UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WILFRED BERMUDEZ, on behalf of himself and on behalf of all others similarly situated,

Plaintiffs,

v. Case No. : 6:19-cv-01847

CFI RESORTS MANAGEMENT, INC.,

Defendant.
_____/

PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES AND COSTS AND ADDITIONAL COMPENSATION TO PLAINTIFF

Class Counsel hereby files this Unopposed Motion for an Award of Attorney's Fees and Costs and Additional Compensation to Plaintiff. In support of this Motion, Class Counsel states the following:

I. BRIEF OVERVIEW OF MOTION

On September 25, 2019, Plaintiff, Wilfred Bermudez, initiated this action by the filing of a Class Action Complaint styled *Wilfred Bermudez v. Westgate Resorts, Inc.*,[1] in the United States District Court for the Middle District of Florida, Orlando Division, (Dkt. 1) (the "FCRA Litigation"), asserting claims against Defendant under the Fair Credit Reporting Act ("FCRA") on behalf of himself and on behalf of a proposed class of similarly situated individuals. On December 11, 2019, Plaintiff filed his Amended Complaint against Defendant, CFI Resorts Management, Inc. Subsequently, the parties exchanged discovery and attended mediation on May 21, 2020, before an experienced FCRA mediator, Mr. Carlos Burruezo, Esq. The parties

[1] On December 11, 2019, the Parties jointly filed a Stipulation of Dismissal Without Prejudice as to Defendant, Westgate Resorts, Inc. On December 31, 2019, the Court entered an Order dismissing Westgate Resorts, Inc. from the FCRA Litigation.

were able to resolve the action at mediation. (Dkt. 40, 41). On August 3, 2020, this Court preliminarily approved the Settlement. (Dkt. 49). The Settlement, if granted final approval by this Court, will resolve all claims of the Plaintiff and each of the putative class members. By way of this motion, Plaintiff now seeks Court approval of the attorneys' fees and costs.

Class Counsel's efforts resulted in a Settlement Fund of $515,712.50. If the Court grants final approval, each Class Member that submitted a claim is anticipated to receive check for $57.50.

Subject to the Court's approval, Class Counsel requests attorneys' fees and costs in the amount of $161,225.54 (31.2% of the Settlement Fund), which sum will be paid from the Settlement Fund and which Defendant has agreed not to oppose. The attorneys' fees requested are justified by the monetary benefit obtained for the Settlement Class. Rule 23 class actions are inherently complex. FCRA class actions are even more so because the law is very unsettled. Here, Class Counsel leveraged an undeveloped theory of liability into a class wide settlement. To prosecute the action, Class Counsel invested time and resources without any guaranteed return. Regardless of the potential pitfalls, Class Counsel took the risk and obtained a fantastic result for the Settlement Class. Not many attorneys would have even recognized the existence of the claim, accepted the undertaking, or had the skill or expertise to obtain similar results.

The requested fees and costs are reasonable and in line with fees commonly awarded in this district. Class Counsel also requests the Court approve a payment of $5,000.00 to Plaintiff as consideration for executing a general release.[2]

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[2] Pursuant to the terms of the Settlement Agreement preliminarily approved by the Court, Plaintiff was to receive a $5,000.00 service award and execute a general release of all claims against Defendant (Dkt. 42-1, ¶ 57). The Settlement Agreement was entered into before the Eleventh Circuit Court of Appeals issued its decision in *Johnson v. NPAS Solutions, LLC*, No. 18-123444, 2020 WL 5553312 (11th Cir. September 17, 2020), and the additional $5,000.00 to Plaintiff was designated a "service award." Class Counsel asserts *Johnson* is not binding authority since mandate has not issued. If the Court finds *Johnson* to be binding authority, the instant action is distinguishable

For these reasons, the Court should grant this Motion in its entirety.

II. SUMMARY OF LITIGATION AND SETTLEMENT

A. History of the Litigation

This action was originally filed on September 25, 2019. After initial discovery exchanges, the parties attended a mediation with Mr. Carlos Burruezo that proved to be successful. The Settlement was memorialized in full and presented to the Court as Exhibit "A" to the Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Notice to Settlement Class. (Dkt. 42-1).

B. Settlement Terms

The Settlement, if granted final approval, will resolve Plaintiff's claims and the claims of the members of the Settlement Class in exchange for Defendant's agreement to establish Settlement Fund in the amount of $515,712.50. After all settlement terms were agreed upon, the parties negotiated Class Counsel's attorneys' fees, reimbursement of costs and Plaintiff's service award. Defendant agreed not to oppose a fee award of $161,225.54. The parties also agreed Plaintiff would execute a general release and receive a service award of $5,000.00, if approved, to be paid from the Settlement Fund.

III. ARGUMENT

A. The Court Should Afford Substantial Weight to the Settlement on Fees and Costs

The Court must independently evaluate the requested fees, costs and expenses. However, when a settlement is the result of adversarial negotiations and attorneys' fees are agreed to after settlement is reached on all other material terms, the Court should give great weight to the

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from *Johnson*. To facilitate settlement, Plaintiff agreed to execute a general release and waive all claims for benefit of the Settlement Class. Class Counsel request the Court approve payment in the amount $5,000.00 as consideration for execution of the general release. Of note, the payment to Plaintiff will not reduce the payments to Settlement Class Members, as settlement payments are fixed at $57.50. Defendant takes no position with respect to designating the $5,000.00 as consideration for execution of the general release.

parties' terms. *See, e.g.*, *Strube v. Am. Equity Inv. Life Ins. Co.*, 2006 WL 1232816, at *2 (M.D. Fla. May 5, 2006); *Elkins v. Equitable Life Ins. Co.*, 1998 WL 133741, at *34 (M.D. Fla. Jan. 27, 1998); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001). As has been noted:

> The Court finds that the fee and expense negotiations were conducted at arm's length, only after the parties had reached agreement on all terms of the Settlement. There is no evidence in this case that the Settlement, or the fee and expense agreement, was in any way collusive. Under these circumstances, the Court gives great weight to the negotiated fee in considering the fee and expense request.
>
> Such agreements between plaintiffs and defendants in class actions are encouraged, particularly where the attorneys' fees are negotiated separately and only after all terms of the settlement have been agreed to between the parties. *See Hensley v. Eckerhart,* 461 U.S. 424, 437 (1983) (noting that negotiated, agreed upon attorneys' fees are the "ideal" toward which the parties should strive and stating that "[i]deally, of course, litigants will settle the amount of a fee").

Manners v. Am. Gen. Life Ins. Co., 1999 WL 33581944, at *28 (M.D. Tenn. Aug. 11, 1999) (internal citations omitted); *see also, e.g.*, *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974) ("In cases of this kind, we encourage counsel on both sides to utilize their best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees."). Citing *Manners* with approval, this Court has held:

> The Court finds that the parties' agreement with regard to the payment of fees and expenses was not reached until after a settlement had been reached in principle on its other terms and that the agreement was not the product of collusion or fraud. As a result, the parties' agreement is entitled to substantial weight. *See, e.g.*, *Strube v. Am. Equity Inv. Life Ins. Co.*, 2008 U.S. Dist. LEXIS 28582 at *6–7 (M.D. Fla. May 5, 2006); *Elkins v. Equitable Life Ins. Co.*, 1998 U.S. Dist. LEXIS 1557 (M.D. Fla. Jan. 27, 1998); *Ingram v. Coca–Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001); *Manners v. Am. Gen. Life Ins. Co.*, No. 3–98-0266, 1999 WL 33581944, at *28 (M.D. Tenn. August 11, 1999).

James D. Hinson Elec. Contracting Co., Inc. v. BellSouth Telecomm. Inc., 3:07-CV-598-TJC-MCR, 2012 WL 12952592, at *2 (M.D. Fla. July 30, 2012) (Corrigan, J.) (*Hinson I*).

As long as the requested fee is one that the Court agrees falls within the range of reasonableness, it should be approved. Where there is no evidence of collusion and no detriment to the parties, as is the case here, courts "should give substantial weight to a negotiated fee amount, assuming that it represents the parties' 'best efforts to understandingly, sympathetically and professionally arrive at a settlement as to attorney's fees.'" *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001). Here, the excellent results achieved for all members of the Class refute any potential inference of collusion or impropriety. Furthermore, Defendant has already agreed to the fees and costs sought by Class Counsel. "A court should refrain from substituting its own value for a properly bargained-for agreement." *In re Apple Computer, Inc., Derivative Litig*., Case No. 06-4128, 2008 U.S. Dist. LEXIS 108195, *12 (N.D. Cal. 2008); *see also Holmes v. Continental Can Co.*, 706 F.2d 1144, 1149, (11th Cir. 1983) (noting courts are often deferential to the opinions of counsel in class action settlements). Thus, the amount sought should be approved.

B. The Requested Fee is Reasonable Under the Common Fund Doctrine

Courts have long recognized the common fund doctrine, under which attorneys who create a recovery benefitting a group of people may be awarded their fees and costs from the recovery. *See, e.g.*, *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980). In a class action where Class Counsel seeks fees from a common fund, the Eleventh Circuit directs that the fee be based upon a percentage of the class benefit. *Camden I Condominium Ass'n, Inc. v. Dunkle,* 946 F.2d 768, 774 (11th Cir. 1992)("attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class"). Courts have a great

deal of discretion in choosing the proper percentage. "There is no hard and fast rule … because the amount of any fee must be determined upon the facts of each case." *Camden I* at 774. The Court should look at factors such as the time required to reach a settlement, whether there are any substantial objections, the economics of a class action, the criteria set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974), and any other "unique" circumstances. *Camden I* at 775. In *Camden I,* the Eleventh Circuit recognized that a fee award of 50 percent of the benefit is the upper limit; that the majority of fee awards fall between 20 and 30 percent. *Camden I*, 946 F.2d at 774-75. Here, Class Counsel seeks a fee award of $161,225.54 (approximately 31.2% of the Settlement Fund). For purposes of determining fees under the controlling percentage of the benefit fee-assessment method, the total value of the common fund or class benefit, both monetary and non-monetary relief, is considered. *Camden I*, 946 F.2d at 771.

The Eleventh Circuit's factors for evaluating the reasonable percentage to award class-action counsel, commonly referred to as the *Johnson* factors, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (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 client; and (12) awards in similar cases. *Id*. 946 F.2d at 772 n. 3 (citing factors articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

These twelve factors are not exclusive. "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." *In re Sunbeam*, 176 F. Supp. 2d at 1333 (S.D. Fla. 2001) (quoting *Camden I*, 946 F.2d at 775). These factors are merely guidelines, and the Eleventh Circuit has "encouraged the lower courts to consider additional factors unique to the particular case." *Id*. (quoting *Walco Inv., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997)). The *Johnson* factors are discussed below.

1. The Time and Labor Required was Reasonable

Class Counsel has invested significant time litigating this action. This includes time drafting and filing the Complaint and Amended Complaint; drafting and serving discovery on Defendant; reviewing and analyzing discovery responses; reviewing and analyzing class-related information submitted by Defendant; driving to Orlando to meet with Defendant's Counsel; preparing for and attending mediation; drafting a settlement agreement; drafting motions for preliminary approval and final approval; attending a preliminary approval hearing; drafting class notices; facilitating notices and class administration; and responding to inquiries from class members. Additionally, Class Counsel must attend the Final Fairness Hearing on November 12, 2020.

If the Court grants final approval of the settlement, Class Counsel will continue to represent the Class. Class Counsel will monitor the settlement to ensure that class members receive their settlement checks and/or replacement checks as necessary, and will continue to respond to inquiries from class members. Therefore, Class Counsel will have dedicated even

more time in this matter to bring it to full and final resolution than the hours reflected in the attached supporting documentation.

Class Counsel performed meaningful work for over one year, litigating this case from inception. Class Counsel performed this work entirely on a contingency fee basis and has not been compensated for his time, or for the costs already expended.

2/3. This Case Presented Novel and Difficult Questions Requiring a High Level of Skill to Perform the Legal Service Properly

The second *Johnson* factor recognizes that attorneys should be appropriately compensated for accepting novel and difficult cases. *Johnson*, 488 F.2d at 718. The third *Johnson* factor is the "[t]he skill requisite to perform the legal service properly." *Johnson*, 488 F.2d 718. This third factor is directly connected to the second *Johnson* factor and requires the judge to "closely observe the attorney's work product, his preparation, and general ability before the court." *Id*. Because the second and third *Johnson* factors are interrelated, below they are analyzed simultaneously.

The FCRA represents an emerging and developing area of law, especially with respect to Rule 23 class actions alleging violations of 15 U.S.C. § 1681b(b)(2)(A). In general, these cases are novel and present difficult questions of both fact and law - raising novel issues only a small subset of the bar would even be able to identify, yet alone handle. Class Counsel has demonstrated expertise in these particular cases, having been named class counsel in over twelve similar FCRA class actions.

The Eleventh Circuit recognizes skill as the "ultimate determinate of compensation level," as "reputation and experience are usually only proxies for skill." *Norman v. Housing Authority of Montgomery*, 836 F.2d 1292, 1300 (11th Cir. 1998). In *Norman*, the Eleventh Circuit listed several factors for district courts consider in determining an attorney's skill. *Id.*

Skill can be measured in several ways, including the degree of prudence and practicality exhibited by counsel at the beginning of the case. *Id*. The Court explained that an attorney who has a sharp command of trial practice and a sound understanding of the substantive law governing the case, such that his time may be spent exploring the finer points raised by the issues, should be compensated at a higher rate of pay than one who has to educate himself just to gain a general working knowledge of trial practice and law. *See id*. at 1301. Finally, the Court noted that persuasiveness is an attribute of legal skill and defines a good advocate as one who advances his client's position in a clear and compelling manner. *Id*. The Eleventh Circuit also explained that the complexity of the case at hand may indicate skill. *See Yates v. Mobile County Personnel Bd*., 719 F.2d 1530, 1535 (11th Cir. 1983). In evaluating the skill involved, the Court should also consider the quality of Class Counsel's opposition. *In re Sunbeam Sec. Litig.,* 176 F.Supp. 2d 1323, 1334 (S.D. Fla. 2001).

Applying these factors, Class Counsel has shown himself to be highly skilled and practical. This is a complex area of the law, with ubiquitous Article III standing pitfalls and success contingent upon a finding of "willfulness." However, even with these inherent challenges and a highly skilled adversary representing Defendant, Class Counsel was able to obtain an excellent outcome for the Settlement Class. *To wit*, if the Court grants the motion, Settlement Class Members will receive an award of $57.50 simply by filing a claim. When all these factors are combined, the outcome demonstrates that Class Counsel is a highly skilled FCRA practitioner. This weighs in favor of finding the requested fee reasonable.

4. Preclusion of Other Employment

The fourth *Johnson* factor is "[t]he preclusion of other employment by the attorney due to acceptance of the case." *Johnson*, 488 F.2d at 718. This factor requires the dual consideration of

otherwise available business which is foreclosed because of conflicts of interest arising from the representation, and the fact that once the employment is undertaken, the attorney is not free to use the time spent on the case for other purposes. Here, the hours required to prosecute this action limited the amount of time and resources that Class Counsel was available to devote to other matters over the period of this litigation.

5. Customary Fee

An award of $161,225.54 or approximately 31.2% percent is within the range of fees typically awarded in this Circuit and the Middle District of Florida. *See, e.g., Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33 1/3 % of settlement of $40 million); *Hargrett v.Amazon.com DEDC LLC,* No. 8-15-dv-2456-WFJ-AAS (M.D. Fla. Nov. 16, 2018)(Jung, W)(In FCRA class action, Court awarded Class Counsel attorneys' fees equal to one third of the $5,000,000 settlement fund); *Christopher Carnegie v. First Fleet, Inc. of Tennessee d/b/a First Fleet, Inc*., Case No.: 8:18-cv-1070-02CPT (Dkt. 63), (M.D. Fla., June 21, 2019) (Jung, W.)(Awarding 33 1/3% in FCRA class action)*; Williams v. Naples Hotel Group*, LLC, Case No.: 6:18-cv-00422-RBD-DCI(Dalton, R.)(July 29, 2019)(Awarding 30% in early-settled FCRA class action); *Luis A. Valdivieso v. Cushman & Wakefield Inc.*, Case No.: 8:17-cv-118-T-23JSS (Dkt. 92), (M.D. Fla., December 7, 2018) (Merryday, S.) (Awarding 33 1/3% in FCRA class action); *Elayne Figueroa v. Baycare Health Systems, Inc.*, Case No.: 8:17-cv-01780-JSM-AEP, (Dkt. 83), (M.D. Fla., November 14, 2018) (Moody, J.) (Awarding 33 1/3% in FCRA class action); *Neyshia Patrick v. Interstate Management Company, LLC*, Case No.: 8:15-cv-1252-T-33AEP (Dkt. 49), (M.D. Fla., April 29, 2016) (Covington, V.) (Awarding 33 1/3% in FCRA class action); *Colin Speer v. Whole Foods Market Group, Inc.*, Case No.: 8:14-cv-3035-RAL-TBM (Dkt. 68), (M.D. Fla., January 15,

2016) (Lazzara, R.) (Awarding 33 1/3% in FCRA class action); *Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *4 (S.D. Fla. Sept. 26, 2012) ("One-third of the recovery is considered standard in a contingency fee agreement."); *Atkinson v. Wal-Mart Stores, Inc.*, 2011 WL 6846747, at *6 (M.D. Fla. Dec. 29, 2011) (approving class settlement with one-third of the maximum $2,020,000 common fund). Accordingly, Class Counsel's requested fee award of $161,225.54 is appropriate.

6. The Case was Taken on Contingency

The sixth *Johnson* factor concerns the type of fee arrangement (hourly or contingent) entered into by the attorney. *Johnson*, 488 F.2d at 718. "A contingency fee arrangement often justifies an increase in the award of attorneys' fees." *Behrens v. Wometco Enters*., 118 F.R.D. 534, 548 (S.D. Fla. 1988). As recognized in *Behrens*, without a contingent fee, "very few lawyers could take on the representation of a class client given the investment of substantial time, effort and money, especially in light of the risks of recovering nothing." *Behrens v. Wometco Enters*., 118 F.R.D. 534, 548 (S.D. Fla. 1988).

Class Counsel took a substantial risk in prosecuting this action. This action was taken on a pure contingency basis with no guarantee of recovery. There were no assurances that the putative class would be certified, or that Plaintiff could have or would have overcome Defendant's willfulness defense. Class Counsel has incurred opportunity costs in prosecuting this action and has received no compensation thus far. From the onset, there was a very real possibility that Class Counsel would not recover anything for the Class and lose the costs already incurred. For these reasons, this sixth *Johnson* factor supports the approval of the requested amount of attorneys' fees. *Waters v. Cook's Pest Control, Inc*., 2012 U.S. Dist. LEXIS 99129, 47 (N.D. Ala. July 17, 2012).

7. Time Limitations

"Priority work that delays the lawyer's other legal work is entitled to some premium. This factor is particularly important when new counsel is called in to prosecute the appeal or handle other matters at a late stage in the proceedings." *Johnson*, 488 F.2d at 718. Time limitations were not an issue in this case. Thus, this factor is neutral.

8. Amount Involved and the Results Obtained

Class Counsel recovered $515,712.50 for the benefit of all Class Members. To litigate this action through trial would have been risky, complicated, protracted, and expensive. At trial, Plaintiff would have still been required to prove Defendant's willfulness. Considering the complexities of this case, the barriers to successful resolution on the merits and the vigorous defense of opposing counsel, this is an excellent recovery. *See, e.g., Schoebel v. Am. Integrity Ins. Co.*, 2015 WL 3407895, at *7 (M.D. Fla. May 27, 2015) (dismissing FCRA stand-alone disclosure case seeking statutory damages because alleged violation was not willful).

Class members will receive awards of $57.50 simply by filing a claim. This compares very favorably to other FCRA class action settlements on record. The district court in *Hillson v. Kelly Services Inc.*, summarized the results of such settlements as follows:

> The results counsel achieved for the class were good. The gross recovery (i.e., recovery before fees and other expenses are taken from the fund) is $30 per class member (on average). This appears to be in line with the average per-class-member gross recovery in other settlements of stand-alone disclosure claims. *See Moore v. Aerotek, Inc.*, No. 2:15-CV-2701, 2017 WL 2838148, at *4 (S.D. Ohio June 30, 2017) (per-capita gross recovery of $25 in case involving a stand-alone disclosure claim and a claim that employer did not provide a copy of consumer report), *report and recommendation adopted*, 2017 WL 3142403 (S.D. Ohio July 25, 2017); *Lagos v. Leland Stanford Junior Univ.*, No. 15-CV-04524-KAW, 2017 WL 1113302, at *2 n.1 (N.D. Cal. Mar. 24, 2017) (per-capita gross recovery of $26); *Lengel v. HomeAdvisor, Inc.*, No. CV 15-2198, 2017 WL 364582, at *9 (D. Kan. Jan. 25, 2017) (citing FCRA disclosure cases with per-capita gross recoveries of $33, $40, and $44).

2017 WL 3446596, at *3 (E.D. Mich. Aug. 11, 2017); see, e.g., *Gibbs v. Centerplate, Inc.,* 2018 WL 6983498, at *8 (M.D. Fla. Dec. 28, 2018(citation omitted)(citing cases and finding that a per-class member gross recovery of $100 was excellent), *report and recommendation adopted*, 2019 WL 1093441 (M.D. Fla. Jan. 7, 2019); *Marcum v. Dolgencorp, Inc.*, No. 3:12-cv-00108 (E.D. Va. 2014) ($53 gross payment per class member reduced by attorneys' fees and service awards); *Knights v. Publix Super Markets, Inc.*, No. 3:14-cv-006720 (M.D. Tenn. 2014) ($48.55 per class member). Here, Class Members will receive awards more than the amounts typically received in FCRA class actions. Class Counsel's effort to secure a favorable outcome supports full payment of the attorneys' fees Defendant has already agreed to pay. Accordingly, given the excellent results achieved, this factor weighs heavily in favor of the reasonableness of the requested fee.

9. Experience, Reputation, and Ability of the Attorneys

Class Counsel set forth his qualifications and prior experience in the attached declaration. This case has, at all stages, been handled on both sides by experienced lawyers whose reputations for effective handling of complex litigation are known throughout the United States. This factor also weighs in favor of awarding the requested fee.

10. Undesirability of the Case

In the above sections, Class Counsel highlights the complexity and skill required to recognize and prosecute a FCRA class action. Most counsel would have little to no interest in prosecuting an action seeking minimal statutory damages for "intangible" injuries on a contingency basis, with no guarantee or high likelihood of recovery. Therefore, this factor, too, supports the requested amount of attorneys' fees.

11. Nature and Length of the Professional Relationship with the Client

Class Counsel was not representing long-term clients in this matter. This factor is neutral.

12. Awards in Similar Cases

"The reasonableness of a fee may also be considered in light of awards made in similar litigation within and without the court's circuit." *Johnson*, 488 F.2d at 719. As detailed above, the fee award comports with the fees awarded in similar Rule 23 Class Actions in the Eleventh Circuit and Middle District of Florida.

C. The Economics of Prosecuting a Class Action and Public Policy

Without the possibility of recovering an attorneys' fee, most class actions would never be filed. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339, (1980) (observing that "[w]here it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved person may be without any effective redress unless they may employ the class action device"). Attorneys, like Class Counsel here, who undertake the risk to vindicate legal rights that may otherwise go un-redressed function as "private attorneys general." *Id*. at 338. This Court should "treat successfully fulfilling such a role as a *Johnson* factor when awarding class counsel attorneys' fees." *Allapattah Servs. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1217-1218 (S.D. Fla. 2006).

In undertaking this case, Class Counsel assumed the risk of hundreds of hours of attorney time and thousands of dollars in costs. And, furthermore, "[u]nless that risk is compensated with a commensurate reward, few firms, no matter how large or well financed, will have any service to represent the small stake holders in class actions against corporate America, no matter how worthy the cause or wrongful the defendant's conduct." *Id*. Indeed, absent an award of fees that

adequately compensates Class Counsel, the entire purpose and function of class litigation under Rule 23 of the Federal Rules of Civil Procedure will be undermined and subverted to the interests of those lawyers who would prefer to take minor sums to serve their own self-interest rather than obtaining real justice on behalf of their injured clients. *Id.* Thus, the economics of prosecuting this class action, along with public policy, support the requested fee sought by Class Counsel.

D. Costs and Expenses

Class Counsel is absorbing the costs and expenses of the litigation.

E. Additional Compensation for Plaintiff Bermudez

The Court should also award Plaintiff a $5,000.00 as additional consideration for executing a general release of claims to facilitate settlement and for the benefit of the Settlement Class. Specifically, Plaintiff agreed to waive all individual claims against Defendant, including his FCRA claim for Defendant's alleged failure to provide him notice and a copy of his consumer report before terminating his employment in violation of 15 U.S.C. § 1681b(b)(3). (Dkt. 21, ¶10, 46-54).

CONCLUSION

Class Counsel has obtained an excellent outcome for the Settlement Class. To date, the administrator has received no objections to the requested fee, or to any other part of the Settlement. Class Counsel and Defendant negotiated a fair attorneys' fee at arm's length after agreeing to all other settlement terms. For the foregoing reasons, Class Counsel respectfully requests that the Court enter an order granting the payment of Class Counsel's attorneys' fees and costs, and additional compensation to the Named Plaintiff, from the Settlement Fund.

Dated this 21st day of October, 2020.

/s/ Marc R. Edelman

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LOCAL RULE 3.01(g) CERTIFICATE

Defendant does not oppose the attorneys' fees, costs and service award requested in this motion.

/s/ Marc R. Edelman
MARC R. EDELMAN, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served via regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

/s/ Marc R. Edelman
MARC R. EDELMAN, ESQ.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WILFRED BERMUDEZ, on behalf of himself and on behalf of all others similarly situated,

Plaintiffs,

v. Case No. : 6:19-cv-01847

CFI RESORTS MANAGEMENT, INC.,

Defendant.
_____/

DECLARATION OF MARC R. EDELMAN

I, MARC R. EDELMAN, declare under penalty of perjury as follows:

1. My name is Marc R. Edelman. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I worked on behalf of Plaintiff and the Class in the above-styled litigation.

3. I am employed as an attorney with the law firm of Morgan & Morgan, P.A. in the above-styled case. Morgan & Morgan is a nationwide trial advocacy law firm, currently employing over 500 attorneys. My office is located at 201 N. Franklin Street, Suite 700, Tampa, Florida 33602.

4. I am a licensed attorney in Florida. I have been a member of the Florida Bar since October, 1996. I have practiced law for over 20 years, more than half of which have been dedicated to labor and employment law. I have a J.D. from Florida State University College of Law and a Bachelor's degree from the University of Florida. For the 10 years before I joined Morgan & Morgan, I was general counsel for a national furniture retailer, overseeing all aspects

of compliance, including compliance with the Fair Credit Reporting Act.

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout Florida. I am admitted in the United States District Courts for the Middle and Southern Districts of Florida, Western District of Tennessee and the Eastern District of Michigan. I have been admitted *pro hac vice* to the United States District Courts for Southern District of New York, Central District of California and Northern District of Georgia.

6. Since joining Morgan & Morgan, I have focused my efforts on employment law and employment related class action lawsuits prosecuting violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b and COBRA. *Graham v. Pyramid Healthcare Solutions*, Case No.: 8:16-cv-1324-T-30AAS (Dkt.58), (M.D. Fla. June 18, 2017)(Moody, J.); *Coles v. Stateserv Medical of Florida, LLC et al*. No. 8:17-cv-829-T-17-AEP, (M.D. Fla., April 10, 2017) (Dkt. 45); *Fosbrink v. Area Wide Protective, Inc*., 8:17-cv-01154-JSM-CPT, (M.D. Fla., May 8, 2018) (Moody, J.) (Dkt. 58); *Musa v. SOS Security LLC*, No. 2:17-cv-05681-MCA-SCM (D.N.J., Newark Division, April 16, 2018) (Dkt. 42); *Grice v. Pepsi Beverages Company, et al*, Case No:1:17-cv-08853-JPO (S.D.N.Y. May 23, 2018); *Gibbs v. Centerplate, Inc., et al.*, No.8:17-cv-2187-T-17EAK-JSS (M.D.Fla. July 12, 2018); *Hargrett v. Amazon.comDEDC LLC*, Case No.8:15-cv-2456-T-26EAJ (July 24, 2018); *Gross v. Advanced Disposal Services, Inc*., No. 8:17-cv-1920-T-36TGW (M.D.Fla. Dec. 10, 2018); *Williams v. Naples Hotel Group*, No: 6:18-cv-422-Orl-37DCI (M.D.Fla. June 11, 2019); *Lindsey v. Ring Power Corporation*, No.: 18-CA-007124 (Fla. 13th Cir.); *Bulgajewski v. R.T.G. Furniture Corporation, d/b/a Rooms To Go*, No.: 18-CA-007000 (Fla. 13th Cir.). *Bryant v. Realogy Group, LLC*, No.: 8:18-cv-2572-T-60CPT (M.D.Fla. April 9, 2020); *Bermudez v. CFI Resorts Management, Inc.*, No.: 6:19-cv-1847-Orl-37DCI (M.D.Fla. August 3, 2020); *Silberstein v. Petsmart, Inc.*, No.: 8:19-cv-02800-SCB-AAS

(M.D.Fla. August 27, 2020); *Sharp v. Technicolor Videocassette of Michigan, Inc.*, No.: 2:18-cv-02325-cgc (W.D.T.N., December 5, 2019).

7. The Class Representative, Wilfred Bermudez, has cooperated with counsel thus far, including all discovery matters, and was apprised of the responsibilities of a class representative prior to the commencement of the litigation.

8. I am well-qualified to represent the interests of the Class, as is Plaintiff.

Work Completed in This Litigation

9. My firm, along with Mr. Chad Justice, Esq. served as Class Counsel in this action.

10. Myself and Mr. Justice invested significant time drafting and filing the Complaint and Amended Complaint; drafting and serving discovery on Defendant; reviewing and analyzing documents and information provided by Defendant; reviewing and analyzing class-related information submitted by Defendant; driving to Orlando to meet with Defendant's Counsel; preparing for and attending mediation; drafting a settlement agreement; drafting motions for preliminary approval and final approval; attending a preliminary approval hearing; drafting class notices; facilitating notices and class administration; and responding to inquiries from class members.

11. On May 21, 2020, Plaintiff and Defendant attended mediation before mediator Carlos Burruezo, Esq.

12. The parties settled the action at mediation on a class wide basis.

13. The Settlement represents an excellent result for the Settlement Class. Defendants agreed to a settlement of $515,712.50, with each Class Member submitting a claim to receive $57.50. In my opinion, this is a very favorable outcome when considering the delays and risks associated with continued litigation.

14. Class Counsel's fees and compensation for the Class Representative's Plaintiff's service award were not negotiated until after the Parties had reached an agreement in principal on class relief. Included in the service award was Plaintiff's agreement to execute a general release in favor of Defendants. The negotiations occurred prior to the Eleventh Circuit's decision *Johnson v. NPAS Solutions, LLC*, No. 18-123444, 2020 WL 5553312 (11th Cir. September 17, 2020), and therefore no monetary compensation was specifically designated to the general release. As set forth in the motion, Class Counsel has requested the Court approve re-allocating the $5,000.00 previously agreed upon by the Parties to the general release.

15. Without the Settlement, all parties face the prospect of continued litigation and the associated risks. Even if Plaintiff had the opportunity to try the case in front of a jury, Plaintiff still would have had to prove "willfulness" to recover damages. Even if Plaintiff was to prove willfulness, there is no certainty a jury would award damages exceeding the monetary relief Settlement Class Members will receive through the negotiated Settlement.

16. I firmly believe the decision to settle the case was the right decision. This action was on the path for aggressive litigation, and the outcome could not be predicted with any degree of certainty. An adverse ruling on any one of a host of legal issues could potentially eliminate the possibility of class relief or settlement under equally advantageous terms.

17. This Settlement would not have been possible without Plaintiff, Wilfred Bermudez. Mr. Bermudez represented the interests of the Class for the duration of the litigation, responding to Counsel, reviewing documents, participating in discovery and providing his input. Additionally, Mr. Bermudez sacrificed his own interest for benefit of the Class, agreeing to execute a general release of his individual claims to facilitate settlement.

I declare under penalty of perjury, under the laws of the United Sates and the State of

Florida, that the foregoing is true and correct.

Dated this 21st day of October, 2020 in Tampa, Florida.

MARC R. EDELMAN, ESQ.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WILFRED BERMUDEZ, on behalf of himself and on behalf of all others similarly situated,

Plaintiffs,

v. Case No.: 6:19-cv-01847

CFI RESORTS MANAGEMENT, INC.

Defendant.
_____/

DECLARATION OF CHAD A. JUSTICE

I, Chad A. Justice, declare under penalty of perjury as follows:

1. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I am the owner of Justice for Justice LLC and counsel in the above-styled case.

3. I am a licensed attorney in Florida and Michigan. I have been a member of the Florida Bar since April of 2016. I have been a member of the Michigan Bar since July 2020. I have practiced exclusively labor and employment law since that time. I have a J.D. from Western Michigan University Thomas Cooley Law School and a Bachelor's degree from the University of Michigan.

4. I am admitted in the United States District Courts for the Middle and Southern District of Florida, and the United States Court of Appeals for the Eleventh Circuit.

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout Florida. In the Middle District of Florida alone I have served as co-counsel or lead counsel in 29 federal cases.

6. I focus my practice mainly on employment and consumer class actions.

7. I have experience investigating, selecting, and litigating class actions.

8. I have been appointed as class counsel in multiple class action cases, including, for example, *Molina et, al. v. ACE Homecare, LLC, et al.,* M.D. Fla. Case No.: 8:16-cv-02214-JDW-TGW (appointed class counsel in WARN Act case); *Valdivieso v. Cushman & Wakefield, Inc.*, 8:17-cv-00118-SDM-JSS (appointed as class counsel in COBRA class action case involving over 2,000 class members); *Vazquez v. Marriott International, Inc.,* M.D. Fla. Case No.: 8:17-cv-00116-MSS-SPF (appointed as class counsel in COBRA class action case involving over 19,000 class members); *Luker v. Cognizant Technologies Solutions U.S. Corporation*, M.D. Fla. Case No. 8:19-cv-01448-WFJ-JSS (appointed class counsel in FLSA and unpaid wages class action involving 330 class members); *Rigney et al v. Target Corporation*, M.D. Fla. Case No. 8:19-cv-01432-MSS-JSS (appointed class counsel in COBRA class action case involving over 90,000 class members).

9. I, along with co-counsel have been retained by Plaintiff as counsel in the instant case. I possess the experience required to represent the proposed class. I have confidence that the Class Representative has been and will be loyal to the class. He has and will continue actively participating in the prosecution of this case.

10. No conflicts, disabling or otherwise, exist between Plaintiff and the class members because they have been subjected to the same illegal conduct sought to be certified

with this motion and Plaintiff has the incentive to fairly represent all class members' claims to achieve the maximum possible recovery.

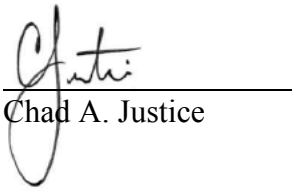
11. I have no conflicts with any class members.

12. I and my co-counsel have the desire, intention and ability to prosecute these claims and have been doing so in the face of strenuous opposition by Defendant.

13. I support the proposed settlement in this case as it is fair, reasonable, and adequate.

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

Dated this 21st day of October, 2020.



Chad A. Justice