UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SCOTT PETERSON, on behalf of himself and all others similarly situated,

Plaintiff,

v.

APRIA HEALTHCARE GROUP, INC.,

Defendant.
_____/

CIVIL ACTION NO. 6:19-cv-00856

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES, COSTS, AND EXPENSES AND SERVICE AWARD AND MEMORANDUM OF LAW IN SUPPORT OF

In accord with Eleventh Circuit precedent, Plaintff seeks attorney's fees of 30% of the Settlement Fund[1]—or $52,500, which results in a significant negative multiplier on Class Counsel's lodestar—as well as costs and expenses of $7,359.50. Plaintiff's fee request is only 25.2% of the amount made available by the Settlement, however, once the separately funded costs of notice and administration are accounted for. Plaintiff also requests that the Court grant Settlement Class Representative Scott Peterson ("Plaintiff" or "Class Representative") a Service Award of $2,500, reflecting his commitment to this case.

The requested relief is demonstrably reasonable and appropriate and amply supported by the record.[2] The Settlement expressly reflects the parties' arms-length and separately negotiated agreement to the relief sought herein. This factor alone merits great weight and consideration by

[1] Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement and Release ("Settlement" or "S.A."), previously filed at Doc. 40-1.
[2] Plaintiff specifically incorporates by this reference Plaintiff's Motion for Preliminary Approval (including attachments and declarations) ("Preliminary Approval Motion"), (Doc. 40).

the Court in ruling on Plaintiffs' motion. Further, Plaintiff seeks a fee award that is eminently reasonable under the controlling "percentage of the benefit" fee-assessment method adopted by the Eleventh Circuit in *Camden I Condominium Ass'n v. Dunkle,* 946 F.2d 768, 774-75 (11th Cir. 1991).[3] Plaintiff also seeks a cost and expense reimbursement of $7,359.50, comprising out-of-pocket costs and expenses reasonably advanced by Plaintiff's Counsel in prosecuting this action to final and successful resolution.

Accordingly, Plaintiff, respectfully submits this Motion for Attorneys' Fees, Costs, and Expenses and Service Award and Incorporated Memorandum of Law in Support.

I. INTRODUCTION

This case involves alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. §227(b), ("TCPA"), which prohibits the use of automatic telephone dialing systems ("ATDS") to call or text cellular telephones unless the caller has the "prior express consent" of the called party to make such calls. *See* 47 U.S.C. § 227(b)(1)(A)(iii). Plaintiff alleges that Defendant, Apria Healthcare Group, Inc., (together with Plaintff, the "Parties"), violated the TCPA by initiating debt calls and text messages via ATDS to a cellular telephone number that was not assigned to the intended recipient of the phone calls and text messages, and the recipient did not consent to receive such text messages.

Defendant denies any liability and has asserted substantial defenses, including what it contends are well-founded affirmative defenses. (Doc. 16). Specifically, Apria contends it

[3] Under *Camden 1,* the benefit of the fund analysis controls; the loadstar/multiplier analysis is improper, although some courts use the latter valuation to cross-check the former. *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1302 (11th Cir. 1999) ("[W]hile we have decided in this circuit that a loadstar calculation is not proper in common fund cases, we may refer to that figure for comparison."). As discussed infra, the fee request is well supported by the loadstar/multiplier method, which may be referenced as a cross-check to the percentage of the benefit calculation.

receives prior express consent from its customers to place automated calls to any phone number associated with their account, including for collection purposes. Apria further contends it lacks sufficient information to identify which of the thousands of collection calls it has placed may have reached someone other than the intended recipient. Apria further contends time-consuming, individualized inquiries would be necessary on a per-call basis to resolve that question. Apria also asserts that whether calls were received on cell phones at the time the calls were placed requires individual fact finding. Finally, Apria claims that its calling records do not differentiate cell phone numbers from landline numbers, raising issues here, as the class includes only those recevieing calls or texts to their cellular telephone numbers.

II. BACKGROUND

A. Nature of the Claims and Procedural History

On May 6, 2019, Plaintiff filed a class action Complaint against Defendant in the United States District Court for the Middle District of Florida. (Doc. 1). The Complaint alleged violations of the TCPA and sought class certification, statutory damages, injunctive relief, and an award of attorneys' fees, costs and expenses on behalf of Plaintiff and the proposed class. (Doc. 1). On June 19, 2019, Defendant filed an Answer and Affirmative Defenses. (Doc. 16).

Plaintiff prepared and served written discovery requests, including interrogatories and requests for production of documents, to which Defendant served written responses. *See* Declaration of John Yanchunis, attached hereto as **Exhibit A**, at ¶ 11 (hereinafter "Yanchunis Decl.").

Subsequently, the parties began exploring the potential for resolution of Plaintiff's claims on a class-wide basis. These discussions were prompted by the parties' desire to avoid the expense, uncertainties, and burden of protracted litigation, and to put to rest any and all claims or causes of

action that have been, or could have been, asserted against Defendant arising out of the alleged TCPA violations. Yanchunis Decl. ¶ 12.

The parties agreed to Jill R. Sperber, Esq. as a mediator. Ms. Sperber is well known as a highly skilled and experienced mediator who has mediated many complex and class action cases. On February 4, 2020, the parties conducted an in-person mediation session to explore settlement. During the mediation, the parties set forth and discussed their respective positions on the merits of the class claims and the potential for a settlement that would involve class-wide relief. The parties exchanged offers and counteroffers, and negotiated the points of each vigorously. At all times, the negotiations were adversarial, non-collusive, and conducted at arm's length. Yanchunis Decl. ¶ 13. The mediation resulted in the material terms set forth in the Settlement before this Court for consideration. *See* (Doc. 40-5 at ¶ 11); Yanchunis Decl. ¶ 13.

On May 26, 2020, Plaintiff filed his Motion for Preliminary Approval. (Doc. 40). On June 17, 2020, this Court granted the motion. (Doc. 41).

B. Summary of the Settlement Terms

The Settlement requires the establishment of a Settlement Fund in the amount of $175,000.00 to be funded by the Defendant, pursuant to the terms of the Settlement. S.A. ¶ 1.15. Each Settlement Class Member who submits a timely and valid claim form will receive a check in the amount of $50.00 regardless of the number of text messages the class member may have received, subject only to a *pro rata* reduction in the event that the claims and other payments approved by the Court otherwise would exceed the total Settlement Fund. *See* S.A. ¶¶ 1.01, 4.06. The notice plan is designed to provide the best notice practicable. The administrative fees, costs, and expenses of the Settlement Administrator incurred in connection with the notice plan will be

paid separate and apart from the Settlement Fund. *See* S.A. ¶ 2.02.[4] This amounts to an additional approximately $$33,000 to $39,000 in benefit to the Class that otherwise would have come from the Settlement Fund and reduced the amounts available to pay claims. *See* Yanchunis Decl. ¶ 23.

III. ARGUMENT

A. The Requested Fee is Clearly 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). "It is axiomatic that attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund[.]" *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1200 (S.D. Fla. 2006) (internal quotations and citation omitted); *see also* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."). In a class case as this one, the Eleventh Circuit has directed that the fee be based upon a percentage of the class benefit. *Camden I*, 946 F.2d at 774-75. 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." *Id.* at 774. The court should look at such factors as the time required reaching 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 1* 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

[4] The Parties sought and were granted appointment of JND Legal Administration as the Settlement Administrator.

20 and 30 percent. *Camden I*, 946 F.2d at 774-75. As stated in *Camden I*, 25 percent serves as the default "benchmark." *Id.* at 774-75; *see also In re Friedman's, Inc. Securities Litig.*, No. 1:03-cv-3475-WSD, 2009 WL 1456698, at *2 (N.D. Ga. May 22, 2009) ("[C]ommon fund cases in district courts in the Eleventh Circuit have awarded fee percentages within a range close to the 30% requested here.").

Here, Class Counsel seek a fee award of 30% of the Settlement Fund—or $52,500. However, in light of the separate payment for costs of notice and administration, and accounting for only the minimum anticipated amount for those costs ($33,000), this request amounts to only 25.2% of the total benefits provided to the Class.[5]

Specifically, 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 nonmonetary relief, are considered. *Camden I*, 946 F.2d at 771; *Poertner v. Gillette Co.*, 618 Fed. Appx. 624, 628 (11th Cir. 2015). Thus, notice and administration costs to be paid separately by defendants should also be included in valuing the total benefit to the class and hence the total fund from which Plaintiff's fee request is judged.[6] This makes sense because if the notice and

[5] $175,000 (Fund) + $33,000 (Notice and Admin. Costs) = $208,000 Total. 52,500 ÷ 208,000 = .252, or 25.2%.

[6] *See, e.g.*, *Chieftain Royalty Co. v. XTO Energy Inc.*, CIV-11-29-KEW, 2018 WL 2296588, at *2 (E.D. Okla. Mar. 27, 2018) (noting that the "750,000 in administration, notice and distribution costs . . . is a significant benefit to the Settlement Class as such funds would otherwise be paid from the Gross Settlement Fund"); *In re classmates.com Consol. Litig.*, C09-45RAJ, 2012 WL 3854501, at *7 (W.D. Wash. June 15, 2012) ("Class counsel argues that the common fund should also include about $1.5 million in settlement administration costs that Classmates has paid or will pay . . . . Because Classmates' payment of these costs relieves the class of the burden of these expenses, the court may consider them as part of the common fund."); *In re Kentucky Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 09 C 7670, 2011 WL 13257072, at *5 (N.D. Ill. Nov. 30, 2011) ("[T]he common-fund doctrine applies to the entire sum recovered by class counsel for purposes of settling a class action lawsuit. Because the costs of class action litigation necessarily include the costs of notice, administration of the settlement fund, incentive awards, and attorneys' fees, and because the settling defendants in these types of lawsuits have agreed to

administration costs were not paid separately, class members would have to pay them directly out of the fund. *Manual for Complex Litigation* § 21.7 at 335 (4th ed.) ("If an agreement is reached on the amount of a settlement fund and a separate amount for attorney's fees and expenses … the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class."). Accordingly, Plaintiff's fee request falls below the Eleventh Circuit's articulated 30% upper benchmark.

A. The *Camden I* Factors Clearly Support the Requested Fee.

The Eleventh Circuit's factors for evaluating the reasonable percentage to award class-action counsel 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; (12) awards in similar cases. *Camden I*, 946 F.2d at 772 n. 3 (citing

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pay these costs 'in exchange for release of [their] liability,' the court finds that such costs are reasonably viewed as having been paid 'for the benefit of the class.'") (citations omitted); *cf, e.g., Johnston v. Comerica Mtg. Corp.*, 83 F.3d 241, 245-46 (8th Cir. 1996) ("Even if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of the class' recovery."); *David v. American Suzuki Motor Corp.*, 2010 WL 1628362 at *8 n.14 (S.D. Fla. Apr. 15, 2010) ("While I recognize that the fee award requested by Class Counsel will be paid separately by Defendants and is not drawn from a 'common fund' in the traditional sense, there is authority directing 'district courts to exercise their equitable jurisdiction to review counsel-fee arrangements negotiated in connection with class-action settlements—even where the counsel fees are not taken from a common fund but are instead paid separately by a class-action defendant.'") (quoting *Duhaime v. John Hancock Mut. Life Ins. Co.*, 183 F.3d 1, 4 (1st Cir.1999)).

factors originally set forth 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 (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 *Camden I* factors are discussed below.

1. Time and Labor Involved

As recounted above, and as set forth in the supporting declaration of John Yanchunis (**Exhibit A**), Class Counsel expended significant effort to achieve the settlement for the Class. Class Counsel have litigated this action for over a year, and reached a hard-fought settlement only after mediation. *Id*. Although the present case was resolved before trial, Class Counsel invested significant time and resources investigating and litigating this action. Specifically, among other work, Class Counsel (1) consulted with Plainitff Scott Peterson throughout the course of this case; (2) investigated his claims; (3) drafted the Complaint; (4) prepared and served discovery on Defendant; (5) reviewed the discovery responses from Defendant; (6) communicated and conferred with Defendant regarding discovery issues; (7) traveled to mediation in Orange County, Califonria where they negotiated a comprehensive class action settlement; (8) drafted and filed a motion for preliminary approval of the settlement and supporting memorandum and exhibits; (9) and prepare and filed the instant motion for attorneys' fees, costs, and expenses and class

representative service award. Yanchunis Decl. ¶ 21. The time and labor spent litigating and resolving this matter on a class-wide basis supports Class Counsel's fee request.

In performing the aforementioned work on behalf of the Class, Class Counsel spent over 140 hours of attorney and other professional time without any assurance that the commitment of time and effort to this case would result in the payment of any fee. While seeking less than the full value of the time they spent to achieve the Settlement here, Class Counsel should be compensated for the substantial time and labor invested to obtain this resolution on behalf of the Class and should not be punished for their persistence in achieving a positive result.

2. The Novelty and Difficulty of the Questions Involved Required the Skill of a Highly Talented Team of Attorneys.

This factor strongly favors an award of the fees requested. "Class actions are inherently complex to prosecute because the legal and factual issues are complicated and uncertain in outcome." *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677, 2008 WL 649124, at *15 (S.D. Fla. Jan. 31, 2008). That this dispute presents complex issues as outlined above is evidenced by the caliber of lawyers representing the parties. *See Walco*, 975 F. Supp. at 1472 (explaining that "[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results"); *see also Camden I*, 946 F.2d at 772 n. 3 (in assessing the quality of representation by Class Counsel, Court also should consider the quality of their opposing counsel.); *Johnson.*, 488 F.2d at 718; *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992). "The fact that this level of legal talent was available to the Settlement Class is another compelling reason in support of the fee requested... In the private marketplace, as pointed out by several of Plaintiffs' experts, counsel of exceptional skill commands a significant premium." *In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d 1330, 1363 (S.D. Fla. 2011).

Here, Class Counsel enjoy a strong reputation in the area of complex and class action litigation. (Doc. 40-5 ¶¶ 3–4, 17, and its Exh. A). Class Counsel have successfully litigated and settled similar cases across the country, and, in this case, have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant's behalf.

3. The Claims Against Defendants Entailed Considerable Risk.

Prosecuting these claims was a significant undertaking. The risks incurred in pursuing the case were great. "The simple fact is that there were a larger than usual number of ways that Plaintiffs could have lost this case, and they still managed to achieve a successful settlement. A significant amount of the credit for this must be given to Class Counsel's strategy choices, effort and legal acumen." *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1364. "A court's consideration of this factor recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk." *In re Sunbeam*, 176 F. Supp. 2d at 1336.

Here, Defendant maintained (and still maintains) that the challenged devices were not ATDS. That precise issue played out before the FCC and D.C. Circuit Court of Appeals multiple times before and during the lifespan of this case, with each subsequent iteration potentially blowing a death knell to this matter. Indeed, just days *before* the mediation of this case, the Eleventh Circuit weighed-in on the ATDS issue, with a ruling that could have essentially ended Plaintiff's efforts here. *See Glasser v. Hilton Grand Vacations Co., LLC*, 18-14499, 2020 WL 415811, at *2-8 (11th Cir. Jan. 27, 2020). However, Class Counsel's skill and dogged determination in pursuing this matter has led to a favorable result for the Class, despite the significant risks this matter faced. Accordingly, this factor also militates in favor of awarding Class Counsel the requested fee amount.

4. Class Counsel Assumed Substantial Risk in Pursuing this Action on a Pure Contingency Basis, and Were Precluded from Other Employment.

Class Counsel prosecuted this case entirely on a contingent fee basis. Yanchunis Decl. ¶ 17. As such, they assumed a significant risk of nonpayment or underpayment. Numerous cases recognize the importance of this factor in determining the fee award. "A contingency fee arrangement often justifies an increase in the award of attorney's fees." *In re Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens*, 118 F.R.D. at 548); *see also In re Continental Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent basis, plaintiffs' counsel must be compensated adequately for the risk of non-payment); *Ressler*, 149 F.R.D. at 656 ("Numerous cases recognize that the attorney's contingent fee risk is an important factor in determining the fee award."); *Walters v. Atlanta*, 652 F. Supp. 755, 759 (N.D. Ga. 1985), *modified*, 803 F.2d 1135 (11th Cir. 1986); *York v. Alabama State Ed. of Education*, 631 F. Supp. 78, 86 (M.D. Ala. 1986).

As Judge King has observed:

> Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer... A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, 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, 118 F.R.D. at 548. Class Counsel spent substantial time litigating this case that they could not spend on other matters. Thus, consideration of this factor also justifies the requested fee.

5. The Fee Requested Comports with Customary Fees Awarded in Similar Cases.

"In private litigation, attorneys regularly contract for contingent fees between 30% and 40% directly with their clients." *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334 (S.D. Fla. 2007) (approving award equal to 30% of common fund). "These percentages are the

prevailing market rates throughout the United States." *Id.* An award of 25.2% is below the upper-benchmark and less than the growing trend in this Circuit of 33 1/3% or above.[7] Likewise, such an award comports with other fee awards in similar cases.[8] Accordingly, Class Counsel's requested fee award of $52,500, or 30% of the Settlement Fund—and 25.2% of the total cash value—is appropriate.

6. The Remaining *Camden I* and Other Factors Favor Approval of The Fee Requested.

The remaining *Camden I* factors also support Class Counsel's fee request. The burdens of this litigation and the results obtained on behalf of Plaintiff and the Class weigh in favor of the fee

[7] *See 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); *Seghroughni v. Advantus Rest, Inc.*, No. 12-2000, 2015 WL 2255278, at *1 (M.D. Fla. May 13, 2015) ("An attorney's fee ... which is one-third of the settlement fund ... is fair and reasonable in light of the results obtained by the Lead Counsel, the risks associated with this action, the Lead Counsel's ability and experience in class action litigation, and fee awards in comparable cases."); *Wolff v. Cash 4 Titles*, No. 03-22778, 2012 WL 5290155, at *4 (S.D. Fla. Sept. 26, 2012) ("One-third of the recovery is considered standard in a contingency fee agreement."); *Morefield v. NoteWorld, LLC*, No. 10-117, 2012 WL 1355573 (S.D. Ga. April 18, 2012) (awarding fees of 33 1/3% of the $1,040,000 settlement fund in addition to expenses); *Atkinson v. Wal-Mart Stores, Inc.*, No. 08-691, 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); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-1317, (Doc. 1557 at 8-10) (S.D. Fla. Apr. 19, 2005) (awarding class counsel 33.3% of settlement fund in part because they prosecuted the action on a wholly contingent basis); *In re: Managed Care Litig. v. Aetna*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding fees and costs of 35.5% of settlement of $100 million); *Gutter v. E.I. DuPont De Nemours & Co.*, No. 95-2152, (Doc. 626 at 7) (S.D. Fla. May 30, 2003) (awarding class counsel 33.3% of the Settlement Fund as attorneys' fees ($1,201,728.42) because they expended significant time and resources on a purely contingent basis under the common fund theory).

[8] *See, e.g., Med. & Chiropractic Clinic, Inc. v. KMH Cardiology Centres Inc.*, 8:16-CV-644-T-23JSS, 2017 WL 11046397, at *2 (M.D. Fla. Nov. 17, 2017) (awarding 30% fee in TCPA class case); *James v. JPMorgan Chase Bank, N.A.*, 8:15-CV-2424-T-23JSS, 2017 WL 2472499, at *2 (M.D. Fla. June 5, 2017) (approving a 30% fee in TCPA class action); *Wreyford v. Citizens for Transp. Mobility, Inc.*, 1:12-CV-2524-JFK, 2014 WL 11860700, at *1 (N.D. Ga. Oct. 16, 2014) (awarding 33 1/3 % in TCPA class case); *see also Cooper v. Nelnet, Inc.*, 6:14-CV-314-ORL, 2015 WL 4623700, at *2 (M.D. Fla. July 31, 2015) (awarding 27.78% of the Settlement Fund in TCPA class case that had only been pending for one and a half years).

requested. The fee request is firmly rooted in "the economics involved in prosecuting a class action." *In re Sunbeam*, 176 F. Supp. 2d at 1333. "[P]roper incentives must be maintained to insure that attorneys of this caliber are available to take on cases of significant public importance like this one." *In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d at 1368.

In addition, the fact that the parties negotiated arduously and at length during the mediation session, and that no class member has objected to the Settlement or its provision on attorneys' fees, costs, and expenses, weighs in favor of the fee requested.[9] *See, e.g.*, *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006) ("The lack of significant objection from the Class supports the reasonableness of the fee request.") (collecting cases); *Gevaerts v. TD Bank*, No. 14-20744, 2015 WL 6751061, at *10 (S.D. Fla. Nov. 5, 2015).

B. A Lodestar Analysis Confirms the Reasonableness of the Requested Fee.

Under *Camden I*, use of the lodestar analysis is improper in common fund cases. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362-63 (declining to perform lodestar cross-check because *Camden I* "mandated the exclusive use of the percentage approach in common fund cases" and noting that "courts in this Circuit regularly award fees . . . without discussing lodestar at all") (internal quotations marks, brackets and emphasis omitted). Still, it has been used as a "cross-check" to the percentage-of-the-fund analysis. *Waters*, 190 F.3d at 1298 ("[W]hile we have decided in this circuit that a lodestar calculation is not proper in common fund cases, we may refer to that figure for comparison."); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1343 (S.D. Fla. 2007) (noting that "[s]ome courts use the lodestar method as a cross-check of the percentage of the fund approach") (citing *In re Sunbeam*, 176 F. Supp. 2d at 1336).

[9] Plaintiff notes, however, that the deadline for objections is September 18, 2020. (Doc. 41 at 8).

To determine the lodestar amount, the "court must multiply the number of hours reasonably expended by a reasonable hourly rate." *Duckworth v. Whisenant*, 97 F.3d 1393, 1396 (11th Cir. 1996). "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). "After the lodestar is determined . . ., the court must next consider the necessity of an adjustment for results obtained." *Id*. at 1302. "If the results obtained were exceptional, then some enhancement of the lodestar might be called for." *Id*. (citing *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986), *supplemented*, 483 U.S. 711 (1987)). "[E]nhancement may be appropriate if there is a risk of non-recovery of a fee in the case," such as in a contingent fee arrangement. *Id*.

The following chart summarizes the time and hourly rates entered by attorneys and the professional staff of the firm in this matter:

Name	**Hourly Rate**	**Hours Billed**	**Total**
MORGAN & MORGAN COMPLEX LITIGATION GROUP			
John Yanchunis, Lead Partner	$950	42.8	$40,660.00
Jean Sutton Martin	$894	0.70	$625.80
Patrick Barthle	$658	63.1	$41,519.80
Michael Braun	$894	7	$6,258.00
Jonathan Cohen	$742	23	$17,066.00
Lorraine Carreiro, Paralegal	$202	4.7	$949.40
Jennifer Cabezas, Paralegal	$202	8.6	$1,737.20
Total		**149.9**	**$108,816.20**

These rates have been approved by various courts across the country, including here in the Middle District of Florida. Yanchunis Decl. ¶ 16. Here, in the year that Counsel has been prosecuting these claims against Defendant, they have expended over 140 hours. Yanchunis Decl. ¶ 18. At their current hourly rates, the lodestar is $108,816.20. *Id*. Of course, as this Court knows, Class Counsel will continue to invest significant time in this matter through the settlement

administration process, preparing the motion for final approval, responding to any objections, preparing for and attending the final approval hearing, and defending the Court's Final Judgment on any subsequent appeals. Yanchunis Decl. ¶ 17. The additional time will only further bring the total loadstar beyond the $52,500.00 requested.

Had there been no common fund in the proposed Settlement and attorneys' fees were determined based solely on the lodestar method, Class Counsel would have sought a "multiplier" to apply to their lodestar for reasons earlier discussed, in particular, the result achieved for the Class, the complexity of the dispute and issues Class Counsel had to skillfully address, and the contingent nature of Class Counsel's fee arrangement. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-3066, 2012 WL 12540344, at *5 (N.D. Ga. Oct. 26, 2012) (applying a multiplier of four times lodestar to "reflect such considerations as (1) the contingent nature of the fee; (2) the risk of the case (*i.e.*, the likelihood of success viewed at the tune of the filing); (3) the quality of representation; and (4) the result achieved," and surveying cases applying multipliers of approximately 4 to 9 times lodestar). This would further dwarf the fees requested under the percentage-of-the-fund approach and the proposed Settlement.

C. Class Counsel's Expenses Are Reasonable.

In addition to attorneys' fees, Class Counsel seek reimbursement of the costs and expenses incurred in prosecuting this case against Defendant. Since the filing of the case, and as of this filing, they have incurred expenses of $7,359.50. Yanchunis Decl. ¶ 19. The amount of costs and expenses actually expended and advanced by counsel include: filing and PACER fees, process service, copying and mailing expenses, travel expenses in connection with the mediation, as well as the costs of the mediation fee. *Id.* As this Court can certainly be assured, however, this litigation is not over, and Class Counsel will continue to incur and advance costs through final judgment,

and, if necessary, through any appeals. Yanchunis Decl. ¶ 20. A supplemental declaration of additional costs and expenses will be submitted to the Court prior to the fairness hearing in October. Accordingly, Class Counsel respectfully submit that they are entitled to recover these expenses.

D. Plaintiff Is Entitled to a Reasonable Service Award.

The Settlement proposes that the Class Representative receive a Service Award of $2,500.00 for his participation in this action and service to the Settlement Class. "[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action." *David v. American Suzuki Motor Corp.*, No. 08-22278, 2010 WL 1628362, at *6 (S.D. Fla. Apr. 15, 2010). Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives. *See, e.g.*, *Cooper v. Nelnet, Inc.*, No. 14-314, (Doc. 81) (M.D. Fla. Aug. 4, 2014) (Dalton, J.) (approving a service award of $25,000); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (awarding class representatives $300,000 each, explaining that "the magnitude of the relief the Class Representatives obtained on behalf of the class warrants a substantial incentive award."); *Spicer v. Chi. Bd. Options Exchange, Inc.*, 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving service awards ranging from $5,000 to $100,000, and awarding $10,000 to each named plaintiff).

Plaintiff has worked diligently in service of the Class. Yanchunis Decl. ¶ 22. Mr. Peterson worked hand-in-hand with Plaintiff's Counsel from the start, having many conversations about this case, staying involved in and apprised of litigation strategy from day one. Mr. Peterson was involved in and approved the settlement terms reached in this case. Yet, the subject of service awards was not raised nor negotiated until after the parties had reached a settlement of the

underlying claims, and the Plaintiff's consent and agreement to the terms of the Settlement was not, nor is it in any way, conditioned on his receipt of a service award. Yanchunis Decl. ¶ 22.

Plaintiff respectfully submits that a service award of $2,500 is reasonable.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the request for attorney's fees, costs, and expenses, and for a service award in the amounts requested.

Dated: August 14, 2020

Respectfully submitted,

MORGAN & MORGAN
COMPLEX LITIGATION GROUP

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 14, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to all attorneys of record in this matter.

/s/ John A. Yanchunis
John A. Yanchunis

Exhibit A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SCOTT PETERSON, on behalf of himself and all others similarly situated,

Plaintiff,

v.

APRIA HEALTHCARE GROUP, INC.,

Defendant.
_____/

CIVIL ACTION NO. 6:19-cv-00856

DECLARATION OF JOHN A. YANCHUNIS IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARD

I, John A. Yanchunis, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am one of the attorneys representing Plaintiff in this matter and was preliminarily appointed as Class Counsel. I submit this declaration in support of Plaintiff's Unopposed Motion for Attorney's Fees, Costs, and Expenses and Service Award. The facts herein stated are true, of my own personal knowledge, and if called to testify to such facts, I could and would do so competently

2. I have been licensed to practice law in the state of Florida since 1981.

3. I was one of the principal lawyers in charge of all aspects of the litigation and I worked to ensure that Plaintiff and the class which he sought to represent was zealously represented, while also ensuring efficiency and reducing duplicative effort.

4. I began the practice of law following the completion of a two-year clerkship with the Honorable Carl O. Bue, Jr., United States District Judge, Southern District of Texas, Houston

Division. The vast majority of my practice, spanning more than 38 years, has concentrated on complex litigation, including consumer class actions for over 20 of those years. I have represented consumers in class action cases, including as co-lead counsel in the successful prosecution and settlement of two of the largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM, and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). My role as lead counsel in these cases is particularly noteworthy as these cases were filed against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, Reed Elsevier (which owns Lexis/Nexis), and other companies to protect the important privacy rights of consumers.

5. I also represented a class of consumers in *Zyburo v. NCSPlus, Inc*., No. 12-Cv-6677, a TCPA action before Judge Jed S. Rakoff in the Southern District of New York, which was certified, on a contested motion for class certification, as a class action on September 15, 2014. That case was successfully settled on the eve of trial, and a Final Judgment approving the class settlement was entered on June 29, 2015. In addition, I represented a class of consumers in *Swift v. Bank of America Corp., et al.*, No. 14-cv-01539, a TCPA action in which a class settlement was approved by the Middle District of Florida on July 20, 2016, *Black-Brown v. Terminix Int'l Co. Ltd. Partnership*, No. 16-cv-23607, another TCPA action in which a class settlement was approved by the Southern District of Florida on February 23, 2018, and *Preman v. Pollo Operations, Inc*., No. 16-cv-00443, an additional TCPA action in which a class settlement was approved by the Middle District of Florida on November 21, 2018. My partner Patrick Barthle and I also represented a class of consumers in *Swaney v. Regions*, 2:13-cv-00544-JHE (N.D. Ala.), a TCPA action in which a class settlement was finally approved by Judge Proctor in the Northern District

of Alabama. These experiences have given me the necessary background to assess the issues and Settlement in this case.

6. I presently serve and have served in the past as lead, co-lead, or class counsel in numerous class actions across the country in a wide variety of areas affecting consumers, including, but not limited to, antitrust, defective products, life insurance, annuities and unfair and deceptive acts and practices. I also serve as lead counsel or co-lead counsel in several multi-district class cases in federal courts across the United States, including one involving 194 million U.S. and 270,000 Israeli users of Yahoo's services (which recently achieved final approval)[1] as well as the data breach involving Capital One, which impacted the information of nearly 100 million individuals.

7. As a result of my experience in litigation against the insurance industry, including class litigation, I served as lead counsel for the insurance regulators for the state of Florida in connection with their investigations of a number of insurance companies and brokers regarding allegations of price fixing, bid rigging, undisclosed compensation and other related conduct, and negotiated a number of settlements with insurance companies and brokers who were the subject of those investigations. These investigations resulted in the recovery of millions of dollars for Florida policyholders and the implementation of changes to the way insurance is sold in Florida and throughout the United States.

8. I also have significant trial experience and over the years I have tried many cases. One case in particular, an insurance coverage case filed in 1991 by The Celotex Corporation and its subsidiary, Carey Canada, Inc., where, during the 17 years that case was pending, I was lead

[1] *See In re: Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK, 2020 WL 4212811 (N.D. Cal. July 22, 2020).

trial counsel for seven of the 42 insurance companies sued at the inception of the case. While five of those seven insurance companies settled at various times in the case, two of my insurance company clients did not settle and eventually prevailed at trial. The case was tried in three phases and took almost 200 trial days over several years. I continued to represent and successfully defended those clients through appeals.

9. We filed this matter on behalf of Mr. Peterson on May 6, 2019, accusing Apria of violating the Telephone Consumer Protection Act, 47 U.S.C. § 227(b) ("TCPA"), by placing calls and sending text messages to his cell phone without consent.

10. On June 19, 2019, Apria filed is Answer. (Doc. 16).

11. Discovery ensued, including Plaintiff's preparation and service of interrogatories, requests for production of documents, and a Notice of Rule 30(b)(6) Deposition, each of which Apria responded to.

12. Subsequently, the parties began exploring the potential for resolution of Plaintiff's claims on a class-wide basis. These discussions were prompted by the Parties' desire to avoid the expense, uncertainties, and burden of protracted litigation, and to put to rest any and all claims or causes of action that have been, or could have been, asserted against Defendant arising out of the alleged TCPA violations.

13. The parties' engaged in a mediation with Mediator Jill R. Sperber, Esq. on February 4, 2020, in Santa Ana, California. At all times, the parties' negotiations were adversarial, non-collusive, and conducted at arm's length. During this session, the parties set forth and discussed their respective positions on the merits of the putative class claims—including issues related to the then very recently issued decision in *Glasser v. Hilton Grand Vacations Co., LLC*, 948 F.3d 1301, 1304 (11th Cir. 2020), which is, and was, likely dispositive of Plaintiff's claims—and the potential

for a settlement that would involve class-wide relief. The parties exchanged offers and counteroffers and negotiated the points of each vigorously. The parties ultimately reached an agreement in principle on the material terms of a class action settlement during this mediation. Attorneys' fees, costs, expenses and the service award to the Class Representative were not discussed or negotiated until after the parties had reached an agreement on the framework and material terms of the Settlement. Thereafter, the parties focused their efforts on documenting the terms of the settlement, which were ultimately memorialized in the Settlement Agreement ("Settlement"), attached to the Motion for Preliminary Approval.

14. Throughout the settlement process, proposed Class Counsel—Mr. Barthle and I—carefully weighed: (1) the benefits to the Class Representative and the Class under the terms of this Settlement, which provides significant relief to the Class; (2) the attendant risks and uncertainty of litigation, an assessment I felt confident I could make based on my trial experience, as well as the difficulties and delays inherent in such litigation, including the challenges to certification of a class, both at the trial court level and at the appellate level if we were successful in obtaining an order certifying the class; (3) the desirability of consummating the present Settlement to ensure that the Class receives a fair and reasonable Settlement; and (4) providing Plaintiff and Class Members prompt relief, especially in light of evolving jurisprudence (not in Plaintiff's favor) on the automatic telephone dialing systems ("ATDS") issue.

15. The hourly rates of the professionals in my firm, including my own, reflect experience and accomplishments in the area of class litigation. The rate of $950 per hour which I charge for my time is commensurate with hourly rates charged by my contemporaries around the country, including those rates charged by lawyers with my level of experience who practice in the area of class litigation across the nation. Prior to submitting the motion for attorneys' fees, costs

and expenses, I compared and confirmed the hourly rate of the professionals in my firm with lawyers at other law firms whose practice is focused on class litigation. Moreover, as I have been retained as an expert on attorneys' fees in other class cases, and as part of my legal education, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as part of my continuing education, opinions rendered by courts on attorneys' fee requests. Again, based upon my research, our rates are within the range of lawyers with our levels of experience and credentials, which are further explained below:

a. Patrick A. Barthle II – Attorney, 8 years in practice, $658 per hour. Mr. Barthle graduated, cum laude, with a double major in History and Criminology from the University of Florida in 2009. While at UF, he was inducted into the Phi Beta Kappa Honor Society. Mr. Barthle graduated summa cum laude from Washington and Lee University School of Law in 2012. He was a Lead Articles Editor for the Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society. Before joining Morgan & Morgan in 2015, Mr. Barthle worked at one of the country's largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. Mr. Barthle was selected as a Florida Super Lawyer Rising Star in 2019 and 2020 in the field of Class Actions, and regularly speaks on class action topics, as set out in his resume, submitted in connection with the Motion for Preliminary Approval. *See* (Doc. 40-5 at 10–12). Mr. Barthle billed at hourly rates of $658 per hour based upon the rates set by Lead Counsel in this matter

b. Jonathan B. Cohen – Attorney, 14 years in practice, $742 per hour. Mr. Cohen earned his Bachelor of Arts degree in Journalism from Indiana University in 1996. He graduated from Stetson University College of Law in 2005. Before joining Morgan & Morgan in 2013, Mr. Cohen was a partner at James, Hoyer, Newcomer & Smiljanich, P.A., a firm specializing in the prosecution of nationwide consumer class actions and whistleblower (qui tam) complaints. Mr. Cohen billed at $742 per hour, below than the cap set by Lead Counsel in this matter.

c. Michael Braun – Attorney, 25 years of practice, $894 per hour. Mr. Braun has represented shareholders and consumers in class action litigation for the past 25 years, has served as lead or liaison counsel in well over a hundred cases. He was named Lawyer of the Year in 2000 by California Lawyer Magazine, and a Super Lawyer from 2005-2019 by Los Angeles Magazine. Mr. Braun is a graduate of the London School of Economics, Loyola Law School, The Hague Academy of International Law and the University of California at Los Angeles. Mr. Braun is a member of the California, New York and District of Columbia bars, and is also licensed as an English Solicitor.

d. Jean Sutton Martin – Attorney, 21 years in practice, $850 per hour. Ms. Martin received her Juris Doctor degree from Wake Forest University School of Law in 1998, where she served as Editor-in-Chief of the Wake Forest Law Review and a member of Moot Court. She obtained eDiscovery certification from the eDiscovery Training Academy at Georgetown Law Center in 2017. Ms. Martin graduated from Wake Forest University with a Bachelor of Science in Mathematical Economics in 1989 and earned a Master of International Business from the University of South

Carolina in 1991.Ms. Martin has been honored with the prestigious "AV" rating by Martindale-Hubbell. In 2016, Ms. Martin was selected by her peers as the foremost Litigation attorney in the State of North Carolina for Business North Carolina Magazine's Legal Elite, gaining membership in the Legal Elite Hall of Fame. Ms. Martin billed at $850 per hour based upon the rates set by Lead Counsel in this matter.

e. Jennifer Cabezas - Paralegal, billing rate is $202 per hour. Ms. Cabezas is a paralegal with more than 15 years of experience. She obtained her Associates in Arts, paralegal studies from Keiser University in 2007, and later obtained her Bachelors in Arts in Criminal Justice from Florida International University in Miami, Florida. She assisted the attorneys with document preparation, court filings, preparing deposition materials, electronic discovery materials, mediation materials and other clerical tasks. These billing rates reflect her ordinary and customary rate, which has increased during the time of this litigation. Her billing rate has been approved for paralegals of her experience level by other state and federal courts

16. The billable rates charged by the attorneys and other professionals in my law firm, for non-document review work, as set forth herein have been approved by other federal and state courts as follows:

a. *In re: Yahoo! Inc. Customer Data Sec. Breach Litig*., 16-MD-02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (approving as reasonable rates of class counsel, which included $900 for John Yanchunis, and $550 for Messrs. Barthle and Cohen, and finding as reasonable: "billing rates for partners range from about $450 to $900, depending on seniority level," "billing rates for non-partner attorneys, including of counsel, associates, and staff/project attorneys, range from about $160 to $850, with most under $500," and "billing rates for paralegals range from $50 to $380")

b. *In re: Equifax Inc. Customer Data Security Breach Litigation*, Case No 1:17-md-02800-TWT, ECF 956 at 105 (N.D. Ga. Jan. 13, 2020), (approving as reasonable

rates of class counsel, which included $950 for John Yanchunis, and approving rates ranging from $750 - $1050 for lead counsel).

c. *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387, ECF 117 (N.D. Cal. July 11, 2019), *id*., ECF 113-1 (May 8, 2019) (identifying Morgan and Morgan rates of $864-950 for partners, $450-636 for associates, $196 for paralegals, and $300 for investigators);

d. *Finerman v. Marriott Ownership Resorts, Inc.*, No. 3:14-cv-01154, ECF 222 (M.D. Fla. Aug. 15, 2018); *id*., ECF 222 (May 7, 2018) (identifying Morgan and Morgan rates of $950 for John Yanchunis, $450-864 for associates, $196 for paralegals, and $300 for investigators);

e. *Sanborn v. Nissan N. Am., Inc*., No. 0:14-cv-62567, ECF 200 at 3 (S.D. Fla. Jan. 6, 2017); *id*., ECF 195-3 at 4 (Oct. 14, 2016) (identifying Morgan and Morgan rates of $950 for John Yanchunis, $450 for associate); and,

f. *Dyer v. Wells Fargo Bank, N.A.*, No. 3:13-cv-02858, ECF 51 at 10 (N.D. Cal. Oct. 22, 2014); *id*., ECF 43-1 (July 11, 2014) (identifying Morgan and Morgan rates of $900 for John Yanchunis, $550 for associate).

17. The lawyers and other professional staff of my firm maintain and record their respective time and the specific services they perform contemporaneously in a computerized system. Based upon the records in this system, my firm's lodestar is in excess of 140 hours as of August 13, 2020, amounts to $108,816.20 in lodestar. Additional time will be spent to prepare the motion for final approval and respond to any objections, to prepare for and attend the fairness hearing and obtain final approval, to defend any appeals taken from the final judgment approving settlement, and ensure that the distribution of settlement proceeds to class members is done in a timely manner in accordance with the terms of the settlement. I assert that the attorneys' fees sought in the motion for attorneys' fee is reasonable and seeks fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for Plaintiff and the class. Throughout this action, we have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant's behalf.

18. The chart below reflects the amount of time spent by me and members of my firm in the prosecution of this case:

Name	Hourly Rate	Hours Billed	Total
MORGAN & MORGAN COMPLEX LITIGATION GROUP			
John Yanchunis, Lead Partner	$950	42.8	$40,660.00
Jean Sutton Martin	$894	0.70	$625.80
Patrick Barthle	$658	63.1	$41,519.80
Michael Braun	$894	7	$6,258.00
Jonathan Cohen	$742	23	$17,066.00
Lorraine Carreiro, Paralegal	$202	4.7	$949.40
Jennifer Cabezas, Paralegal	$202	8.6	$1,737.20
Total		**149.9**	**$108,816.20**

19. A breakdown of my firm's costs and expenses, again which I assert are reasonable, are pulled from a computerized database maintained by individuals in the accounting office of my firm and which were checked for accuracy, are reflected below.

Description	Subtotals	Totals Per Category
Professional Services		**$5,971.73**
Judicate West (Mediation)	$5,779.22	
SLK Investigations (Process Server)	$192.51	
Copies & Printing		**$58.25**
Color Printing / Copies	$8.50	
Black and White Printing / Copies	$49.75	
Shipping, Long Distance & Printing		**$35.67**
FedEx	$35.67	
Travel Expenses to attend hearings, depositions and the mediation of this case		**$1,293.85**
John A. Yanchunis	$619.70	

Patrick A. Barthle II	$674.15	
	Total	**$7,359.50**

20. Additional costs and expenses will be incurred before our work is done in this case, as is true of the additional services which we will provide to the class.

21. Although the present case was resolved before trial, we invested significant time and resources investigating and litigating this action. Specifically, among other work, we (1) consulted with Class Representative Scott Peterson throughout the course of this case; (2) investigated his claims; (3) drafted the Complaint; (4) prepared and served discovery on Defendant; (5) reviewed the discovery responses from Defendant; (6) communicated and conferred with Defendant regarding discovery issues; (7) traveled to mediation in Santa Ana, California, where we negotiated a comprehensive class action settlement; (8) drafted and filed a motion for preliminary approval of the settlement and supporting memorandum and exhibits; and (9) drafted and filed this motion for attorneys' fees, costs and expenses and class representative service award.

22. From the commencement of this case through today, Mr. Peterson has at all times been in control of this litigation and worked diligently in service of the Class. He reviewed and approved of the complaint filed in this case, and kept up with the ongoing developments of the case. He was also consulted regarding the relief reached at mediation. The subject of a service award was not raised nor negotiated until after the parties had reached a settlement of the underlying claims, and Mr. Peterson's consent and agreement to the terms of the Settlement was not, nor is it in any way, conditioned on his receipt of a service award. I support and request the reasonable serve award of $2,500 for Mr. Peterson.

23. As described in the Preliminary Approval Motion (Doc. 40 at 4–5), the

administrative fees, costs, and expenses of the Settlement Administrator ("Settlement Administration Expenses") are to be paid exclusively by Defendant separate and apart from the Settlement Fund. *See* S.A. ¶¶ 2.02. I am informed that this amount is expected to be between $33,000 to $39,000. This additional amount benefits the Class as had it not been negotiated to be paid separately, these amounts would have necessarily come from the Settlement Fund and reduced the amounts available to claimants.

Executed this 14th day of August, 2020 at Tampa, Florida.

By: /s John A. Yanchunis
John A. Yanchunis, Esq.