UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Michael Shutler,

Plaintiff,

v. CASE NO. 2:23-cv-14337-KMM-RMM

Citizens Disability LLC,

Defendant.
_________________________________/

UNOPPOSED MOTION FOR
CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS
AND MEMORANDUM IN SUPPORT

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Pursuant to this Court's January 31, 2025 Order granting Preliminary Approval of the Class Settlement (ECF No. 126), Class Representative Michael Shutler ("Shutler"), on behalf of himself and all others similarly situated, and Defendant Citizens Disability LLC ("Citizens") respectfully submit this Motion for Attorney's Fees and Costs.

I. INTRODUCTION

On January 31, 2025, this Court preliminarily approved a class action settlement (the "Settlement") between Shutler and Citizens (collectively with Shutler, "Settling Parties") related to Citizens' alleged practice of making prerecorded voice calls without the "prior express consent" of the called party. [ECF No. 121-1; *see also* ECF No. 126].

Under the Settlement,[1] Citizens has agreed to pay $320,000 to establish a fund to pay each of the 3,411 Settlement Class Members who submit timely and approved claim forms on a pro rata basis (the "Settlement Relief"). The Settlement Fund will be distributed in its entirety, providing substantial monetary relief to all those who submit valid claims. None of it will revert to Citizens. In addition, pursuant to the Settlement, Citizens has agreed to only make prerecorded calls when it has the prior express consent of the individual called. [*See* ECF No. 121-6 ¶ 13]. Thus, the benefits conferred upon Class Members and the public are substantial.

As detailed in the Joint Motion for Final Approval being filed contemporaneously herewith, Plaintiff and Class Counsel have adequately represented the Class, obtaining an exceptional Settlement to which no class member or governmental entity has objected. The Settlement provides significant relief, both monetary and non-monetary, for the Settlement Class. The Settlement was reached only after extensive factual investigation, motions practice, and fulsome discovery and is the product of arm's length negotiations by experienced counsel with a

[1] Unless defined in this motion and memorandum, all defined terms in this motion and memorandum have the meanings set forth in the Settlement Agreement.

firm understanding of the strengths and weaknesses of their clients' respective claims and defenses.

Accordingly, and pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel respectfully moves the Court for an award of attorneys' fees of $96,000, which represents 30% of the total cash value of the Settlement Fund. This request is reasonable under Eleventh Circuit guidance regarding fee awards in consumer class actions, and fits squarely with other TCPA fee awards. In addition, Class Counsel requests $5,000 in costs. Shutler does not request any service or incentive award in this matter. *See Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020), *rehearing denied en banc*, 43 F.4th 1138 (11th Cir. 2022).

II. BACKGROUND

A. <u>Plaintiff's allegations and procedural history</u>

This case involves claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq*. The TCPA prohibits making any call using an artificial or prerecorded voice, unless the caller has the "prior express consent" of the called party. 47 U.S.C. § 227(b)(1)(A)(iii). The TCPA provides for injunctive relief and statutory damages. 47 U.S.C. § 227(b)(3).

On October 25, 2023, Shutler filed his class action complaint alleging that Citizens made prerecorded calls to his cellular phone without prior express consent. [ECF No. 1]. The Parties engaged diligently in discovery and undertook extensive motion practice.

On December 15, 2023, Citizens filed a Motion to Dismiss the Complaint for Failure to State a Claim [ECF No. 11], a Motion to Strike Class Allegations [ECF No. 12], a Motion to Stay Discovery [ECF No. 13], and a Motion to Bifurcate Discovery [ECF No. 14]. Following the Parties' filing of responses and replies, the Court denied the Motion to Dismiss, Motion to Strike Class Allegations and Motion to Stay on April 19, 2024 [ECF No. 33], and denied the Motion to Bifurcate on June 11, 2024 [ECF No. 44]. Citizens filed an Answer and Counterclaim against Shutler on May 29, 2024. [ECF No. 35]. Shutler filed his Answer to the Counterclaim on June 21, 2024 [ECF No. 48].

Shutler filed his Motion to Certify Class and Motion to Appoint Counsel and Memorandum of Law in Support on July 8, 2024 [ECF No. 59]. On July 19, 2024, Citizens filed a Motion in Limine [ECF No. 66], Motion to Strike Declaration of Pipes.Ai [ECF No. 67], Motion for Summary Judgment on Counterclaim [ECF No. 68], and Motion to Disqualify Counsel [ECF No. 70]. By Orders entered on September 23, 2024, the Court granted Shutler's Motion to Certify Class [ECF No. 88] and denied Citizens Motion to Strike [ECF No. 88], Motion for Summary Judgment [ECF No. 86], and Motion to Disqualify Counsel [ECF No. 87]. Citizens' Motion in Limine was granted in part and denied in part. [ECF 102]. The Court ordered Shutler to submit a proposed schedule for class notice by September 19, 2024. [ECF 88] ¶ 18. Citizens filed a petition for interlocutory review of the Order certifying the Class pursuant to Federal Rule of Civil Procedure 23(f) on September 23, 2024.

On December 18, 2024, Shutler and Citizens filed a joint motion for preliminary approval of the class-wide settlement. [ECF No. 121]. The Court entered an Order preliminarily approving the Settlement on January 31, 2025. [ECF No. 126].

B. The Settlement

The Settling Parties rigorously litigated this case and conducted extensive arm's-length settlement negotiations. After more than a year of litigation, the Settling Parties reached an agreement in principle on or around November 14, 2024. [*See* ECF No. 116]. Thereafter, the Parties negotiated the entirety of the Settlement Agreement. [*See* ECF No. 121-1].

As described in more detail in the Joint Motion for Preliminary Approval, [ECF No. 121] and the Joint Motion for Final Approval filed contemporaneously herewith, the Settlement Agreement establishes a non-reversionary Settlement Fund of $320,000.00. Settlement Class

Members[2] will receive a *pro rata* share of the Settlement Fund. There is no *cy pres* and no amount of the Fund will revert back to Citizens. Rather, any unclaimed funds will be distributed *pro rata* among the Class Members who made valid claims. As such, this is a common fund case. *See Drazen v. Pinto*, 106 F.4th 1302, 1339–40 (11th Cir. 2024) (explaining that in "a common fund common fund case, a defendant contributes the settlement amount, say $100 million, into a settlement fund; the fund is distributed to the class directly or after a claims process. If the class does not claim the full $100 million, the unclaimed funds do not necessarily go back (or 'revert') to the defendant; they may be distributed *pro rata* among the class members who made claims").

The Court preliminarily approved the Settlement Agreement and certified the Settlement Class on January 31, 2025. [ECF No. 126].

III. DISCUSSION

A. Legal Standard

"The district court has great latitude in formulating attorneys' fees awards subject only to the necessity of explaining its reasoning." *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1293 (11th Cir. 1999). As noted, the Settlement in this case involves a common fund. In the Eleventh Circuit, "attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I Condo Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991); *see also Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007); *In re Home Depot Inc.*, 931 F.3d 1065, 1079 (11th Cir.

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[2] To recover, a Class Member must have submitted a timely and valid Claim Form. [*See* Settlement Agreement, ECF No. 121-1 ¶ 9].

2019) ("Common-fund cases are consistent with the American Rule, because the attorney's fees come from the fund, which belongs to the class.").

As a general matter, the Eleventh Circuit has set 20-30% of the fund as a "benchmark range" under the percentage-of-fund method. *See In re Home Depot Inc.*, 931 F.3d at 1076. "The percentage applies to the total fund created." *Id.*

"Indeed, district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund." *Gonzalez v. TCR Sports Broadcasting Holding, LLP*, 1:18-CV-20048-DPG, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019) (granting final approval in TCPA settlement and awarding one-third of common fund in attorneys' fees).

B. <u>The fee request is reasonable</u>

The request for attorneys' fees in the amount of 30% of the Settlement Fund is reasonable. *See, e.g.*, *Wilson v. EverBank*, No. 14-CIV-22264-BLOOM/VALLE, 2016 WL 457011, *18 (S.D. Fla. Feb. 3, 2016) ("[F]ederal district courts across the country have, in the class action settlement context, *routinely* awarded class counsel fees in excess of the 25 percent 'benchmark,' even in so-called 'mega-fund' cases.") (emphasis in original); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1358 (S.D. Fla. 2011) ("[T]he majority of common fund fee awards fall between 20 percent to 30 percent of the fund, although an upper limit of 50 percent of the fund may be stated as a general rule.") (internal quotation omitted).

Here, the Settlement provides for $320,000, with potential individual recoveries equaling or exceeding the statutory damages available under the TCPA. And in addition to these monetary benefits, this litigation and the Settlement have resulted in significant non-monetary benefits, namely review of Defendants' policies and procedures to ensure compliance with the TCPA and an agreement that Citizens will not make prerecorded calls without prior express consent. [*See*

ECF No. 121-1 ¶ 13]. Consideration of the benefits achieved in this case demonstrates that an award of 30% is a reasonable and appropriate fee award in this case. *See, e.g.*, *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1243–44 (11th Cir. 2011) (affirming fee award and noting "the 1.5 million payment is designed to compensate the class counsel for the non-monetary benefits they achieved for the class—like company-wide policy changes"); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App'x 880, 884 (3d Cir. 2016) (approving one-third percentage fee of the TCPA settlement fund, for an award of $208,333 plus $2,389.40 in expenses, finding fee award fair and reasonable and class "counsel has met its responsibility to seek an award that adequately prioritizes direct benefit to the class"); *Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 797 (7th Cir. 2018) (affirming attorneys' fee award in TCPA case of 30% of second tier of recovery); *Vandervort v. Balboa Cap. Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the ceiling settlement fund in attorneys' fees and costs and finding that percentage fair and reasonable); *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1254 (S.D. Fla. 2016) (awarding 33% of common fund in attorneys' fees); *Wolff v. Cash 4 Titles*, No. 03-cv-22778-JIC, 2012 WL 5290155, at *6 (S.D. Fla. Sept. 26, 2012) (collecting cases and concluding that 33% is consistent with the market rate in class actions); *Waters*, 190 F.3d at 1295–96 (affirming attorneys' fee award of 33.3% to class counsel); *Soto v. The Gallup Organization, Inc.*, No. 13-cv-61747-MGC (S.D. Fla. Nov. 24, 2015) (ECF No. 95) (awarding fees of one-third of the settlement fund in TCPA action); *Guarisma v. ADCAHB Medical Coverages, Inc., et al.*, 13-cv-21016-FAM (S.D. Fla. June 24, 2015) (ECF No. 95) (awarding fees of one-third of the settlement fund plus costs in TCPA action); *Espinal v. Burger King Corp.*, No. 09-20982-MGC (S.D. Fla. 2010) (ECF No. 65) (same).

C. The *Johnson* factors support the requested fee

In determining the reasonableness of the percentage to be awarded, courts in the Eleventh Circuit consider the factors set forth in *Johnson v. Georgia Highway Expr., Inc.*, 488 F. 2d 714 (5th Cir. 1974),[3] or the "*Johnson* factors." *See In re Home Depot*, 931 F.3d at 1090 ("With the percentage method, courts use the *Johnson* factors to help determine what percentage of the fund to award to counsel."); *see also Camden I,* 946 F.2d at 775; *Spinelli v. Cap. One Bank (USA), N.A.*, No. 8:08-CV-132-T-33EAJ, 2010 WL 11475481, at *1 (M.D. Fla. Dec. 22, 2010) ("The award of attorneys' fees is premised upon a consideration of all the *Johnson* factors."). These factors include: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is contingent; (7) the time limitations imposed; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I*, 946 F. 2d at 772. Each of these factors confirm the reasonableness of the fee requested in this case.

i. Time and labor required, contingent nature of the fee, and preclusion of other employment support granting the requested fee.

The United States Supreme Court has recognized that "complex civil litigation involving numerous challenges to institutional practices or conditions … is lengthy and demands many hours of lawyers' services." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). And while "the hours

[3] "As a Fifth Circuit decision issued before October 1, 1981, the decision is binding precedent in the Eleventh Circuit." *Stein v. Buccaneers Ltd. P'ship*, 772 F. 3d 698, 704 (11th Cir. 2014).

claimed or spent on a case should not be the sole basis for determining a fee ... they are a necessary ingredient to be considered." *Johnson*, 488 F.2d at 717.

Here, Class Counsel dedicated considerable time and effort to pre-filing investigation into the claims and potential defenses at issue in this case, drafting the Complaint, discovery, and responses to numerous motions, including but not limited to motions to dismiss, to strike, to bifurcate, and for summary judgment, as well as in analyzing, researching, and responding to the arguments presented in various filings, negotiating stipulations, propounding discovery, reviewing documents, mediation, and negotiating the Settlement. While Class Counsel worked efficiently to resolve the case as early as practicable, the favorable outcome reached in the Settlement would not have been possible without the time, effort, and skillful work of Class Counsel.

Collectively, to date, Class Counsel have devoted over 1,280 hours to this case. [*See* Clark Decl. ("Clark Decl") ¶ 19, ECF No. 127-2] . In addition, Class Counsel anticipates that it will expend additional time and labor in connection with overseeing Settlement administration, assisting and serving Settlement Class Members, and tending to any issues that may arise relating to the Settlement. Accordingly, the time and labor expended by Class Counsel supports the requested fee is reasonable and fair.

Moreover, "[m]indful of the need to attract counsel of this high caliber, courts have recognized the importance of providing incentives to experienced counsel who take on complex litigation cases on a contingent fee basis so those cases can be prosecuted both efficiently and effectively." *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *5 (S.D. Fla. Sept. 26, 2012), *R&R adopted*, No. 03-22778-CIV, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012). Class Counsel took this case on a fully contingent basis, investing time, effort and money with no guarantee of ever getting paid. Thus, the contingent nature of the fee also weighs in favor of Class Counsel's requested fee. *See id.* ("It was Class Counsel alone that bore the entire risk of this representation—a significant finding in support of the requested fee."); *see also Pinto*, 513 F. Supp. 2d at 1339 ("A determination of a fair fee for Class Counsel must include consideration of

the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high."); *In re Checking Acc't Overdraft Litig.*, 830 F. Supp. 2d at 1364 ("A contingency fee arrangement often justifies an increase in the award of attorney's fees."); *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677-CIV, 2008 WL 649124, at *14 (S.D. Fla. Jan. 31, 2008) ("Attorneys' risk is perhaps the foremost factor in determining an appropriate fee award."); *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981) ("Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result."). Further, had Class Counsel not taken a role in this litigation, they would have been free to allocate their time and resources elsewhere. This factor further supports the requested fee award. *See Johnson*, 488 F.2d at 718 ("Priority work that delays the lawyer's other legal work is entitled to some premium.").

Accordingly, the *Johnson* considerations of the substantial time and labor required to prosecute this action, the contingent nature of the fee, and the priority of the work Class Counsel has performed, weigh strongly in favor of granting the fee requested here.

ii. The difficulty of the case and novel issues, the experience and skill of Class Counsel, and the undesirability of the case favor granting the requested fee.

This case involved difficult issues and the risk of not prevailing on the claims was substantial. For example, the deference to agency actions and rulemaking, like those applicable here involving the Federal Communications Commission ("FCC"), has also been eliminated and put into serious question. *See Loper-Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). For example, in *Loper-Bright*, the Supreme Court held that the Administrative Procedure Act requires courts to exercise independent judgment when deciding whether a federal agency has acted within its statutory authority. According to that holding, courts may not defer to an agency's interpretation of the law, as had been the doctrine under *Chevron v. Natural Resources Defense Council*, but must consider the law independently. That holding could have consequences in the TCPA realm

as the FCC has implemented many rules and exercised its former discretion in interpreting the law. *Loper-Bright* was decided while this case was being litigated. Other matters involving the TCPA are also currently in flux and awaiting decision from the United States Supreme Court after recent oral argument. *See, e.g.*, *Mclaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 23-1226 (U.S. argued Jan. 14, 2025). That case also has the potential to impact TCPA cases and causes of action.

These outstanding and evolving questions surrounding the TCPA heightened the complexity of the legal and factual issues involved in this case, which translated into considerable material risk that Shutler and the Class could recover less than that secured by the Settlement. Additionally, Citizens' petition for interlocutory appeal would have drawn-out and delayed the litigation and any recovery. *See In re Aetna Inc. Sec. Litig.*, No. CIV. A. MDL 1219, 2001 WL 20928, at *6 (E.D. Pa. Jan. 4, 2001) ("The risk of delay could have deleterious effects on any future recovery"). And while the Parties vigorously litigated this case and were approaching trial, "significant costs would still result in the absence of settlement." *Id.* Thus, achieving the Settlement at this stage was highly beneficial to the Class.

Also complicating matters, Citizens asserted a counterclaim for fraud against Shutler, and it also alleged that Class Members consented to receive prerecorded calls and that it complied with the TCPA. While Plaintiff believed his positions on these matters were meritorious, Citizens' arguments still presented potential challenges to recovery and would further complicate the trial. The uncertainty surrounding these issues further exacerbated the risk to Shutler and the Settlement Class Members, including the potential of securing no recovery at all.

Notwithstanding the complexity and difficulty of the issues involved in this case, Class Counsel was able to negotiate an excellent Settlement for the Class. Class Counsel respectfully submit that the work performed in this litigation reflects counsels' skill and experience in complex class litigation, particularly in the TCPA area. Accordingly, the quality and skill involved in the services performed by Class Counsel support the requested fee.

Lastly, because the TCPA does not provide for an award of attorneys' fees to a prevailing plaintiff, Class Counsel's recovery of costs and fees in this case has always been contingent on a successful outcome and substantial recovery. Such a significant risk of nonpayment, coupled with Class Counsel advancing all of the costs and fees incurred in the litigation, demonstrates the undesirability of the case. Few lawyers are willing to invest the significant time and resources required to prosecute a lawsuit that involves complicated and uncertain legal questions, particularly when faced with a risk of no compensation like here. And while Class Counsel was able to achieve an excellent result for the Settlement Class, this outcome was not certain until the Settlement was reached. As such, the "undesirability" factor weighs heavily in favor of finding the requested fee reasonable. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1364 ("'Undesirability' and relevant risks must be evaluated from the standpoint of plaintiffs' counsel as of the time they commenced the suit, not retroactively, with the benefit of hindsight.") (citing *Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 540 F. 2d 102, 112 (3d Cir. 1976)). For all of these reasons, the requested fee should be granted.

iii. The results achieved.

As noted, the Settlement provides eligible Settlement Class Members with a *pro rata* distribution of the Settlement Fund. This is estimated to yield individual payments of not less than $450-500, a payment nearly equivalent to the $500.00 statutory damages amount provided for under the TCPA and far exceeding the norm in these circumstances. In addition to these monetary benefits, this litigation and the Settlement resulted in significant non-monetary benefits, namely review of Citizens' policies and procedures to ensure compliance with the TCPA and an agreement that it will not make prerecorded calls without the prior express consent of the called party. [ECF No. 121-1 ¶ 13]. In short, this is an excellent recovery for the Settlement Class. *See* Clark Decl. ¶¶ 4-6.

Here, the Class Members will receive substantially more monetary benefit than many other TCPA cases where the settlements were approved. *See, e.g.*, *Jairam v. Colourpop Cosmetics, LLC*,

No. 19-cv-62438- RAR, 2020 WL 5848620 (S.D. Fla. Oct. 1, 2020) (granting final approval to settlement providing for maximum cash benefit of $2,862,191.25 and $11.25 per claim); *Hanley v. Tampa Bay Sports and Entertainment LLC*, No. 8:19-cv-00550-CEH-CPT, 2020 WL 2517766 (M.D. Fla. April 23, 2020) (granting final approval to settlement providing for maximum cash benefit of $2,250,000 and $45.00 per claim); *De Los Santos v. Millward Brown, Inc.*, No. 9:13-cv-80670-DPG, 2015 WL 11438497 (S.D. Fla. Sept. 11, 2015) (granting final approval to settlement providing for maximum cash benefit of $11,000,000 and $50 per claim); *Ashkenazi v. Bloomingdale's, Inc.*, No. 3:15-CV-2705, ECF No. 55 (D.N.J. Dec. 21, 2018) (approving settlement valued at $1.4 million that provides for $25 cash payments or $50 vouchers per claim); *Family Med. Pharmacy, LLC v. Trxade Grp., Inc.*, No. 15-0590-KD-B, 2017 WL 1042079 (S.D. Ala. Mar. 17, 2017) (approving settlement providing for $200,000 cash plus 5% discount on next purchase with defendant Westminster); *Degnen v. Gerzog*, No. 4:15-CV-1103, ECF No. 47 (E.D. Mo. Apr. 20, 2016) (approving $1.6 million settlement that provides for $100 per claim). Consequently, in this case the reasonableness of the requested fee is supported by the exceptional result obtained with the Settlement.

iv. The requested fee is consistent with customary fees and awards in similar cases.

As set forth in Section III.B. above, 30% of the total Settlement is customary in common fund TCPA cases. *See supra*. Class Counsel's requested fee is thus consistent with the percentage customarily awarded to counsel in similar cases in the Eleventh Circuit. Accordingly, this factor weighs in favor of Class Counsel's requested fee.

D. <u>Class Counsel's litigation expenses and costs were reasonably incurred in furtherance of the prosecution of the claims, and should be awarded</u>

The terms of the Settlement, and well-settled precedent, support Class Counsel's recovery of out-of-pocket costs reasonably incurred in investigating, prosecuting, and settling the claims in this case. *See* FED. R. CIV. P. 23(h); *Dowdell v. City of Apopka*, 698 F. 2d 1181, 1191-92 (11th Cir. 1983) ("[W]ith the exception of routine office overhead normally absorbed by the practicing

attorney, all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case may be taxed as costs under section 1988."); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." (citing Herbert B. Newberg, *Attorney Fee Awards* (1986) § 2.19: "Costs Reimbursement in Common Fund Fee Determinations," at 69 and *Mills*, 396 U.S. at 391–92)).

Here, Class Counsel have incurred more than $17,000 in unreimbursed out-of-pocket costs over the course of this litigation. Clark Decl. ¶ 21. These costs arose from mediation fees, attendance at depositions, filing and pro hac vice fees, legal research, postage/overnight delivery, telephone conferencing, travel and other customary litigation expenses, and were all reasonably incurred in furtherance of the investigation, prosecution, and Settlement of this case. *Id.* ¶¶ 22-23. Consequently, these costs are the type regularly reimbursed by courts and should be awarded. *See, e.g.*, *Briggins v. Elwood TRI, Inc.*, 3 F. Supp. 3d 1277, 1297 (N.D. Ala. 2014) (finding fees including "filing fees, witness fees, court reporter fees, and other miscellaneous expenses" were "reasonable and necessary, and should be approved.").

IV. CONCLUSION

For the reasons stated herein, Plaintiff respectfully requests that the Court: (1) award Class Counsel attorneys' fees of 30% of the Settlement Fund, or $96,000; and (2) award Class Counsel reimbursement of litigation expenses of $5,000.

(Signatures to follow)

Dated: May 20, 2025

Respectfully submitted,

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