**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISON**

MARCUS SMITH, ALVIN HODGE and DAVID KORTRIGHT, on behalf of themselves and on behalf of all others similarly situated,

Plaintiffs,

v. Case No. : 8:19-cv-02068-CEH-CPT

KFORCE INC., a Florida profit corporation,

Defendant.
_____/

**PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES AND COSTS AND ADDITIONAL COMPENSATION TO PLAINTIFFS**

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

## I. BRIEF OVERVIEW OF MOTION

Plaintiffs and Defendant (collectively, the "Parties") have been litigating this action since August 19, 2019. The Class Representatives alleged in their Amended Class Action Complaint (the "Complaint") that Defendant violated 15 U.S.C. § 1681b(b)(2)(A) of the FCRA by failing to: 1) disclose to the Class Representatives and other of its employees, former employees, and/or prospective employees (in a

document consisting solely of the disclosure) that it was going to obtain a consumer report for employment purposes prior to obtaining a copy of the actual report; and, 2) as a result, obtain the proper authorization under the FCRA to obtain those consumer reports (collectively, the "FCRA Claims"). [Dkt. 1]. After two mediation sessions with Mr. Mark Hanley, Class Counsel's efforts resulted in a Settlement Fund of $790,000.00. If the Court grants final approval, each Class Member that submitted a claim is anticipated to receive a check for $68.50.

Subject to the Court's approval, Class Counsel requests attorneys' fees in the amount of One Third of the Settlement Fund plus reimbursement for its litigation costs, 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.

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 August 19, 2019. After initial discovery exchanges, the parties attended two mediation sessions with Mr. Mark Hanley, Esq, the Parties reached a settlement in principal on February 10, 2020. On June 18, 2020, the Court verbally preliminarily approved the Settlement. However, before the Court issued an order, the Parties amended their Settlement Agreement and [Dkt. 34-1] and moved the Court to approve the Amended Settlement Agreement. [Dkt. 34]. On December 10, 2020, the Court issued its Order Granting Motion for Preliminary Approval. [Dkt. 35].

### B. Settlement Terms

The Settlement, if granted final approval, will resolve Plaintiffs' 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 $790,000.00, from which each Settlement Class member submitting a claim form shall receive a fixed award in the amount of $68.50. After all settlement terms were agreed upon, the parties negotiated Class Counsel's attorneys' fees, reimbursement of costs and Plaintiffs'

general release compensation. Defendant agreed not to oppose a fee award of one third of the Settlement Fund or reimbursement from the Settlement Fund for Class Counsel's litigation costs. The parties also agreed Named Plaintiffs shall receive $2,000.00 each for executing general releases. The compensation to Named Plaintiffs for executing general releases, which Defendant has agreed to pay separately, does not reduce the Settlement Fund or distributions to Settlement Class Members.

## 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 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 $263,070.00 (One Third 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, and will continue to invest, 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; preparing for and attending two mediation sessions; drafting and amending the settlement agreement; drafting and amending motions for preliminary approval and final approval; drafting class notices; facilitating notices and class administration; and responding to inquiries from class members. Additionally, Class Counsel will attend the Final Fairness Hearing on April 16, 2021.

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 and one half years, 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 $68.50 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 $263,070.00 or approximately 33.33% 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 $790,000.00 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 $68.50 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); *Gross v. Advanced Disposal Services, Inc.*, Case No.: 8:17-cv-1920-CEH-TGW, (M.D. Fla. Feb. 26, 2020) (Judge Honeywell) (citation omitted)(the payments to the Settlement Class Members of $90 is fair and reasonable in light of all the circumstances); *Bryant v. Realogy Group, LLC*, Case No.: 8:18-cv-2572-T-60CPT, (M.D. Fla. Aug. 19, 2020) (Judge Tuite) (citation omitted)(the proposed recovery for class members of $50 was within the range of reasonableness); *report and recommendation adopted,* (M.D. Fla. Sept. 4, 2020) (Judge Barber); *Bermudez v. CFI Resorts Management, Inc.*, Case No.: 6:19-cv-1847-Orl-37DCI, (M.D. Fla. Nov. 23, 2020) (Judge Dalton)(citation omitted)(the settlement award of $57.50 is well within the range of comparable FCRA settlements, if not above). 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 sets 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 seeks reimbursement of litigation costs and expenses in the amount of $2,622.50, as set forth in the attached Declaration.

## 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 12th day of February, 2021.

***/s/ Marc R. Edelman***
**MARC R. EDELMAN, ESQ.**
Florida Bar No.: 96342
**MORGAN & MORGAN, P.A.**
201 N. Franklin Street, Suite 700
Tampa, FL 33602

Telephone: 813-223-5505
Facsimile: 813-257-0572
medelman@forthepeople.com
*Attorney for Plaintiffs*

**LOCAL RULE 3.01(g) CERTIFICATE**

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided via electronic transmission and/or via U.S. Mail on this 12th day of February, 2021, to the following:

Jennifer Monrose Moore, Esq.
William Grob, Esq.
Ogleree, Deakins, Nash, Smoak & Stewart, P.C.
100 North Tampa Street, Suite 3600
Tampa, Florida 33602
jennifer.moore@ogletree.com
william.grob@ogletreedeakins.com
*Attorneys for Defendant*

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