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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

ARTHUR ANDERSON and JERRY)	
HOLLINGSWORTH,)	
)	
Plaintiffs,)	
)	
v.)	94 CV 2967 D/P
)	
CONWOOD COMPANY, et al.,)	
)	
Defendants.)	
)	

ORDER ON MOTION BY WARNER HODGES, III FOR
INTEREST ON ATTORNEY FEES

Before the Court is Plaintiffs' counsel's Motion for Interest on Attorney Fees, filed on February 4, 2004 (docket entry 327). On February 13, 2004, Defendants filed their response to the motion. The matter was referred to the Magistrate Judge for determination pursuant to 28 U.S.C. § 636(b)(1)(A). For the reasons given below, the motion is GRANTED.

I. BACKGROUND

Plaintiffs filed suit against Defendants for violations of 15 U.S.C. § 1681 et seq., commonly known as the Fair Credit Reporting Act ("FCRA"). Plaintiffs asserted that their consumer credit reports were improperly acquired by Defendants for Defendants' use in civil litigation, and that Defendants' subsequent sharing, dissemination, and use of their credit reports

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violated provisions of the FCRA.

Following a trial on the merits before the District Court, on August 21, 1998, the jury awarded each plaintiff \$2 million in compensatory damages, and a total of \$3.5 million in punitive damages. On August 25, 1998, the Court entered its Order on Jury Verdict and Judgment documenting the jury's determination. This judgment did not make any express reference to attorney's fees.

On September 4, 1998, Plaintiffs filed a motion for attorney's fees pursuant to Fed.R.Civ.P. 54(d)(2). In their motion, Plaintiffs argued that they were entitled to attorney's fees under FCRA § 1681n, which governs civil liability for willful noncompliance, and § 1681o, which governs liability for negligent compliance. See 15 U.S.C. §§ 1681n & 1681o.

On January 29, 1999, the Court granted Defendants' motion for remittitur, and reduced Plaintiffs' compensatory damages awards to \$50,000 for each Plaintiff, and vacated entirely the award of punitive damages. In the same order, the Court awarded Plaintiffs reasonable attorney's fees, essentially granting Plaintiffs' September 4, 1998 motion.¹

On March 16, 1999, Plaintiffs accepted the remittitur "under protest," but subsequently purported to withdraw their acceptance

¹A Docket Modification made on January 29, 1999, confirms that the Court's January 29, 1999 Order granted Plaintiffs' motion for attorney's fees.

on March 31, 1999.² On August 14, 2001, based on Plaintiffs' initial acceptance of the remittitur, the District Court entered a final judgment awarding compensatory damages in the amount of \$50,000 to each Plaintiff, and granted judgment as a matter of law eliminating entirely any award of punitive damages.

On February 21, 2003, the Court granted Plaintiffs' counsel's Second Renewed Motion for Approval of Attorney Fees, awarding Plaintiffs \$66,140 in fees "authorized by statute to the prevailing party."³ The Court reserved the issue of interest. On March 5, 2003, Defendants sent a check in the amount of \$66,140 to Plaintiffs' counsel in satisfaction of the February 21, 2003 order.

Plaintiffs now seek interest from Defendants on the attorney's fees award for the period between August 25, 1998, the date the Court entered its initial judgment on the merits in favor of the Plaintiffs, and March 5, 2003, when Defendants submitted payment of the award.

Defendants categorically oppose the award of any interest to Plaintiffs. In the alternative, Defendants argue that interest

²On March 2, 1999, Plaintiffs filed notices of appeal from various orders, including the remittitur order which reduced their award of damages. On May 4, 1999, the Sixth Circuit dismissed Plaintiffs' appeals for lack of jurisdiction.

³The Court expressly stated in its September 12, 2002 order that it would refrain from entertaining such a motion until after the Sixth Circuit had ruled on the appeals taken in this case. In its February 21, 2003 order, the Court noted that "it appears that there no longer exists any issue of appeal on behalf of the Defendants which would prevent such an award."

should only be awarded for the period between February 21, 2003, the date that the Court approved Plaintiffs' award of attorney's fees, and March 5, 2003.

II. DISCUSSION

Section 1961 of Title 28 of the United States Code states, in pertinent part:

Interest shall be allowed on any money judgment in a civil case recovered in a district court Such interest shall be calculated from the date of the entry of the judgment at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.

28 U.S.C. § 1961. In the Sixth Circuit, it is well-settled that "any money judgment" includes a judgment awarding attorney's fees. Associated Gen. Contractors of Ohio v. Drabik, 250 F.3d 482, 485 (6th Cir. 2001). Thus, Plaintiffs are entitled to interest on their award for attorney's fees.⁴ Id.

The Court must next determine the date when the interest began to accrue. The Sixth Circuit has adopted the approach set forth by the Fifth Circuit in Copper Liquor, Inc. v. Adolph Coors Co., 701 F.2d 542 (5th Cir. 1983) (overruled in part on other grounds), holding that interest on attorney's fees begins accruing from the "time of entry of the judgment which unconditionally entitles the prevailing party to reasonable attorney fees. . . . [W]e find that

⁴Although Defendants state that they oppose any award of interest, they fail to make any argument or cite any authority in support of this position.

the equitable considerations weigh entirely in favor of interest accrual on attorney fees from the date of the judgment that establishes the party's entitlement to such fees."⁵ Drabik, 250 F.3d at 495; see also Caffey v. UNUM Life Ins. Co., 302 F.3d 576, 589-90 (6th Cir. 2002); Mogilevsky v. Bally Total Fitness Corp., 311 F.Supp.2d 212, 226 (D. Mass. 2004). The Drabik Court based its decision on equitable considerations as well as the plain language of the statute:

If interest does not accrue from the time a party becomes entitled to such fees, the losing party has every reason to delay quantification of the fees. That rule provides the losing party with incentive to repeatedly request extensions, or seek a stay on the issue of attorney fees pending the merits appeal The prevailing party (or perhaps her attorney) will then be out of pocket for what is potentially a long period of time while awaiting quantification. On the other hand, the losing party will suffer no actual prejudice or unfair burden by the accrual of interest from the date of entitlement, since that party has the use of the money until payment.

Drabik, 250 F.3d at 494-95.⁶

⁵Pursuant to the plain language of § 1961, postjudgment interest runs from the date of the entry of the judgment rather than the date of the verdict. See Drabik, 250 F.3d at 487 (citing Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 835(1990)).

⁶In their response brief, Defendants rely exclusively on Tenth Circuit law without any mention of Drabik or any Sixth Circuit law. In Drabik, the Sixth Circuit considered the case cited by Defendants, MidAmerica Fed. Sav. & Loan Assoc. v. Shearson/Am. Express, Inc., 962 F.2d 1470 (10th Cir. 1992), and expressly rejected the Tenth Circuit's approach. Drabik, 250 F.3d at 489 (analyzing MidAmerica and stating that "[w]e respectfully decline to accept the Third and Tenth Circuits' assertions that, in the context of an award of attorney fees, the term 'money judgment' is 'commonly understood' to require an

In this case, the date of the judgment which unconditionally entitled Plaintiffs to reasonable attorney fees was August 25, 1998. Although the August 25 judgment did not expressly award attorney's fees, because Plaintiffs were "successful" in the litigation, they were entitled to a mandatory award of attorney's fees under the FCRA. Specifically, the FCRA provides that "in the case of any successful action to enforce liability under this section, [a defendant is liable for] the costs of this action together with reasonable attorney's fees as determined by the court." 15 U.S.C. §§ 1681n(3) & 1681o(2). The FCRA, like other Consumer Protection Act laws found under 15 U.S.C. §§ 1601 et seq., provide for a mandatory award of reasonable attorney's fees to the successful plaintiff. See Pappas v. City of Calument City, 9 F.Supp.2d 943, 951 (N.D. Ill. 1998) ("The FCRA also requires the court to award Pappas his court costs and attorney's fees."); see also Lewis v. Ohio Prof. Elec. Network LLC, 248 F.Supp.2d 693, 704 (S.D. Ohio 2003); Milgram v. Advanced Cellular Sys., Inc., CIV. A. No. 88-5544, 1990 WL 55376, at *1 (E.D. Pa. April 27, 1990); Collins v. Retails Credit Co., 410 F.Supp. 924, 935 (E.D. Mich 1976); see generally Zagorski v. Midwest Billing Services, Inc., 128 F.3d 1164, 1166 (7th Cir. 1997) (holding that an award of attorney's fees to plaintiffs for a debt collector's violation of the Fair Debt Collection Practices Act is mandatory); Purtle v.

award of a fixed sum to the prevailing party.")

Eldridge Auto Sales, Inc., 91 F.3d 797, 802 (6th Cir. 1996) (holding that an award of attorney's fees to a successful plaintiff in an action under the Truth in Lending Act is mandatory); De Jesus v. Banco Popular de Puerto Rico, 918 F.2d 232, 233-34 (1st Cir. 1990) (same).

Since the attorney's fees award under the FCRA is mandatory, the date of the merits judgment (and not the date that the Court awarded attorney's fees) is the operative date for purposes of calculating interest. As the Court in Copper Liquor explained:

If a judgment is rendered that does not mention the right to attorneys' fees, and the prevailing party is unconditionally entitled to such fees by statutory right, interest will accrue from the date of judgment. If, however, judgment is rendered without mention of attorneys' fees, and the allowance of fees is within the discretion of the court, interest will accrue only from the date the court recognizes the right to such fees in a judgment.

Id. at 589-90; see also Louisiana Power & Light Co. v. Kellstrom, 50 F.3d 319, 332 n.24 (5th Cir. 1995) ("Because LP&L recovered under a mandatory fee shifting statute, it became entitled to fees on the date of judgment on the merits.").


For the foregoing reasons, the Court finds that Plaintiffs are entitled to interest on their attorney's fees award from the date of the original judgment on the merits, August 25, 1998, until the date that Defendants submitted payment on the attorney's fees, March 5, 2003. Section 1961(a) dictates that the proper postjudgment interest rate is equal to the weekly average 1-year constant maturity Treasury yield for the calendar week preceding the date of judgment. See 28 U.S.C. § 1961(a). This rate is

published by the Board of Governors of the Federal Reserve System
and can be found online at
<http://www.federalreserve.gov/releases/H15>.

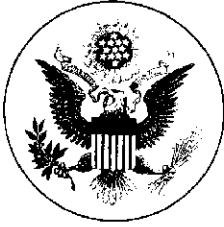
III. CONCLUSION

Accordingly, Plaintiffs' counsel is instructed to submit a Proposed Order consistent with this Order calculating in detail the interest due on the attorney's fee award within ten (10) days of the date of this Order. Defendants will have ten (10) days to respond following Plaintiffs' counsel's submission of a Proposed Order.

IT IS SO ORDERED.



TU M. PHAM
United States Magistrate Judge
Date 6/30/04



Notice of Distribution

This notice confirms a copy of the document docketed as number 348 in case 2:94-CV-02967 was distributed by fax, mail, or direct printing on July 1, 2004 to the parties listed.

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