UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

MELVIN CORNELIUS, on behalf of himself and others similarly situated, Plaintiff, v. DEERE CREDIT SERVICES, INC., Defendant.	Case No.: 4:24-cv-25-RSB-CLR

CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND EXPENSES AND INCORPORATED MEMORANDUM IN SUPPORT

I. INTRODUCTION

Representative Plaintiff Melvin Cornelius and Defendant Deere Credit Services, Inc. ("DCSI") entered into a class action settlement agreement ("Settlement Agreement" or "Agreement")[1] resulting in $1.5 million being placed into a non-reversionary common fund for the benefit of the Settlement Class. Participating Settlement Class Members are expected to receive at least $2,500 each—a tremendous result by any measure.

On September 25, 2024, this Court preliminarily approved the settlement. ECF No. 29. Accordingly, Plaintiff and Class Counsel hereby move the Court for an award of attorneys' fees and the reimbursement of reasonable litigation expenses. Specifically, for the reasons set forth in this memorandum and in the papers previously submitted in support of preliminary approval, pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel respectfully request that the Court award attorneys' fees of $500,000, equal to one-third of the Settlement Fund, and out-of-

[1] The Settlement Agreement can be found at ECF No. 25-2 and the Addendum to the Settlement Agreement can be found at ECF No. 28-2. All capitalized terms used herein have the same definitions as those defined in the Agreement.

pocket litigation expenses of $7,255.82. The requested attorneys' fees are in line with amounts approved in similar TCPA class action settlements in this Circuit and across the country. The amount also reflects the risk and exceptional results corresponding to this case, and was specifically included in the Notice documents to the Settlement Class.[2] Accordingly, Class Counsel respectfully request that the Court approve the requested fees and costs at or after the fairness hearing set for February 12, 2025.[3]

II. BACKGROUND

Congress enacted the TCPA in 1991 to address privacy and harassment concerns arising from certain telemarketing practices that escaped state invasion of privacy and nuisance statutes by operating interstate. *Mims v. Arrow Fin. Servs. LLC*, 132 S. Ct. 740, 745 (2012). To that end, the TCPA makes it unlawful to place calls to a cellular telephone with an artificial or prerecorded voice. 47 U.S.C. § 227(b)(1)(A)(iii); *accord Hylton v. Titlemax of Va., Inc.*, No. 4:21-cv-163, 2022 WL 16753869, at *3 (S.D. Ga. Nov. 7, 2022) (Baker, J.). "Prior express consent" of the called party is an affirmative defense to a TCPA claim. *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012) *aff'd*, 755 F.3d 1265 (11th Cir. 2014).

Here, Mr. Cornelius's claims are relatively straightforward: DCSI placed calls to Mr. Cornelius's cellular telephone number even though he was not a DCSI accountholder and did not owe money that DCSI was trying to collect. Rather, DCSI made the calls to Mr. Cornelius while attempting to reach someone else—its customer who it alleges had a past-due account balance.

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[2] The Court-approved Notice documents advise Settlement Class Members that Class Counsel intend to request fees in an amount not to exceed one-third of the Settlement Fund, plus reimbursement of out-of-pocket expenses incurred in the litigation. *See* ECF No. 28-1 at 6, 9, 14.

[3] A proposed order will be submitted in connection with Plaintiff's Motion for Final Approval. *See* ECF No. 28-1 at 31-34.

Discovery indicates that the party DCSI attempted to reach changed their phone number at some point after providing it to DCSI. This cellular telephone number was then reassigned to Mr. Cornelius. While Mr. Cornelius believes strongly in his claims—as the settlement amount confirms—DCSI vehemently disputes that it violated the TCPA. To that end, DCSI raised a host of defenses. For example:

- DCSI contended that it did not use an automatic telephone dialing system or a prerecorded voice in connection with outbound calls, and thus class members' claims would fail. ECF No. 10 at 8;
- DCSI suggested that class members may have consented to its calls, and consent is a complete defense to a TCPA claim. *Id*. at 10-11;
- DCSI argued that its calls fall under a Federal Communications Commission safe harbor, 47 C.F.R. § 64.1200(c)(2), and thus it had a defense to many claims at issue. *Id*. at 11.
- DCSI asserted 39 separate defenses and affirmative defenses, *see id*. at 8-14, any of which could have curtailed—or eliminated—class members' claims; and
- Mr. Cornelius faced significant risks in obtaining class certification as several courts in this Circuit have refused to certify TCPA class actions, making the likelihood of certification uncertain. *See, e.g.*, *Tillman v. Ally Fin. Inc.*, No. 16-313, 2017 WL 7194275 (M.D. Fla. Sept. 29, 2017); *Shamblin v. Obama for America*, No. 8:13-cv-2428-T-33TBM, 2015 WL 1909765 (M.D. Fla. Apr. 27, 2015).

Against this backdrop, and after sufficient fact discovery for the parties to assess potential damages and the strengths and weaknesses of the claims, the parties mediated this case on June 25, 2024 before Seamus Duffy.[4] With Mr. Duffy's substantial assistance, the parties reached an agreement to resolve this matter.

The Court preliminarily approved a settlement class under Rule 23(b)(3) comprised of:

> All persons throughout the United States (1) to whom Deere Credit Services, Inc. placed a call, (2) directed to a number assigned to a cellular telephone service, but not assigned to a Deere Credit Services, Inc. customer or accountholder, (3) in

[4] https://www.seamusduffymediation.com/ (last visited Dec. 11, 2024).

> connection with which Deere Credit Services, Inc. used an artificial or prerecorded voice, (4) from February 2, 2020 through June 25, 2024.

ECF No. 29 at 2.

Participating Settlement Class Members who aver that they received artificial or prerecorded voice calls on their cellular telephones from DCSI and are not DCSI customers or accountholders will receive a pro-rata share of the settlement fund, after attorneys' fees and expenses and notice and administration costs are deducted. While the exact per-claimant recovery will not be known until Settlement Class Members are provided with a complete opportunity to submit claims, given historical claims rates in TCPA cases, each participating Settlement Class Member is likely to receive between $2,500 and $3,750, after deducting settlement-related costs.

III. CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES IS FAIR, REASONABLE, AND JUSTIFIED, AND SHOULD BE APPROVED

Pursuant to the Agreement, and as indicated in the Notices, consistent with recognized class action practice and procedure, Class Counsel respectfully requests an award of attorneys' fees of $500,000, which is one-third of the Settlement Fund. Class Counsel also respectfully requests reimbursement for its reasonable out of pocket litigation expenses of $7,255.82. The settlement is not contingent on any award of fees or costs. *See* Declaration of Anthony Paronich ("Paronich Decl."), attached as Exhibit 1, ¶¶ 12, 16, 18.

Rule 23 permits a court to award "reasonable attorney's fees… that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court has "recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

The requested fee is well within the range of reason under the factors listed in *Camden I Condo. Ass'n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991). For the reasons detailed herein, Class Counsel submits that the requested fee is appropriate, fair, and reasonable and respectfully requests that this Court approve it.

The common benefit doctrine is an exception to the general rule that each party must bear its own litigation costs. The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1202 (N.D. Ill. 1989) (citation omitted). The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are "unjustly enriched" at the expense of the successful litigant. *Van Gemert*, 444 U.S. at 478. As a result, the Supreme Court, the Eleventh Circuit, and other courts have all recognized that "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as whole." *See, e.g., In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001). Courts have also recognized that appropriate fee awards in cases such as this encourage redress for wrongs caused to entire classes of persons, and deter future misconduct of a similar nature. *Id*.

In the Eleventh Circuit, fees are awarded as a percentage of the funds obtained through a settlement. In *Camden I*—the controlling authority regarding attorneys' fees in common-fund class actions—the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this 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*, 946 F.2d at 774; *see also Hamilton v. SunTrust Mortg. Inc.*, No. 13-

60749-CIV-COHN/SELTZER, 2014 U.S. Dist. LEXIS 154762, at *20 (S.D. Fla. Oct. 24, 2014) (attorneys representing a class are entitled to attorneys' fees based upon the total value of the benefits afforded to the class by the settlement).

The Court has discretion in determining the appropriate fee percentage. "There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 774).

The Eleventh Circuit has provided a set of factors the Court should use to determine a reasonable percentage to award as attorneys' fees to class counsel in class actions:

(1) the time and labor required;

(2) the novelty and difficulty of the relevant questions;

(3) the skill required to properly carry out the legal services;

(4) the preclusion of other employment by the attorney as a result of her acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

(7) time limitations imposed by the clients or the circumstances;

(8) the results obtained, including the amount recovered for the Clients;

(9) the experience, reputation, and ability of the attorneys;

(10) the "undesirability" of the case;

(11) the nature and the length of the professional relationship with the clients; and

(12) fee awards in similar cases.

Camden I, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). "Other pertinent factors are the time required

to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Camden I*, 946 F.2d at 775.

As applied, these *Camden I* factors support the requested fee.

1. The Claims Against DCSI Required Substantial Time and Labor

Mr. Cornelius and the class's claims demanded considerable time and labor, making this fee request reasonable. Paronich Decl. ¶¶ 19-22; Declaration of Michael Greenwald ("Greenwald Decl."), attached as Exhibit 2, ¶¶ 49-51; Declaration of Steven H. Koval ("Kocal Decl."), attached as Exhibit 3, ¶¶ 9-14. Class Counsel devoted substantial time to investigating the claims against DCSI. *Id*. Class Counsel also expended resources researching and developing the legal claims at issue. *Id*. Time and resources were also dedicated to extensive formal discovery, working on responses to discovery requests to Mr. Cornelius, and a review of documents relating to Defendant's calling practices and defenses. *Id*

Settlement negotiations, including preparing for and attending mediation, consumed further time and resources. *Id*. Finally, significant time was devoted to negotiating and drafting the Agreement, obtaining preliminary approval, preparing amended notice documents in line with the Court's suggestions, and to all actions required thereafter pursuant to the preliminary approval order. *Id*.

All told, Class Counsel's work resulted in an excellent result—the settlement provides immediate monetary relief of $1,500,000 to the Settlement Class. Each of the above-described efforts was essential to achieving the settlement now before the Court. The time and resources devoted to this Action readily justify the requested fee. Paronich Decl., ¶¶ 8-23; Greenwald Decl.,

¶¶ 38-51.

2. The Issues Involved Were Novel and Difficult, and Required the Skill of Highly Talented Attorneys

Courts have long recognized that "particularly in class action suits, there is an overriding public interest in favor of settlement,' ... because ... 'class action suits have a well-deserved reputation as being most complex.'" *In re Pool Prods. Distrib. Market Antitrust Litig.*, 310 F.R.D. 300, 316 (E.D. La. 2015) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). "Settlement 'has special importance in class actions with their notable uncertainty, difficulties of proof, and length.'" *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474-Goodman, 2016 U.S. Dist. LEXIS 50315, at *26 (S.D. Fla. Apr. 13, 2016).

"[P]rosecution and management of a complex national class action requires unique legal skills and abilities." *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). The quality of Class Counsel's legal work is evidenced by the substantial benefit conferred to the Settlement Class in the face of significant litigation obstacles. Class Counsel's work required the acquisition and analysis of a significant amount of factual and legal information.

In any given case, the skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this Action required counsel trained in class action law and procedure as well as the specialized issues presented here as they relate to the TCPA. Class Counsel is particularly experienced in the litigation, certification, and settlement of nationwide class action cases, and Paronich Law P.C., the Koval Firm, and Greenwald Davidson Radbil PLLC's participation added considerable value to the Settlement Class. Paronich Decl., ¶¶ 2-7; Greenwald Decl., ¶¶ 4-7, 10-37; Koval Decl., ¶¶ 2-8.

In evaluating the quality of representation by Class Counsel, the Court should also consider opposing counsel. *See Camden I*, 946 F.2d at 772 n.3; *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992). Throughout the litigation, DCSI was represented by capable counsel at Carlton Fields. They were worthy, highly competent adversaries. Paronich Decl., ¶ 22.

3. Class Counsel Achieved a Successful Result

In determining whether a fee award is reasonable, the most critical factor is the results achieved, *i.e.*, the overall result and benefit to the class from the litigation. *Farrar v. Hobby*, 506 U.S. 103, 114 (1992).

Given the significant litigation risks the Settlement Class faced, the settlement represents an outstanding result. Rather than facing years of costly and uncertain litigation, the settlement makes available an immediate cash benefit of $1,500,000 to Settlement Class Members. The monetary relief alone is significant. Paronich Decl., ¶ 15. The per-claiming Settlement Class Member recovery is expected to be between $2,500 and $3,750, after deducting settlement-related costs, including the requested attorneys' fees and expenses. *Id*. This amount is greater than the payouts in the majority of TCPA class action settlements. *See, e.g., Rose v. Bank of Am. Corp.*, 2014 WL 4273358 at *10 (N.D. Cal. Aug. 29, 2014) ($20-$40 per claimant); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493–94 (N.D. Ill. 2015) ($30 per claimant); *Markos v. Wells Fargo Bank, N.A.*, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017) ($24 per claimant; deemed an "excellent result"); *Goldschmidt v. Rack Room Shoes*, No. 18-21220-CIV, ECF 86 (S.D. Fla. Jan. 16, 2020) ($10 voucher and $5 in cash, less attorneys' fees, costs, notice and administration costs, and service award, per claimant); *Halperin v. You Fit Health Clubs, LLC*, No. 18-61722, ECF 44 (S.D. Fla. Nov. 1, 2019) (less than $9 per claimant).

4. The Claims Presented Serious Risk

As discussed above, the settlement is fair and reasonable given the extensive litigation risks. Paronich Decl., ¶ 19. Consideration of the "litigation risks" factor under *Camden I* "recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including social opprobrium surrounding the parties, thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term 'undesirable.'" *Sunbeam*, 176 F. Supp. 2d at 1336.

The risk of no recovery here—and in complex cases of this type more generally—is real. In numerous hard-fought lawsuits, plaintiff's attorneys (including the undersigned) have received little or no fee—despite *years* of excellent, professional work—due to the discovery of facts unknown when the case started, changes in the law while the case was pending, or an adverse decision of a judge, jury, or court of appeals. *See, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming district court's ruling overturning jury verdict in favor of plaintiff class); *In re Oracle Corp. Secs. Litig.*, No. 01- cv-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd,* 627 F.3d 376 (9th Cir. 2010) (affirming summary judgment for defendants after eight years of litigation). Here, major hurdles remained in this litigation, including class certification and summary judgment.

Class Counsel accepted substantial risk in taking this case given the possibility that this Court, the Eleventh Circuit, or the Supreme Court could take action that might extinguish the TCPA claims at issue. The settlement benefits obtained through the settlement are substantial, given the complexity of the litigation and the significant risks and barriers that loomed in the absence of settlement. Any of these risks could easily have impeded, if not altogether derailed, Mr. Cornelius' successful litigation of these claims on behalf of Settlement Class Members.

The recovery achieved by this settlement must be measured against the fact that any recovery by Mr. Cornelius and Settlement Class Members through continued litigation could only have been achieved if: (i) Mr. Cornelius were able to certify a class and establish liability and damages at trial; (ii) the final judgment was affirmed on appeal; and (iii) DCSI was then able to satisfy the final judgment. The settlement is an extremely fair and reasonable recovery for the Settlement Class in light of DCSI's defenses, including specifically its consent defense, and the challenging and unpredictable path of litigation Mr. Cornelius and any certified class would have faced absent the settlement. Paronich Decl., ¶ 23.

Despite Mr. Cornelius' confidence that this Court would certify the proposed class for litigation purposes, he recognizes that class certification is far from automatic. *Compare Head v. Citibank, N.A.*, 340 F.R.D. 145 (D. Ariz. 2022) (certifying a TCPA class over objection) *with Revitch v. Citibank, N.A.*, No. C 17-06907 WHA, 2019 WL 1903247, at *2 (C.D. Cal. Apr. 28, 2019) (denying class certification); *Sliwa v. Bright House Networks, LLC*, 333 F.R.D. 255, 271–72 (M.D. Fla. 2019) (same). The risks of the litigation, including the ever-changing TCPA landscape, the complexity of the issues involved, and the contingent nature of Class Counsel's representation, as discussed below, justify the requested fees. *See Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 U.S. Dist. LEXIS 166484, at *19 & *35 (N.D. Cal. Dec. 11, 2015) (awarding class counsel fees of one-third of common fund based in part on the significant risks of litigation including potential changes in law and contingent nature of engagement).

Interpretations of the TCPA are ever-evolving and notoriously unpredictable, further injecting uncertainty into the outcome. And even had Mr. Cornelius succeeded on the merits and prevailed on appeal, a reduction in statutory damages was possible. *See Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1125 (9th Cir. 2022) (vacating "the district court's denial of the defendant's post-

trial motion challenging the constitutionality of the statutory damages award to permit reassessment of that question guided by the applicable factors.").

Underscoring the fairness of the compensation recovered for Class Members, the court in *Markos v. Wells Fargo Bank, N.A.* characterized a $24 per-claimant recovery in a TCPA class action—far less than what participating Settlement Class Members stand to receive here—as "an excellent result when compared to the issues Plaintiff would face if they had to litigate the matter." No. 15-1156, 2017 WL 416425, at *4 (N.D. Ga. Jan. 30, 2017). Here, Class Counsel has secured a result that exceeds that recovery by ***100 times*** that amount.

5. Class Counsel Assumed Considerable Risk to Pursue This Action on a Pure Contingency Basis

"The importance of ensuring adequate representation for Plaintiff who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *see Berry v. Wells Fargo & Co.*, No. 3:17-cv-00304-JFA, 2020 U.S. Dist. LEXIS 143893, at *35 (D.S.C. July 29, 2020) ("class counsel undertook to prosecute this action without any assurance of payment for their services. Counsel's entitlement to payment was entirely dependent upon achieving a good result for Plaintiff and the class. Contingency fee arrangements are customary in class action cases and such arrangements are usually one-third or higher. Therefore, this factor supports the reasonableness of the requested fee award.") (internal citation omitted). Indeed, "[a] contingency fee arrangement often justifies an increase in the award of attorney's fees." *Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988)); *see also Birch v. Office Depot Inc.*, No. 06 CV 1690 DMS (WMC), 2007 U.S. Dist. LEXIS 102747,

at *7 (S.D. Cal. Sep. 28, 2007) ("Class Counsel has proceeded on a contingency basis despite the uncertainty of any fee award. Class Counsel risked that it would not obtain any relief on behalf of Plaintiff or the Class, and so no recovery of fees. In addition, Class Counsel was precluded from pursuing other potential sources of revenue due to its prosecution of the claims in this action.").

Because Class Counsel was working entirely on a contingency basis, only a successful result—at trial or by settlement—would result in any fees and recovery of costs. Paronich Decl., ¶ 16. The contingent nature of Class Counsel's representation strongly favors approval of the requested fee.

6. The Requested Fee Comports with Fees Awarded in Similar Cases

Counsel's requested fee of $500,000, which is one-third of the Settlement Fund, is well within the range of fees typically awarded in similar cases. Numerous decisions within and outside of the Southern District of Georgia and the Eleventh Circuit have found that a fee of one-third of a settlement's value is an appropriate fee percentage under the factors listed by *Camden I. See, e.g.*, *Chapman, et. al. v. America's Lift Chairs, LLC*, No. 21-cv-245 (S.D. Ga.) (Baker, J.) (approving fee amounting to one-third of settlement fund in TCPA case); *Hanley v. Tampa Bay Sports & Entm't Ltd. Liab. Co.*, No. 8:19-CV-00550-CEH-CPT, 2020 U.S. Dist. LEXIS 89175, at *16 (M.D. Fla. Apr. 23, 2020) (collecting cases and stating that "district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund" and approving fees of more than one-third of a TCPA settlement fund); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) ("The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third.") (collecting cases).

In fact, Class Counsel's fee request also falls specifically within the range of awards in

TCPA cases within this Circuit and elsewhere. *See, e.g.*, *Wright et al. v. eXp Realty, LLC*, No. 6:18-cv-01851-PGB-EJK, ECF No. 230 (M.D. Fla. Oct. 26, 2022) (granting fees and costs amounting to one-third of the $26.9 million monetary relief and less than one-third of the total settlement value when including other non-monetary benefits to class members); *Gottlieb v. Citgo Petroleum Corp.*, No. 9:16-cv-81911, 2017 U.S. Dist. LEXIS 197382, at *7 (S.D. Fla. Nov. 29, 2017) (granting fees and costs amounting to one-third of the $8,000,000 common fund and less than one-third of the total settlement value when including other non-monetary benefits to class members); *ABC Bartending School of Miami, Inc. v. American Chemicals & Equipment, Inc.*, No. 15-CV-23142-KMV (S.D. Fla. April 11, 2017) (granting fees and costs amounting to one-third of the $1,550,000 settlement fund); *Guarisma v. ADCAHB Med. Coverages, Inc.*, No. 1:13-cv-21016 (S.D. Fla. June 24, 2015) (granting fees and costs amounting to one-third of the $4,500,000 settlement fund); *Vandervort v. Balboa Capital Corp*., 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding fees of one-third on TCPA class action).

Consequently, the attorneys' fee requested here is appropriate and should be awarded.

7. Class Counsel's Request for Reimbursement of Litigation Expenses Is Reasonable

Rule 23(h) also permits the Court to "award . . . nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "Courts typically allow counsel to recover their reasonable out-of-pocket expenses. Indeed, courts normally grant expense requests in common fund cases as a matter of course." *Hanley*, 2020 U.S. Dist. LEXIS 89175, at *17 (collecting cases and approving cost award of approximately $27,000). The settlement permits Class Counsel to seek reimbursement of its reasonable expenses.

Class Counsel has incurred expenses in the prosecution of this action totaling $7,255.82 for filing fees, service of process fees, and mediation fees. Paronich Decl., ¶ 25-28; Greenwald Decl., ¶¶ 53-56; Koval Decl., ¶¶ 15-16. These expenses were reasonable and necessary for the prosecution of this action and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. *Id*.

IV. CONCLUSION

Plaintiff and Class Counsel respectfully request that this Court award attorneys' fees in the amount of $500,000 and reasonable costs in the amount of $7,255.82.

Date: December 11, 2024

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