UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

SHAWANA SANDERS and KENYATTA WILLIAMS on their own behalf and on behalf of all similarly situated individuals,

Plaintiffs,

v. Case No.: 2:18-cv-00555-UA-NPM

GLOBAL RADAR ACQUISITION, LLC d/b/a GLOBAL HR RESEARCH, a foreign for-profit corporation, f/k/a RADAR POST-CLOSING HOLDING COMPANY, INC., f/k/a GLOBAL HR RESEARCH, INC.,

Defendants.
_____/

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVES SERVICE AWARD

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

I. BRIEF OVERVIEW OF MOTION

On July 11, 2018, Plaintiffs, Shawana Sanders and Kenyatta Williams, filed a Class Action Complaint styled *Shawana Sanders and Kenyatta Williams vs. Global Radar Acquisition, LLC, et al.*, in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida (the "FCRA Litigation"), asserting claims against Defendant under the Fair Credit Reporting Act ("FCRA") on behalf of themselves and on behalf of a proposed class of similarly situated individuals. On May 3, 2019, the parties reached a mediated settlement agreement ("Settlement"). On July 15, 2019, Judge John E. Steele preliminarily approved the Settlement

(ECF 45). The Settlement, if granted final approval by this Court, will resolve all claims of the Plaintiffs and each of the putative class members. By way of this motion, Plaintiffs now seek Court approval of the attorneys' fees and costs.

Notice has been sent out by the class administrator to 18,313 class members and the results have been overwhelmingly positive. Not a single request for exclusion from the settlement or objection to the settlement has been received. Further, notice was also provided to every state attorney general. No state attorney general or regulator has objected to any portion of the agreement.

Class Counsel's efforts resulted in a Settlement Fund of $3,653,650.00, a gross recovery of approximately $199.00 for each class member. Class members are not required to submit claims to receive an award anticipated to be no less than $125.00, after Plaintiffs' service awards, attorneys' fees and costs are deducted. Defendant is bearing the cost of notice and administration up to $75,000.00, which Defendant may recoup from unclaimed monies in the Settlement Fund before *cy pres* distribution.

Class Counsel's request for attorneys' fees not to exceed thirty three percent (33%) of the Settlement Fund is justified by the monetary benefit obtained for the Settlement Class and by the prospective non-monetary relief effectuated by the changes in Defendant's practices. 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 those commonly routinely awarded in this district. Class Counsel also requests the Court award Plaintiffs a $5,000.00 service award, which is also reasonable. Defendant does not oppose the fees or costs sought by Plaintiffs or the $5,000.00 service award sought by Plaintiffs.

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 July 11, 2018 and was aggressively litigated on both sides. Defendant filed two motions to dismiss. (ECF 16, 23). After the Court denied the second motion, Class Counsel served comprehensive discovery on Defendant. (ECF 80). Defendant responded, providing Class Counsel the information and evidence necessary to validate the claims.

On May 3, 2019 the parties attended mediation with Mr. Rodney Max, Esq., a respected mediator with extensive FCRA experience. At mediation, the parties were able to resolve Plaintiffs' claims on a class wide basis, ultimately memorialized in full and presented to the Court as Exhibit "A" to the Joint Motion for Preliminary Approval. (ECF 43).

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 $3,653,000.00 and to pay the cost of Notice and Administration up to $75,000.00. After all settlement terms were agreed upon, the parties

negotiated Class Counsel's attorneys' fees, reimbursement of costs and Plaintiffs' service award. Defendant agreed not to oppose a fee award not to exceed thirty three (33%) of the common fund and reimbursement of costs and expenses. The parties also agreed for Class Counsel's costs and Plaintiffs' individual service awards 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 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 case as this one in which 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 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 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 not to exceed thirty three percent (33%) 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. Said differently, non-monetary relief provided to the class is "part of the settlement pie."[1]

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 Spent on Case was Significant, but Reasonable

[1] As a result of this action, Defendant has stopped providing consumer reports for employment purposes to users from whom it has not obtained the 15 U.S.C. §§ 1681b(b)(1)(A)(i)-(ii) certifications. Thus, this action has effectuated changes in Defendant's practices for the benefit of future applicants and employees.

Class Counsel spent significant time prosecuting this action. Class Counsel expended considerable time conducting exhaustive FCRA class action-research; drafting and filing Complaint and Amended Complaint; responding to a motion to dismiss; drafting and serving discovery on Defendant; resolving discovery disputes; reviewing and analyzing hundreds of pages of discovery; reviewing and analyzing class-related information submitted by Defendant, including the putative class list; preparing for and attending mediation; drafting a settlement agreement; drafting motions for preliminary approval and final approval; drafting class notices; facilitating notices and class administration; and responding to inquiries from class members. Additionally, the parties' motion for final approval still must be finalized for submission and class counsel must attend the Final Fairness Hearing on November 12, 2019.

In the event that 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 significantly 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 dozens of similar FCRA actions. (See Declarations, attached hereto as Exhibit "A"). With respect specifically to this action, it is believed to be one of the first, if not only, FCRA class action settlements holding a consumer reporting agency accountable for alleged violations of 15 U.S.C § 1681b(b)(1). This factor also weighs heavily in favor of the reasonableness of the requested fee.

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 elements that district courts may 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 themselves 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, class members will automatically receive an award of no less than $125.00 without even having to submit a claim. When all these factors are combined, the outcome demonstrates that Class Counsel are highly skilled FCRA practitioners. 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 were available to devote to

other matters over the period of this litigation. Thus, this factor also militates in favor of finding the requested fee reasonable.

5. Customary Fee

An award of 33% percent is within the range of fees typically awarded in this Circuit. *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); *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 33% of the Settlement Fund 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 one of the first of its kind under this particular provision of the FCRA, taken on a pure contingency basis with no guarantee of recovery. There were no assurances that the putative class would ever be certified, or that Plaintiffs 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, while also fronting costs totaling nearly $8,563.37. 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 $3,653,000.00 for the benefit of all Class Members, none of which will revert to Defendant. 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 are expected to receive an award of no less than $125.00 without even having to file 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.*, *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 automatically receive well above the statutory minimum and significantly more than the amounts typically received in FCRA class actions. Class Counsels' efforts to secure this 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 their qualifications and prior experience in the attached declarations. 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's seeks reimbursement of costs totaling $8,563.37, the majority of which were filing fees and mediation-related expenses. These costs and expenses for which Class Counsel seeks reimbursement were reasonable and directly benefited the class.

E. Service Award

The Court should also award Plaintiffs a $5,000.00 service award each. "At the conclusion of a successful class action case, it is common for courts, exercising their discretion, to award special compensation to the class representatives in recognition of the time and effort they have invested for the benefit of the class." *Smith v. Krispy Kreme Doughnut Corp*., 2007 U.S. Dist. LEXIS 2392, at *4 (N.D.N.C. Jan. 10, 2007) (approving $15,000 service award); *Spicer v. Chi. Bd. Options Exchange, Inc*., 844 F. Supp. 1226, 1267-68 (N.D.Ill. 1993) (collecting cases approving awards from $5,000 to $100,000). Named Plaintiffs, Shawana Sanders and Kenyatta Williams have provided a great deal of value to the Class, and the requested award of $5,000.00 should be awarded. Ms. Sanders and Ms. Williams reviewed documents, participated in discovery and remained engaged throughout the course of the litigation. Without them putting their name on the complaint and stepping forward on behalf of the Class, it is likely class members never would have received an award at all and Defendant would still be infringing upon consumers' privacy rights. In short, Ms. Sanders and Ms. Williams have been critical to the success of this litigation and should receive the award they seek, which Defendant has agreed to pay pending Court approval.

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 Named Plaintiffs' Service Award from the Settlement Fund.

LOCAL RULE 3.01(g)

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

Dated this 21st day of October, 2019.

/s/ *Marc R. Edelman*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 2019, a true and correct copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system.

/s/ *Marc R. Edelman*
Marc R. Edelman, Esq.

EXHIBIT “A”

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SHAWANA SANDERS and KENYATTA WILLIAMS on their own behalf and on behalf of all similarly situated individuals,

Plaintiffs,

v. Case No.: 2:18-cv-00555-UA-CM

GLOBAL RADAR ACQUISITION, LLC d/b/a GLOBAL HR RESEARCH, a foreign for-profit corporation, f/k/a RADAR POST-CLOSING HOLDING COMPANY, INC., f/k/a GLOBAL HR RESEARCH, INC.,

Defendant.
_____/

DECLARATION OF MARC R. EDELMAN
IN SUPPORT OF PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS AND PLAINTIFF'S SERVICE AWARD

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

1. My name is Marc R. Edelman. I am over 21 years of age, of sound mind and capable of executing this Declaration. I have personal knowledge of the facts stated herein, and they are all true and correct to the best of my knowledge.

2. I am an attorney with the Morgan & Morgan law firm's Tampa office, and I have represented Plaintiffs Shawana Sanders, Kenyatta Williams and the Class in this litigation.

3. I have already submitted a Declaration describing my firm, my experience and qualifications to act as Class Counsel. (ECF 43-3).

4. I believe this settlement represents an excellent outcome. Class members are receiving exceptional monetary awards and future consumers will reap the benefit of

Defendant's revised practices. None of this would have been possible without Plaintiffs Sanders and Williams stepping forward to assert their rights. Prior to this action being filed, Plaintiffs were apprised of the responsibilities of a class representative. Both fulfilled their responsibilities, and actively participated in the litigation. I encourage the Court to award them the service awards requested on their behalf.

5. Our firm has seeks reimbursement for costs and expenses in the amount of $7,299.77. The only costs and expenses for which our firm is seeking reimbursement are filing fees ($415.00), service of process ($50.00) and mediation-related expenses ($6,834.77).

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 21, 2019 in Tampa, Florida.

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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

SHAWANA SANDERS and KENYATTA WILLIAMS on their own behalf and on behalf of all similarly situated individuals,

Plaintiffs,

v. Case No.: 2:18-cv-00555-UA-CM

GLOBAL RADAR ACQUISITION, LLC d/b/a GLOBAL HR RESEARCH, a foreign for-profit corporation, f/k/a RADAR POST-CLOSING HOLDING COMPANY, INC., f/k/a GLOBAL HR RESEARCH, INC.,

Defendant.
_____/

DECLARATION OF CRAIG C. MARCHIANDO IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVES' SERVICE AWARDS

I, Craig C. Marchiando, hereby declare the following:

1. My name is Craig C. Marchiando. I am over 21 years of age, of sound mind, capable of executing this Declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

2. I am one of the attorneys working on behalf of the Plaintiffs and the Class in the above-styled litigation, and I am an attorney and partner of the law firm of Consumer Litigation Associates, P.C., a seven-attorney law firm with offices in Hampton Roads, Richmond, Harrisonburg and Alexandria, Virginia. My primary office is at 763 J. Clyde Morris Boulevard, Suite 1-A, Newport News, Virginia 23601. I submit this Declaration in support of Plaintiffs'

Motion for Final Approval of Class Action Settlement and Plaintiffs' Motion for Attorneys' Fees and Costs and Class Representatives' Service Awards.

3. In support of Plaintiffs' Motion for Preliminary Approval, I submitted a Declaration setting out my and my Firm's experience and qualifications to act as Class Counsel. (SeeECF 43-2.) That Declaration also detailed the progression of the litigation and process that resulted in the Settlement.

CONSIDERATIONS SINCE THE GRANT OF PRELIMINARY APPROVAL

4. After the Court's grant of preliminary approval, the Court-appointed Settlement Administrator notified Class Members of the proposed settlement by electronic and traditional mail. That notification included the Court-approved Notices.

5. The Administrator reports that as of today, approximately 96.7% of the Class is estimated to have been reached by the Notices. This is a high an estimated notice rate as I can recall in any class-action case in which I have participated.

6. As of the date of this Declaration, one Class Member has excluded herself from the Settlement, and no one has objected to the Settlement.

7. My Firm has accumulated $800 in expenses relating to this case, which was for travel by two attorneys to the mediation that resulted in the Settlement.

I declare under penalty of perjury, under the laws of the United States and the State of Florida, that the foregoing is true and correct.

DATED: October 18, 2019, Newport News, Virginia.

/s/ Craig C. Marchiando
Craig C. Marchiando