.20
Tue. Jan 30, 2018		Review OC objections to Oregon1 designee deposition.	0.50
Tue. Jan 30, 2018		Confer with co-counsel on need to address OC objections to Oregon1 deposition (.70), confer on deposition prep, remainder.	1.00

Date	Task / Activity Code	Task/Activity Description	Time (hrs)
Thu. Jan 25, 2018		Edit notice of deposition for Oregon1.	0.50
Tue. Jan 23, 2018		Oregon1 depo Citibank -	5.90
Mon. Jan 22, 2018		851 SW Sixth Avenue, Portland, Oregon Oregon1 depo of Goodyear -	2.30
Mon. Jan 22, 2018		Review documents emailed by OC after 5 for the depo of citibank tomorrow.	0.50
Fri. Jan 19, 2018		Draft quick depo outline for Citi and Good Year depos by defendant.	1.90
Wed. Jan 17, 2018		Review discovery from Oregon1 while conferring with co-counsel on issues related to Goodyear and Citi depo.	0.40
Tue. Jan 2, 2018		Confer with co-counsel on need for protective order given excessive discovery requests and limited issues in case that relate to evidence or knowledge possessed by client.	0.10
Wed. Nov 22, 2017		Call from OC (FC) regarding remote depositions, will have phone access.	0.50
Wed. Nov 22, 2017		Confer on discovery and class settlement issues.	0.30
Tue. Oct 31, 2017		Confer with co-counsel on resp to Def MOET file M Compel Arb (.10), review of various documents produced by Def as there is some disconnect between what subpoena produced and what def produced on account docs (.60), email to OC on same and reply (.20). Quick review of email from OC about settlement (.10).	1.00
Mon. Oct 30, 2017		Confer on settlement issues with co-counsel.	0.30
Wed. Oct 25, 2017		Review documents submitted by Oregon One.	2.30
Tue. Oct 24, 2017		Confer with OC on protective order and motion to compel. They are not seeking PO for purchase agreements, agree to designate consumers as confidential but if filed with court then no agreement on whether redaction is OK, real property records not confidential. Probably agree that taxes are confidential, agree net worth as a number can be disclosed. No agreement on abating motion to compel arbitration.	1.10
Tue Oct 24, 2017		Confer with co-counsel on net worth issues and effect of low net worth on options to handle class issues (.80). Review samples of Oregon One judgments via OJIN (.60).	1 40

Date	Task / Activity Code	Task/Activity Description	Time (hrs)
Fri. Oct 20, 2017		Review proposed PO regarding defendant's financial info and class member's info.	0.40
Fri. Oct 20, 2017		Reply to OC email on protective order. Confer with co-counsel on substance of reply (.20) and reply to OC regarding same (.50).	1.10
Tue. Oct 17, 2017		Review revisions to my revisions of PL discovery requests, make substantive changes.	1.20
Mon. Oct 16, 2017		Review first draft of discovery.	2.50
Tue. Sep 12, 2017		Confer with co-counsel on answer and whether to move to strike unsupported affirmative defenses and insufficient responses.	0.60
Wed. Aug 30, 2017		Rule 16 conference 9th fl -	0.50
Thu. Aug 24, 2017		Review email from OC on establishing new deadlines. Email to OC on whether their position has changed on the jnt Rule 26 report.	0.20
Thu. Aug 24, 2017		Review email from OC asserting plaintiff agreed to hold off on discovery. Check communications and discovery order (.30), confer with co-counsel (.20), respond and correct misrepresentation (.10).	0.60
Thu. Aug 24, 2017		Advise OC on location of word version of rule 26 report. Review filed version and dropbox version and confirm OC is wrong and respond to OC assertion that word version is not in shared dropbox.	0.20
Wed. Aug 23, 2017		Email from OC asking for discovery schedule in response to our notifying OC of intent to request a rule 16 conference. Confer with co-counsel.	0.20
Fri. Aug 18, 2017		Email from OC (yesterday re discovery deadlines) (.10). Confer with co-counsel on response (.10).	0.20
Tue. Aug 8, 2017		Review court opinion on motion to dismiss.	1.60
Thu. Jun 8, 2017		Review signed RFAs, identify issues (1.0). Research "legal conclusion" and RFAs, remainder.	3.50
Fri. Jun 2, 2017		Email from court on rule 16.	0.10
Fri. Jun 2, 2017		Email court for clarification on whether discovery is cut off per expired order. Review reply email from OC requesting issue be resolved by motion.	0.20

Date	Task / Activity Code	Task/Activity Description	Time (hrs)
Thu. Jun 1, 2017		Email from OC.	0.10
Thu. Jun 1, 2017		More emails from OC on reminder and Rule 16.	0.10
Thu. Jun 1, 2017		Call with KJ re discovery issues and what discovery to serve on def.	0.30
Wed. May 31, 2017		Review and edit draft RFA responses via call with KJ.	0.40
Fri. May 26, 2017		Discuss rebuttal discovery with KJ and how to proceed with initial discovery.	0.40
Wed. May 24, 2017		Review RFA's with co-counsel and responses.	1.00
Tue. May 16, 2017		Review email response from OC in regard to expired discovery deadlines and their RFAs.	0.10
Mon. May 15, 2017		Review Lillegard v. Blatt, Illinois D Crt decision on admissibility of Arb agreement.	0.10
Mon. May 15, 2017		Confer on RFA's served on Bryne and discovery with co-counsel.	0.40
Tue. Mar 21, 2017		Review FHA case OC says they will rely on at oral argument.	0.20
Tue. Mar 21, 2017		Appointment - RESETTING Oral Argument from March 6, 2017 to Tuesday, March 21, 2017 at 01:00 PM in Portland Courtroom 9B before Magistrate Judge Stacie F. Beckerman	1.50
Tue. Mar 14, 2017		Confer with co-counsel on supplemental authorities and which to identify to the court.	0.50
Wed. Mar 8, 2017		Email from OC to court re schedule for new authorities.	0.10
Mon Jan 9, 2017		Review response to M dismiss for lack of jurisdiction.	4 50
Fri. Jan 6, 2017		Confer with co-counsel on issues in response to M to dismiss and need for page extension.	0.30
Wed. Jan 4, 2017		Email from OC re response to defendant subpoena to Citibank. Review docs and request complete response.	0.30
Wed. Jan 4, 2017		Confer with co-counsel on citi subpoena response.	0.30
Wed. Dec 21, 2016		Confer with co-counsel on status of response and treatment of issues raised.	0.40
Tue. Nov 29, 2016		Confer with co-counsel on issues addressed in response to motion to dismiss and need for MOET..	0.30

Date	Task / Activity Code	Task/Activity Description	Time (hrs)
Sat. Nov 19, 2016		Review rule 26 disclosures, substantive edits.	0.20
Tue. Nov 15, 2016		Confer co-counsel, chain of title issues and document review (.40), initial disclosure issues (.20), how to approach discovery (.20).	0.90
Wed. Nov 2, 2016		Review NY dist crt case Douglass v Forster re failure to notify consumer that balance may increase due to interest and fees.	0.30
Tue. Nov 1, 2016		Confer with co-counsel on alleged Spokeo issue and whether to amend.	0.50
Mon. Oct 31, 2016		Review pleadings in aid of Rule 26 conference.	0.30
Mon. Oct 31, 2016		Confer with co-counsel on scheduling deadlines and anticipated discovery needs in advance of call with OC on Rule 26.	0.90
Mon. Oct 31, 2016		Draft rule 26 report post conference call.	0.50
Fri. Oct 28, 2016		Confer with co-counsel on lawsuits filed by Oregon One, review of same, and class issues/Spokeo Issues.	0.80
Mon. Oct 17, 2016		Call with co-counsel about discovery and inability to get OC to confer on Rule 26.	0.30
Thu. Oct 13, 2016		Confer with co-counsel on OC's tactic of pursuing arbitration and effect on class issues (.40), remainder confer on initiating Rule 26 conference in response to OC request to subpoena Citibank and other discovery issues.	1.00
Tue. Oct 11, 2016		Confer with co-counsel about OC's approach to class certification.	0.70
Tue. Oct 4, 2016		Email from OC Caan (.10), confer with co-counsel on response (.20). Confer on discovery approach (.50).	0.80
Wed. Sep 28, 2016		Review final draft of complaint and confer with co-counsel on edits.	0.40
Tue Sep 27, 2016		Edit complaint and class allegation. Suggest edits.	1 00
Thu. Sep 22, 2016		Review revised complaint (.50). Listen to recording (.10).	0.70
Fri. Sep 2, 2016		Review complaint and letters, check law and allegations.	2.80
Wed. Aug 31, 2016		Confer with co-counsel on draft of complaint and issues raised.	0.80

**Total Time:****90.30**

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**ROBERT D. BYRNE, et al.,**

Case No. 3:16-cv-01910-SB

Plaintiff,

vs.

**DECLARATION OF  
MICHAEL FULLER**

**OREGON ONE, INC.,**

**IN SUPPORT OF THE  
ATTORNEY FEE  
APPLICATION OF  
KELLY JONES**

Defendant.

**DECLARATION**

I, Michael Fuller, declare the following under penalty of perjury:

1. I know the facts I am testifying about based on my personal knowledge. I have reviewed the pleadings in this case and am aware of the underlying factual allegations and the substance of the settlement terms. A true and correct copy of my curriculum vitae is attached to this declaration.



2. Over the past several years I have worked as co-counsel with Mr. Kelly Jones on some of the largest consumer class actions in the country, including *Equifax* (MDL No. 2800) and *CenturyLink* (MDL No. 2795). Mr. Jones's litigation skills and efforts have helped recover millions of dollars for aggrieved consumers through class action settlements. Mr. Jones has a reputation in the Portland-area community as being one of the top legal minds in the consumer protection field. His legal analysis, claim theories and briefing skills have helped defeat complex and nuanced dispositive motions in various local consumer class action cases. *See, e.g., Silva v. Unique Beverage*, D. Or. Case No. 3:17-cv-00391-HZ (Doc. #41, Order Denying Motion to Dismiss); *Lund v. CenturyLink*, D. Or. Bankr. AP Case No. 17-06100-tmr (Doc. #38, Order Denying Motion to Dismiss), etc.
3. Mr. Jones has been a practicing attorney for 11 years. The 2017 Oregon State Bar Economic Survey indicates that Portland attorneys with 10-12 years of practice, like as Mr. Jones, have an hourly rate ranging from \$283 to \$410 per hour. According to this survey, a rate of \$410 per hour would put that attorney in the 95<sup>th</sup> percentile of those surveyed. (The Oregon State Bar Economic Survey can be found at

[https://www.osbar.org/\\_docs/resources/Econsurveys/17Economic Survey.pdf](https://www.osbar.org/_docs/resources/Econsurveys/17EconomicSurvey.pdf)).

4. I am chair of the Oregon Trial Lawyers Association consumer law section, executive committee member of the Oregon State Bar debtor-creditor section, past chair of the Oregon State Bar consumer law section, and past chair of the Oregon Chapter of the National Association of Consumer Advocates. Consumer protection is my life and I know almost every consumer law and debtor-side attorney in the state. I can say with confidence that Mr. Jones's skill, experience and reputation are within the top 95th percentile of his peers.
  
5. Based on the rates of Portland-area consumer law attorneys with comparable skill, experience, and reputation to Mr. Jones, I find his hourly rate of \$410 to be reasonable. His rate of \$410 per hour is consistent with other attorneys in the 95th percentile of his vintage according to the most recent Oregon State Bar Survey. When compared with the few consumer law attorneys who practice both individual *and* class action litigation like Mr. Jones, I find his hourly rate of \$410 per hour to be on the low side of the prevailing rate in Portland. Mr. Jones has two more years of experience than I do and my hourly rate of \$410 for individual consumer cases was recently approved by Judge Trish Brown in

*Pinkerton v. Wells Fargo*, D. Or. Bankr. AP Case 18-03016-tmb,  
Doc. #18, #20.

6. Under 28 U.S.C. § 1746, I declare under penalty of perjury that  
this declaration is true and correct.

October 4, 2018

**RESPECTFULLY SUBMITTED,**

s/ Michael Fuller  
**Michael Fuller, OSB No. 09357**  
Attorney  
OlsenDaines  
US Bancorp Tower  
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Portland, Oregon 97204  
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**OlsenDaines**  
*Attorneys at Law*

## MICHAEL FULLER

### Professional Experience

**Partner.** OlsenDaines. 2009-current. Michael Fuller is an Oregon attorney licensed to practice in the US Supreme Court and the Ninth Circuit Court of Appeals. His national consumer class action litigation rate is \$525 per hour. About 20% of his practice is impact litigation taken pro bono at no charge.

**Adjunct Professor.** Lewis & Clark Law School. 2015-current. Consumer Law 326.

**Public Interest Fellow.** Legal Aid Services of Oregon. 2007.

**Staffer.** Senator Gordon Smith, Washington DC office. 2006.

### Board Leadership

**Oregon District Court Historical Society.** Board of Directors.

**Oregon Trial Lawyers Association.** Chair, Consumer Law Section.

**Oregon State Bar.** Executive Committee Member, Debtor-Creditor Section.

**Oregon Consumer League.** Chair, Financial Services Committee.

**Oregon State Bar.** Past Chair, Consumer Law Section.

**National Association of Consumer Advocates.** Past Chair, Oregon Chapter.

**American Bar Association.** Past National Chair, YLS Bankruptcy Section.

## Legal Presentations

**Portland.** Sept. 10, 2018, Speaker, Maximizing Case Values CLE, OTLA.

**Portland.** Aug. 9, 2018, Speaker, Advocacy using Social Media CLE, OSB.

**Boise.** Feb. 16, 2018, Speaker, Consumer Law CLE, Idaho State Bar.

**Portland.** Nov. 16, 2017, Keynote, Annual Dinner, OSB Securities Law Section.

**Portland.** Oct. 26, 2017, Panelist, Pro Bono CLE, Multnomah Bar Association.

**Salem.** Oct. 16, 2017, Speaker, Student Loan Law CLE, Convention Center.

**Portland.** Oct. 13, 2017, Panelist, Annual Conference, Financial Beginnings.

**Portland.** July 19, 2017, Panelist, Student Loan Law, Neighborhood Partnerships.

**Portland.** March 3, 2017, Speaker, Student Loan Law, Portland State University.

**Portland.** July 14, 2016, Speaker, Litigation CLE, Legal Aid Services of Oregon.

**Sunriver.** Sept. 18, 2015, Panelist, Litigation CLE, OSB Debtor-Creditor Section.

**San Antonio.** 2014, Panelist, FDCPA Litigation CLE, NACA.

**Eugene.** 2014, Speaker, Bankruptcy Discharge CLE, Lane County Bar Association.

**Portland.** 2013, Bankruptcy Automatic Stay Litigation CLE, OTLA.

**Portland.** 2012, Speaker, Bankruptcy Litigation CLE, National Business Institute.

**Toronto.** 2011, Speaker, Bankruptcy Litigation CLE, ABA Conference.

**Atlanta.** 2010, Speaker, Pro Bono Bankruptcy for Seniors CLE, ABA Conference.

## Peer Distinctions

**Super Lawyers® Magazine.** Rising Star.

**Martindale-Hubbell®.** AV Preeminent.

## **Legal Publications**

- Editor.** 2018. *Consumer Law Chapter*, ADR Oregon State Bar Books.
- Editor.** 2018. *Resisting Arbitration Chapter*, ADR Oregon State Bar Books.
- Editor.** 2017. *Consumer Law Chapter*, Oregon Statutory Time Limitations, PLF.
- Writer.** 2017. *Consumer Bankruptcy Protection*, Oregon State Bar Newsletter.
- Editor.** 2016. *Oregon Student Debt: How to Discharge Student Loans*.
- Writer.** 2016. *Pokémon Go's Rules 'Ripoff' Players*, NY Daily News.
- Writer.** 2016. *Harassment After Bankruptcy*, Oregon State Bar Newsletter.
- Editor.** 2013. *Consumer Leasing Act Chapter*, Oregon State Bar Books.
- Writer.** 2012. *Enforcement of the Discharge Order*, Oregon State Bar Newsletter.
- Writer.** 2011. *Consumer Dragnet Clauses*, Oregon State Bar Newsletter.
- Editor.** 2010. *Personal Bankruptcy*, Oregon State Bar FEMA Manual.

## **Education**

- JD.** Willamette University College of Law (Order of Barristers). 2009.
- BS.** Oregon State University. 2005.

## **Pro Bono Involvement**

- Federal Court Pro Bono Program.** Volunteer Attorney.
- Trinity Episcopal Cathedral.** Volunteer Attorney, Legal Aid Booth.
- Legal Aid Services of Oregon.** Volunteer Attorney, Bankruptcy Clinic.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

ROBERT D. BYRNE ,*et al.*,

Plaintiff,

VS.

OREGON ONE, INC.,

Defendant.

Case No.: 3:16-cv-01910-SB

**DECLARATION OF JUSTIN M.  
BAXTER**

I, Justin M. Baxter, hereby declare as follows:

1. I am a member of the Oregon State Bar in good standing. I make this declaration of my personal knowledge.

2. I have been in private practice since 1999. My practice is focused on handling consumer protection litigation on a contingent fee basis. As such, I have made a conscious effort to survey prevailing market rates for attorneys engaged in consumer litigation in Oregon. When I

have submitted fee petitions in state and federal court, I have consistently been awarded hourly rates that are at the very high end of the comparable rates in the applicable Oregon State Bar economic surveys. *See, e.g., Demmings v. KKW Trucking, Inc.*, No. 3:14-CV-0494-SI, 2018 WL 4495461, at \*16 (D. Or. Sept. 19, 2018) ("the Court finds that an hourly rate of \$500 is appropriate (the 95th percentile of Portland attorneys with 16-20 years' experience)").

3. For the reasons set forth herein, it is my belief that prevailing market rates support an hourly rate of \$410 for an attorney of comparable skill and experience as class co-counsel, Kelly Donovan Jones. Mr. Jones has been engaged in private practice for 11 years. The Oregon State Bar Economic Survey (2017) (available at [http://www.osbar.org/\\_docs/resources/Econsurveys/17EconomicSurvey.pdf](http://www.osbar.org/_docs/resources/Econsurveys/17EconomicSurvey.pdf)) reflects that the mean hourly rate for Oregon attorneys with 10-12 years of experience was \$283 in 2016, ranging up to \$410. *Id.* at 39. A three percent annual increase to account for inflation would net \$300.23 to \$434.97 base rates. The OSB Survey demonstrates that hourly rates for business litigation (\$367 to \$525) and civil litigation (\$312 to \$500) are higher than other practice areas, such as family law (\$258 to \$400), workers compensation (\$284 to \$450), and criminal law (\$300 to \$485). *Id.* at 40-42. The OSB Survey is limited in its accuracy insofar as it relies upon self-reporting (i.e., it does not include all OSB members). It is also limited insofar as it includes attorneys that are unemployed or underemployed, and who may consequently charge a rate lower than market value.

4. Mr. Jones has distinguished himself as a highly capable advocate in consumer protection cases, including class actions and individual cases. *See, e.g., Villanueva v. Liberty Acquisitions Servicing, LLC*, 319 F.R.D. 307 (D. Or. 2017), approving Mr. Jones as co-counsel for the class.



5. Mr. Jones is also a very active and integral member of the Oregon legal community. He is the past Chair of the Oregon State Bar Consumer Law Section. He has regularly been invited to lecture on various consumer protection topics, and is the author of legal publications such as Consumer Law in Oregon (OSB Legal Pubs 2013).

6. Other very experienced attorneys in our community seek out Mr. Jones' skills and expertise in the consumer law and class action arena and request that he be co-counsel on their cases. I have consulted with Mr. Jones for his input on litigation-related matters, including class action litigation and Fair Debt Collection Practices Act litigation. Oregon is a small legal community, and Mr. Jones' accomplishments and reputation are well known to lawyers on both sides of the consumer litigation bar.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this 3rd day of October, 2018.

s/ Justin M. Baxter  
Justin M. Baxter, OSB #992178