IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MAX STORY, *et al., on behalf of themselves and all others similarly situated,* Plaintiffs, v. HEARTLAND PAYMENT SYSTEMS, LLC, Defendant.	No. 3:19-cv-724-TJC

PLAINTIFFS AND CLASS COUNSEL'S PETITION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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INTRODUCTION

On May 23, 2025, this Court preliminary approved an $18,250,000 non-reversionary settlement (Dkt. 278), which will deliver immediate payments to parents and caretakers of school children nationwide. This is an outstanding outcome for the Class in a case that presented significant challenges: it required experienced attorneys; skillful advocacy; and a substantial investment of time, labor, and money to pursue untested claims. It was secured only after a careful pre-filing investigation, contentious litigation, voluminous discovery, and settlement negotiations overseen by an experienced and respected mediator. Class Counsel embraced these challenges and risks on a purely contingent basis.

Accordingly, and as compensation for the nearly six years spent litigating this class action, Class Counsel respectfully asks the Court to order that: (1) counsel may be reimbursed litigation expenses that were reasonably necessary to prosecute the litigation in the amount of $547,500;[1] (2) it is fair and reasonable for them to be compensated $4,927,500 (27 percent of the non-reversionary settlement) under Rule 23(e)(2)(iii), Rule 23(h), and the *Johnson* factors; and (3) that Plaintiffs may submit the Proposed Order attached hereto, pursuant to Local Rule 3.01(j).

[1] Class Counsel are those counsel appointed in the Court's preliminary approval order. Dkt. 278 ¶ 14. Please note that since the Court issued the preliminary approval order, Lisa R. Considine and David DiSabato left Siri & Glimstad LLP and joined Nagel Rice LLP. *See* Considine Decl. ¶¶ 1–2.

BACKGROUND

The Court is familiar with the history of this litigation, much of which is detailed in Plaintiffs' preliminary approval briefing. *See* Dkt. 271 and Dkt. 276-1. Accordingly, Class Counsel summarizes only a handful of key points below.

I. Plaintiffs' Allegations

Plaintiffs are parents and guardians of school children who allege that Heartland charged impermissible "Program Fees" to Plaintiffs each time they used credit or debit cards to load money onto Heartland's school lunch payment product, McSchoolBucks. Dkt. 117; Dkt. 232 at 1. Specifically, Plaintiffs assert that: (1) the Program Fees violate the New Jersey Consumer Fraud Act ("NJCFA") because they are impermissible under the rules issued by the credit card companies; and (2) Heartland breached its contracts with parents because Heartland promised to transmit Program Fees to the schools. *Id.*

II. Class Counsel's Vigorous Prosecution of this Action

Class Counsel filed this nationwide class action on May 15, 2019 following an extensive investigation into Heartland's alleged impermissible charges to school parents in their payments for school lunches. Varnell Decl. ¶ 3; Considine Decl. ¶¶ 6–8. From that point on, they devoted the resources necessary to develop and successfully prosecute Plaintiffs' claims. *See id.*; *see also* Lichtman Decl. ¶ 8.

The Parties proceeded to actively litigate these claims for nearly six intense years: all told, Class Counsel devoted 7,735.80 hours to this litigation, accumulating approximately $5,974,857 in lodestar during that time. *See* Lichtman Decl. ¶ 17

(5,027.60 hours and $3,915,558 lodestar); Varnell Decl. ¶¶ 7, 10 (2,342 hours and $1,640,000 lodestar); Considine Decl. ¶¶ 14, 16 (366.20 hours and $419,299 lodestar). Formal discovery lasted 1.5 years. Lichtman Decl. ¶ 9. Class Counsel propounded 16 requests for admission ("RFAs"), 47 requests for production ("RFPS") and 19 interrogatories, as well as four third-party subpoenas. *Id.*; *see also id.* ¶ 13(c). Class Counsel reviewed and analyzed more than 12,600 documents, comprised of over 167,000 pages, and assessed nearly 40 gigabytes of data produced by Heartland and third parties in response. *Id.* ¶¶ 9, 13(d). Building from this analysis, Class Counsel then prepared for and deposed nine Heartland fact witnesses as well as the company itself through a corporate designee under Rule 30(b)(6). *Id.* ¶¶ 9, 13(e); Varnell Dec. ¶ 8. Counsel also advised the named Plaintiffs in responding to 24 RFAs, 21 RFPs, and 29 interrogatories, and prepared each to sit for depositions defended by Class Counsel. Lichtman Decl. ¶¶ 9, 13(c); Varnell Decl. ¶ 8.

The expert discovery work was similarly comprehensive. Plaintiffs and Class Counsel produced three experts, all of whom are prepared to testify at trial, and presented five different expert reports covering a range of key issues including: Heartland's compliance with the network rules, challenging whether Heartland's survey evidence was reliable, and examining the operative dates of the technical source code produced by Heartland for its MySchoolBucks website. Lichtman Decl. ¶¶ 10, 13(f); Varnell Decl. ¶ 4. Thereafter, Class Counsel prepared their own expert witnesses and defended all three in expert depositions. Lichtman Decl. ¶¶ 10, 13(e).

Heartland likewise produced three experts and three reports in response, and Class Counsel deposed all three experts. *Id*.

The case also involved complete and comprehensive motion practice. Plaintiffs and Class Counsel prevailed on a motion for judgement on the pleadings and ***three*** motions to dismiss. Dkts. 75, 105, 138; Varnell Decl. ¶¶ 4, 8; Considine Decl. ¶ 9–10. Heartland's efforts were unyielding, and as the Court put it, the lawyers "fought over everything." 7/17/24 H'rg Tr. at 6:7–8; *see also* Varnell Decl. ¶ 5. Specifically, Class Counsel fully briefed a motion for injunctive relief, a motion to compel discovery, class certification, summary judgment, and two *Daubert* motions. Dkts. 97, 182, 202, 221, 222, and 241; Lichtman Decl. ¶ 13(a); Varnell Decl. ¶¶ 4, 8. The Parties' class certification, summary judgment, and *Daubert* briefing culminated in a lengthy hearing with oral argument on July 17, 2024 (Dkt. 256). Lichtman Decl. ¶ 13(b).

Class Counsel then participated in protracted settlement negotiations with Heartland under the supervision of Hunter Hughes, a nationally-esteemed mediator with deep experience in complex class action mediations. Lichtman Decl. ¶¶ 11, 13(g). The parties analyzed the strengths and weaknesses of their respective cases in meticulous mediation statements submitted prior to the in-person, all-day mediation on November 8, 2024. *Id.*; Varnell Decl. ¶ 8. These negotiations initially failed, but Mr. Hughes guided the parties through their disagreements to an agreement in principle several weeks later through a mediator's proposal, on November 26, 2024. Lichtman Decl. ¶¶ 11, 13(f); Varnell Decl. ¶ 8; The Parties spent the next several

months perfecting the agreement and finalized all material terms in March 2025 (Dkt. 270), signing the Settlement Agreement on March 31, 2025. *Id.*; *see also id.* ¶ 13(h); Varnell Decl. ¶ 8; Dkt. 271-2.

III. Summary of the Settlement

The Settlement (Ex. A) calls for Heartland to create a non-reversionary cash settlement fund of $18,250,000 to compensate the following Settlement Class:

> All natural persons who enrolled in MySchoolBucks and paid Program Fees to Heartland on credit or debit card "Meals" transactions between June 18, 2013 and July 31, 2019, except those whose last transaction occurred before January 1, 2015.

Dkt. 271-2 at 10; Dkt. 278 ¶ 12. After deduction of the costs of notice and claims administration and attorneys' fees and expenses, the Settlement Fund will be distributed to all valid claimants, with individual payment amounts tied to the amount of Program Fees they paid. Dkts. 223 at 7, 226-6 at 254:7–16, 278 ¶¶ 7, 9. Under no circumstances will any money revert to Heartland.[2]

LEGAL STANDARD

Rule 23(h) permits the Court to award reasonable attorneys' fees and costs in class action settlements as authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). The Supreme Court and Eleventh Circuit have long recognized that "lawyer[s] who recover[] a common fund . . . [are] entitled to a reasonable attorney's

[2] On July 15, 2025, the Parties also requested a modification of the Settlement Agreement in response to concerns from a Class Member, designating Feeding America to receive residual funds in the unlikely event that such funds remain after distribution. Dkt. 279.

fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Ressler v. Jacobson*, 149 F.R.D. 651, 652 (M.D. Fla. 1992) ("Attorneys who represent a class, and achieve a benefit for the class members, are entitled to be compensated for their services."). The Court's task is to determine whether "[t]he amount of attorneys' fees awarded and litigation expenses reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases." *City of St. Clair Shores Gen. Emp. Ret. Sys. v. Lender Processing Serv., Inc.*, 2014 WL 12621611, at *2 (M.D. Fla. Mar. 4, 2014) (Corrigan, J.); *see also* Fed. R. Civ. P. 23(e)(2) (A settlement, including "the terms of any proposed award of attorney's fees," must be "fair, reasonable, and adequate[.]").

ARGUMENT

I. A 27 percent fee award is fair, reasonable, and appropriate.

In this circuit, when a class settlement establishes a common fund, "computing [attorneys'] fees as a percentage of the common fund recovered is the proper approach." *See Ressler*, 149 F.R.D. at 653; *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1279–80 (11th Cir. 2021) (citing *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991)) (the "percentage method" is the "proper method" "in common fund settlement cases"). "There is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *Camden I*, 946 F.2d at 774. "The majority of common fund fee awards fall between 20% to 30% of the fund" in this circuit, but "[t]o avoid depleting the

funds available for distribution to the class, an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded." *Id.* at 774–75.

"Where the requested fee exceeds 25%, the court is instructed to apply the twelve *Johnson* factors" to determine whether Class Counsel's requested fee is fair, reasonable, and appropriate. *Faught v. American Home Shield Corp.*, 668 F.3d 1233, 1242–43 (11th Cir. 2011) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974)).[3] All of the relevant *Johnson* factors favor Class Counsel's request that the Court award $4,927,500, representing 27 percent of the Settlement Fund.

A. The complexity and risks associated with this litigation support Class Counsel's requested fees.

1. Novel and difficult issues (*Johnson* factor 2)

"Courts have recognized that the novelty and difficulty of the issues in a case are significant factors to be considered in making a fee award. *See Stoll v. Musculoskeletal Institute*, 2022 WL 16927150, at *3 (M.D. Fla. July 27, 2022). "[R]elevant risks must be evaluated from the standpoint of plaintiffs' counsel as of

[3] The *Johnson* factors are: (1) the time and labor involved; (2) whether the issues were novel and/or difficult; (3) the skill needed to perform the services properly; (4) the preclusion of other employment; (5) the customary fee; (6) whether the fee was contingent; (7) the time limitations imposed by the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the nature and length of the relationship between class counsel and the named representative; (11) awards in similar cases; and (12) the economics of class counsel. *James D. Hinson Electrical Contracting Co., Inc. v. AT&T Serv., Inc.*, 2016 WL 10459419, at *3 (M.D. Fla. Dec. 16, 2016) (Corrigan, J.) (citing *Camden I*, 946 F.2d 768) (cleaned up).

the time they commenced the suit, not retroactively, with the benefit of hindsight." *Gevaerts v. TD Bank*, 2015 WL 6751061, at *12 (S.D. Fla. Nov. 5, 2015). "The critical point" is whether, "heading into this case, Class Counsel confronted these issues without any assurances as to how the Court would rule." *Id.*

Even in the best of circumstances, complexity and uncertainty are the nature of the class action beast. *See Stoll*, 2022 WL 16927150, at *3 ("class actions are inherently complex to prosecute"). The securities class action *Ressler* is instructive. Therein, this Court held that "[t]he difficulty of the questions involved here was considerable," where plaintiffs needed to prove "*scienter*, materiality, causation, and damages." *Ressler*, 149 F.R.D. at 654. The Court also opined that the factual issues were difficult, because they "included an exploration of the manufacturing processes, and the computer operations that largely control those processes, of a leading manufacturer of wearing apparel." *Id.* All told, "[t]he difficulty of the legal and factual questions presented significant hurdles to achieving this settlement on behalf of the Class." *Id.*

Similarly, from the outset of this litigation, Class Counsel knew they faced challenging factual and legal issues. *See* Varnell Decl. ¶¶ 6, 12. Foremost, Plaintiffs' consumer claim sought to break new ground, because "no case from [New Jersey state] court has endorsed NJCFA liability on this specific fact pattern. And while Plaintiffs maintained no such case is required, at any time the New Jersey courts could issue an appellate opinion on a sufficiently analogous question to torpedo

Plaintiffs' case." Dkt. 271. at 10.[4] And assuming Plaintiffs' NJCFA claim survived to trial, there would be "a 50/50 chance the jury agrees . . . Heartland's violation of the network rules did not rise to the level of unconscionable commercial conduct . . . ." *Id.* at 9.

Additionally, approximately 60 percent of the Class was arguably subject to the arbitration clause Heartland imposed after Plaintiffs filed suit (Dkt. 223 at 7), and there was never a guarantee that the Court would find the clause unenforceable or even that the Eleventh Circuit would affirm such a finding. Dkt. 271 at 9–10. Indeed, the Court previously denied Plaintiffs' motion to enjoin Heartland's communications to MySchoolBucks users imposing the arbitration clause, because the Court did not find that "Heartland's communications have misled or coerced putative class members into waiving their rights in this litigation." Dkt. 75 at 11–12.

At the June 2024 hearing, the Court made it clear that these risks were not speculative. Though the Court said it was "inclined" "to grant class certification," the Court also warned Plaintiffs that they faced far less certainty on summary judgment, with the Court expressing "some skepticism about" Plaintiffs' core legal "theory." 7/17/24 H'rg Tr. at 96:10–103:9. Any denial of Heartland's summary judgment motion would be "by the skin of the plaintiffs' teeth." *Id.* The Court also opined, "I recognize the law greatly favors arbitration. The Eleventh Circuit loves

[4] And while Plaintiffs had great confidence in their arguments on these points, it is also true that the question of whether Heartland's choice-of-law provision in its Terms of Service encompasses Plaintiffs' NJCFA claim, and whether Heartland is a "merchant" subject to the credit card network rules, are pending before this Court. *See generally* Dkt. 249.

arbitration." *Id.* at 36:10–13. Accordingly, the Court cautioned, "[A]s you all know as experienced lawyers, sometimes imperfect knowledge and not knowing what's going to happen can promote settlement," and that the case had reached an "inflection point" "where reasonable people ought to try to figure a way out of this thing, if you can." *Id.* at 102:3–13. And after the Parties heeded this warning, the Court reiterated in granting preliminary approval of the Settlement that "*this case presents numerous risks on liability*, as illustrated by the fulsome summary judgment briefing and oral argument presented at the July 17, 2024 hearing." Dkt. 278 ¶ 6 (emphasis added).

2. Attorney time and labor (*Johnson* factor 1)

The complexity and intensity of the issues in this litigation are also reflected in the "considerable time and effort" Class Counsel expended on the case (Lichtman Decl. ¶¶ 8–11, 13–15, 17, 24; Varnell Decl. ¶¶ 3–8; Considine Decl. ¶¶ 6–14, 20–21). *See Stoll*, 2022 WL 16927150, at *3. Consider *Ressler*, wherein the

> [p]etitioners expended 787.8 hours in the prosecution of this lawsuit . . . Clearly, then, a substantial effort was expended in the time since this case began. This lawsuit was complicated and intense. The motions—plaintiff's class motion, defendants' dismissal motion, and defendants' stay motion—were all fully briefed. Extensive discovery occurred, including the preparation of interrogatories and document requests, Counsel's review and analysis of thousands of documents, and the depositions of [a defendant's] top present and former executives. Moreover, the proposed settlement was consummated only after extensive, complex, and delicate discussions and drafting sessions between counsel.

149 F.R.D. at 653–54.

Likewise, in the face of many potentially fatal risks, here Class Counsel devoted "significant attorney's time and labor" to a vigorous prosecution and defense of Plaintiffs' claims. *See id.* at 654. As outlined above, over the course of close to six years and over 7,700 hours Class Counsel devoted substantial time to, among other key focuses:

- Conducting a comprehensive pre-filing investigation, including detailed reviews of Heartland's contracts with school districts throughout the United States, interviews with state and federal agencies, and detailed reviews of publicly available information and interviews with parents (Varnell Decl. ¶¶ 3, 8(a); Considine Decl. ¶ 6–7);
- Successfully defending the Complaint from three separate pleadings challenges (Dkts. 75, 105, 138; Varnell Decl. ¶¶ 4, 5, 8(d); Considine Decl. ¶ 9–10);
- Amending the pleadings three times (Dkts. 57, 107, 117; Considine Decl. ¶ 8);
- Fully briefing a motion for injunctive relief, a motion to compel, class certification, summary judgment, and *Daubert* (Dkts. 97, 182, 202, 221, 222, and 241; Lichtman Decl. ¶¶ 13(a); Varnell Decl. ¶¶ 4, 8(d));
- Presenting oral argument on the latter five motions (Lichtman Decl. ¶ 13(b));
- Developing a discovery strategy and reviewing over 167,000 pages of documents and nearly 40 gigabytes of data files in preparation to depose ten fact witnesses and three expert witnesses (*id.* ¶¶ 9, 13(c)–(e); Varnell Decl. ¶ 8(b); Considine Decl. ¶ 11–12);
- Defending five depositions of two named Plaintiffs and three experts (Lichtman Decl. ¶¶ 9–10, 13(e)–(f); Varnell Decl. ¶¶ 4, 8(c));
- Producing three expert reports on various technical and sophisticated issues (Lichtman Decl. ¶¶ 10, 13(f); Varnell Decl. ¶ 4);
- Drafting mediation documents and participating in mediations (Lichtman Decl. ¶¶ 11, 13(g); Varnell Decl. ¶¶ 4, 8(e));

- Conducting successful settlement efforts involving numerous agreement drafting sessions to perfect the resolution for the Class (Lichtman Decl. ¶ 13(h); Varnell Decl. ¶¶ 4, 8(f));
- Coordinating with a settlement administrator to develop and implement a notice plan (Lichtman Decl. ¶ 13(i)); and
- Moving for preliminary approval of the Settlement (Lichtman Decl. ¶ 13(j); Dkt. 271).

Accordingly, a 27 percent fee award is justified. *See Stoll*, 2022 WL 16927150, at *3 (33 percent fee award reasonable where class counsel billed 1048.30 hours litigating the case); *Sec. and Exchange Comm'n v. Davison*, 2023 WL 2931641, at *3, 5 (M.D. Fla. Mar. 8, 2023) (25 percent fee award reasonable where class counsel spent over 9,000 hours prosecuting complex claims).

Further, Class Counsel will continue to put more time into the case as they commit time and resources now and in the future to: (1) continued administration of the Settlement; (2) responding to Class Members' inquiries concerning the Settlement and the claims process; (2) overseeing and coordinating distribution of the Settlement funds to Class Members; (4) presenting the Settlement to the Court at the Fairness Hearing; and (5) any potential appeals. Lichtman Decl. ¶ 14; Varnell Decl. ¶ 15. This additional time and labor supports the reasonableness of the fee request. *See Tweedie v. Waste Pro of Florida, Inc.*, 2021 WL 5843111, at *9 (M.D. Fla. Dec. 9, 2021) (costs associated with future settlement administration relevant to fee award inquiry).

3. Contingent fee economics (*Johnson* factors 6 and 12)

Courts universally reward attorneys who assume representation on a contingent basis to compensate them for the economic risk that they might be paid

nothing at all. *See St. Clair Shores*, 2014 WL 12621611, at *2 (awarding fee where "[t]he Action was litigated on a purely contingent nature"); *see also Stoll*, 2022 WL 16927150, at *2 (quoting *Ressler*, 149 F.R.D. at 656–57) ("It is a significant risk to prosecut[e] an action entirely on a contingent fee basis. Indeed, '[n]umerous cases recognize that the attorney's contingent fee risk is an important factor in determining the fee award.'"). This practice also encourages legal professionals to accept future risky contingency-fee arrangements, and provide competent representation for "classes of injured plaintiffs" who cannot realistically pursue "small individual claims." *See Gevaerts*, 2015 WL 6751061, at *13; *see also Ressler*, 149 F.R.D. at 657 ("Attorneys who bring class actions are acting as 'private attorneys general' and . . . public policy favors the granting of counsel fees sufficient to reward counsel for bringing these actions and to encourage them to bring additional such actions.").

Although Class Counsel reached a successful outcome for the Class in this case, that success was by no means assured. Notwithstanding the risks and costs of pursuing Plaintiffs' claims, Class Counsel agreed to litigate this case on behalf of more than 5.6 million individuals (Dkt. 272-1 at 8) holding small claims on a contingent basis. Lichtman Decl. ¶¶ 8, 18; Varnell Decl. ¶ 9; Considine Decl. ¶ 20. The three Settlement Class Counsel firms, moreover, were the only ones who stepped up to the challenges detailed above and could not count on a broad group to share the burdens of complex litigation litigated on contingency. This exacerbated the litigation's financial risks, and indeed the Court previously acknowledged that litigating this cast would "cost millions of dollars." 10/25/19 H'rg Tr. at 4:18–20.

As such, Class Counsel "should be rewarded for taking on a case from which other law firms shrunk." *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1364 (S.D. Fla. 2011) (cleaned up); *see also Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1257 (S.D. Fla. 2016) ("No other law firm has taken the risk to bring this action and tackle these difficult issues."). This factor therefore strongly supports Class Counsel's fee request.

4. Preclusion of other work (*Johnson* factor 4)

That Class Counsel "received no compensation in this matter during the nearly [six] years of litigation" and "put off other matters and declined cases they could otherwise have pursued but for" "the investment of substantial time, effort, and money" put towards this case also favors the request (Lichtman Decl. ¶ 17; Varnell Decl. ¶ 9; Considine Decl. ¶ 20). *Stoll*, 2022 WL 16927150, at *2; *see also St. Clair Shores*, 2014 WL 12621611, at *2 (predicating approval of fee request on fact that class counsel "undertook the Action to the preclusion of other employment"). This factor therefore supports a 27 percent fee award.

B. Class Counsel achieved an outstanding result for the Class in a case fraught with peril (*Johnson* factor 8)

"It is well-settled that one of the primary determinants of the quality of the work performed is the result obtained." *Ressler*, 149 F.R.D. at 655; *see also Stoll*, 2022 WL 16927150, at *3. A settlement is "a significant achievement in a case . . . fraught with peril" where it "eliminates the potential risk of non-recovery. Instead of facing additional years of costly litigation, class members will now share in a substantial

settlement fund." *See Ressler*, 149 F.R.D. at 655 ($775,000 settlement was an excellent result); *see also St. Clair Shores*, 2014 WL 12621611, at *2 (This Court awarded "attorneys' fees in the amount of 25% of $13,100,000" because "in the absence of a settlement, continuing with the claims against Defendants would involve lengthy proceedings whose resolution would be uncertain[.]").

Class Counsel overcame long odds to achieve an excellent result that treats all Class Members fairly. The Settlement entitles Class Members to a pro rata share of an $18,250,000 no-reversionary common fund, scaled relative to each Class Member's damages (i.e., the total fees they paid). The agreement, "including the negotiation of the attorneys' fees, was reached in mediation with a skilled mediator[,]" Mr. Hughes (Lichtman Decl. ¶ 11; Varnell Decl. ¶ 13), whom the Court has held is "experienced and well-respected" (Dkt. 278 ¶ 5). *See Cooper v. Nelnet, Inc.*, 2015 WL 4623700, at *2 (M.D. Fla. July 31, 2015). "Thus, there is a presumption that the Agreement is fair[.]" *Id.* Indeed, the Court has held that the Settlement Agreement "is fair, adequate, reasonable, and in the best interests of the Settlement Class, when measured against, among other things, the costs, risks, and delay of trial and appeal." Dkt. 278 ¶ 6.

That this Settlement will avoid prolonging the litigation is of particular note, pursuant to the Court's statement at the July 17 hearing that "you shouldn't have a case that's [already] five years old and be where we are[.]" 7/17/24 H'rg Tr. at 6:2–5. Further, there was no guarantee that the proceedings would conclude any time soon. At oral argument, the Court asked Class Counsel, "[W]e started this thing in

2019, and now you're telling me not only do you want me to certify this class of 6 million people, but then you . . . want me to adjudicate this arbitration provision," "and then we do something else and then we do something else. When will it end is what I'm asking you." *Id.* at 65:2–67:22. The Court ultimately requested that the Parties first submit additional briefing on the enforceability of the post-litigation arbitration clause, after which it would "determine whether I can decide class certification on the papers or whether I need another argument." *Id.* at 91:20–92:20.

Early reactions to the Settlement are in accord with the Court's assessment. Nearly **100,000 valid claims** have already been submitted, and presently there is only **one** objection to the Settlement and only **three** opt-out requests.[5] Lichtman Decl. ¶ 12. "In a class of [millions], the low number of opt-outs and objections reflects the Class' [sic] overall satisfaction with the Settlement." *See Morgan*, 301 F. Supp. 3d at 1251–52; *Cooper*, 2015 WL 4623700, at *2. Class Counsel even received two e-mails from notice recipients requesting representation in other matters, further indicating that Class Members are satisfied with the outcome. Lichtman Decl. ¶ 12.

[5] Indeed, only one Class Member has expressed reservations about the Settlement, and those reservations do not relate to the amount that Heartland will pay, the amount Class Counsel will receive, or the distribution of funds among Class members: it relates only to the possibility that a Class Member who elects direct deposit will not enter their information correctly or respond to follow-up requests for the correct information, necessitating a cy pres distribution. *See* Dkt. 279. And Class Counsel has attempted to address that concern. *See id.*

C. The experience and skill required to litigate this case justify the requested fee award (*Johnson* factors 3 and 9).

"The court considers the experience, reputation, and ability of the attorneys in determining a fee award." *Stoll*, 2022 WL 16927150, at *3 (cleaned up). Here, Class Counsel "has extensive experience and knowledge in complex litigation." *Id.* For example, Class Counsel Jason Lichtman is a partner in Lieff Cabraser Heiman & Bernstein, LLP, one of the country's most successful Plaintiffs' firms. Lichtman Decl. ¶¶ 1, 3. At least eight other courts have appointed Mr. Lichtman as lead or class counsel in complex cases. *Id.* ¶ 5; *see also id.* ¶¶ 4, 6 (listing additional qualifications). Likewise, this Court has previously observed that Class Counsel Janet Varnell has "extensive experience in class action and consumer litigation with substantial expertise in the investigation and prosecution of complex litigation and class actions[.]" *Black v. Winn-Dixie Stores, Inc.*, 2011 WL 13257526, at *6 (M.D. Fla. June 17, 2011) (Corrigan, J.); *see also* Varnell Decl. ¶ 6 (Varnell & Warwick's additional qualifications). Additionally, both David DiSabato and Lisa R. Considine have been appointed as class counsel in other complex actions at least three times. Considine Decl. ¶¶ 1–5 (additional qualifications and experience).

Class Counsel have leveraged their experience and ability and "prosecuted the claims and achieved the Settlement" in this litigation "with sufficiently skillful and diligent advocacy[.]" *St. Clair Shores*, 2014 WL 12621611, at *2. Indeed, the Court has held that Class Counsel "vigorously and effectively represented the Class through the briefing and arguing motions for class certification, exclusion of expert

testimony, and summary judgment." Dkt. 278 ¶ 4. Class Counsel's efforts are particularly impressive because they did not have "the benefit of any active assistance from any governmental agency" (Lichtman Decl. ¶ 8). *See Ressler*, 149 F.R.D. at 654.

In assessing the quality of representation, the Court should also consider include "the time required to reach a settlement." *See id.* at 655–56. Here, Class Counsel's requested fee is appropriate because the Parties reached settlement after nearly six years of litigation and nearly five months of negotiations (Lichtman Decl. ¶¶ 8, 11; Varnell Decl. ¶¶ 7, 13). This "reflect[s] the care and deliberation with which plaintiff's counsel approached the entire settlement process." *Ressler*, 149 F.R.D. at 656 (fee award justified where the parties reached settlement "2 ¼ years after [the lawsuit] was commenced and some 9–10 months after settlement discussions had begun").

Class Counsel's experience and advocacy are all the more notable given the quality of the opposition. *See Stoll*, 2022 WL 16927150, at *3 (defense counsel's renown and ability are relevant to the assessment of "the quality of representation by the class counsel"). Heartland's defense was led by King & Spalding partners David Balser, Laura Harris, and Peter Starr, who "are highly skilled" and practice at one "of the nation's largest corporate defense firms," which made prosecution of this action much more difficult. *See In re Equifax Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *33 (N.D. Ga. Mar. 17, 2020), *aff'd*, 999 F.3d at 1255 (listing defense

counsel), 1278–81 (affirming fee award); *Stoll*, 2022 WL 16927150, at *3.[6] Indeed, at the July 17 hearing the Court referred to both Parties' counsel as "sophisticated" and "experienced lawyers[.]" 7/17/24 H'rg Tr. at 96:22–24, 102:3; *see also* Varnell Decl. ¶ 5.

Accordingly, the requested 27 percent fee award will help "[e]nsure that counsel of this caliber [are] available to undertake these kinds of risky but important cases in the future." *See Gevaerts*, 2015 WL 6751061, at *11; *see also In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d at 1363 (granting class counsel's request for fee of 30% of $410 million settlement fund because "[i]n the private marketplace, . . . counsel of exceptional skill commands a significant premium. So it must be here[.]").

D. Both the percentage method and a lodestar cross-check support Class Counsel's requested fee award.

1. A 27 percent fee award is consistent with fee awards in similar common fund cases (*Johnson* factors 5 and 11).

Class Counsel's requested fee award is "fair and reasonable when compared to the percentages customarily found in standard contingency fee arrangements or awarded in class actions." *Ressler*, 149 F.R.D. at 653 (awarding 30 percent fee). "[D]istrict courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund." *See Hanley v. Tampa Bay Sports and Enter. LLC*, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020); *see also Black*, 2011 WL 13257526, at

[6] *See also* https://www.kslaw.com/pages/about (King & Spalding, a nationally prominent and sophisticated defense firm, employs "more than 1,300 lawyers in 25 offices" "in more than 160 countries.").

*6 (this Court approved Varnell & Warwick's requested 30 percent fee in different litigation); *Gevaerts*, 2015 WL 6751061, at *11 (awarding fee of 30% of $20,000,000 common fund); *St. Clair Shores*, 2014 WL 12621611, at *2 (awarding "attorneys' fees in the amount of 25% of $13,100,000 . . . or $3,275,000"); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291, 1295, 1298 (11th Cir. 1999) (affirming 33 1/3 percent fee award); *Stoll*, 2022 WL 16927150, at *2 (a 33 percent fee "mirror[s] the market rate in other similar litigation" and is reasonable); *Morgan*, 301 F. Supp. 3d at 1255 (similar) (collecting cases). The one-third benchmark underscores the reasonableness of Class Counsel's 27 percent fee request.

Further, "[t]he percentage method of awarding fees in class actions is consistent with, and is intended to mirror, practice in the private marketplace where . . . attorneys regularly contract for contingent fees between 30% and 40%." *Stoll*, 2022 WL 16927150, at *2 (cleaned up) (collecting cases). Class Counsel's request is well-supported for that reason as well.

2. A lodestar cross-check confirms the reasonableness of the requested 27 percent fee award.

Courts in this circuit are not required to consider lodestar when awarding fees. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d at 1278–79. And because the foregoing analysis shows that the requested fees are supported by the considerable time and labor Class Counsel spent and the "excellent" results achieved, a further lodestar analysis is "unnecessary" in light of "the inefficiencies

that it creates." *See In re Checking Acct. Overdraft Litig.*, 2020 WL 4586398, at *18–19 (S.D. Fla. Aug. 10, 2020).

Out of an abundance of caution, however, Class Counsel respectfully stresses that the requested fee award is modest under the lodestar method. Class Counsel have dedicated 7,735.80 hours to prosecuting this litigation, and their aggregate lodestar is $5,974,857. Lichtman Decl. ¶¶ 17, 24 ($3,915,558 lodestar); Varnell Decl. ¶ 10 ($1,640.000 lodestar); Considine Decl. ¶¶ 14, 16 ($419,299 lodestar).[7] This yields a negative multiplier of approximately 0.82, which is well below the norm: courts in common fund cases regularly apply positive multipliers of 2 to 3 times lodestar "to reward counsel for their risk, the contingent nature of the fee, and the result obtained." *Wendy v. Electrolux Home Prods., Inc.*, 2018 WL 11351711, at *2 (M.D. Fla. Apr. 23, 2018) (negative .63 multiplier supported fee request); *Ressler*, 149 F.R.D. at 653 & n.4 (collecting cases); *see also Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007) ("In many cases, including cases in this jurisdiction, multiples much higher than three have been approved.") (collecting cases); *Thorpe v. Walter Inv. Mgmt. Corp.*, 2016 WL 10518902, at *7 (S.D. Fla. Oct. 17, 2016) (a 3.58 lodestar multiplier "is well within the range previously accepted in this district")

[7] Courts in this district and across the country have repeatedly approved Class Counsel's standard hourly rates. *See* Lichtman Decl. ¶ 22; Varnell Decl. ¶ 10; Considine Decl. ¶ 15. Class Counsel rely on their current hourly rates to calculate the lodestar here (*id.*), which is appropriate "to compensate for a delay in payment," even for attorneys no longer employed by Class Counsel. *See Smith v. City of New Smyrna Beach*, 2015 WL 13738777, at *2–3 (M.D. Fla. Apr. 24, 2015) (citing *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988)) (applying current rates accounts for "the time value of money and the effects of inflation") (cleaned up).

(collecting cases); *cf. Stoll*, 2022 WL 16927150, at *2–3 (1.77 multiplier justified 33 percent fee request). There should be no argument that the requested fee award is a windfall.

E. The relationship between Class Counsel and the named Plaintiffs supports a 27 percent fee award (*Johnson* factor 10), and the lack of time restraints (*Johnson* factor 7) is neutral.

That Class Counsel had not represented the named class representatives before initiating the lawsuit "militates in favor of the [27 percent] fee award sought here because plaintiff[s] did not have a 'track record' with the law firms[.]" *Ressler*, 149 F.R.D. at 655; Lichtman Decl. ¶ 7; Varnell Decl. ¶ 3; Considine Decl. ¶ 1. Finally, this lawsuit was not subject to any time constraints, and as such this factor is not a reason to deny the petition. *See James D. Hinson*, 2016 WL 10459419, at *3 ("the time limitations imposed by the circumstances" is a factor in the fee award analysis).

II. Class Counsel's expenses are reasonable and should be reimbursed.

At the conclusion of class litigation, "courts normally grant expense requests in common fund cases as a matter of course." *Hanley*, 2020 WL 2517766, at *6. This is because "plaintiffs' attorneys are entitled to reimbursement of those reasonable and necessary out-of-pocket expenses incurred in the course of activities that benefitted the class" for which they provide adequate documentation. *Stoll*, 2022 WL 16927150, at *4 (cleaned up). Here, Class Counsel request reimbursement of $547,500 in out-of-pocket expenses. Lichtman Decl. ¶ 29 ($481,182.57 in expenses); Varnell Dec. ¶ 11 ($64,797.43 in expenses); Considine Decl. ¶ 17 ($1,520 reasonable expenses incurred).

As set out in the accompanying declarations, Class Counsel's requested expenses are overwhelmingly attributable to expert costs; the rest almost entirely reflects depositions, e-discovery hosting and review, travel for meetings and appearances, and mediation. Lichtman Decl. ¶¶ 27–29; Varnell Dec. ¶ 11; Considine Decl. ¶ 17. These expenses are commensurate with the stakes, intensity, and technical nature of the litigation, and necessary to its prosecution. *See Gevaerts*, 2015 WL 6751061, at *14 (approving reimbursement of "fees for experts, photocopies, travel, online research, translation services, mediator fees, and document review and coding expenses," among other costs).[8] These expenses also demonstrate Class Counsel's commitment to providing zealous advocacy, even as they made every effort to minimize costs. *See Gutierrez v. Amplify Energy Corp.*, 2023 WL 3071198, at *7 (C.D. Cal. Apr. 24, 2023) (quoting *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014)) ("Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent.").

Class Counsel's requested reimbursement is also consistent with expenses incurred and reimbursed in other similarly-situated complex class action common fund cases. *See, e.g.*, *Wendy*, 2018 WL 11351711, at *2 (in complex consumer class action, reimbursement of costs and expenses in the amount of $400,000 was reasonable and justified); *In re Blue Cross Blue Shield Antitrust Litig.*, 2022 WL

[8] To the very limited extent Class Counsel incurred high expenses that were spent on class counsel such as a bottle of wine with dinner or a particularly expensive plane ticket, those expenses are not included as part of this request. *See* Lichtman Decl. ¶ 27; Considine Decl. ¶¶ 17, 19.

4587617, at *1 (N.D. Ala. Aug. 9, 2022) (awarding $40,916,627.90 in litigation costs and expenses in complex litigation); *Baker v. Saint-Gobain Performance Plastics Corp.*, 2022 WL 1025185, at *9 (S.D.N.Y. Feb. 4, 2022) (awarding $1,040,817 in litigation expenses); *Jenkins v. Nat'l Grid USA Serv. Co.*, 2022 WL 2301668, at *5 (E.D.N.Y. June 24, 2022) (awarding $1,052,082.51 in litigation expenses). As such, Class Counsel's request for reimbursement of $547,500 in out-of-pocket expenses is reasonable.

CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court approve an award of attorneys' fees in the amount of $4,927,500 (27 percent of the total value of the settlement), plus reimbursement of litigation expenses in the amount of $547,500, and that that the Court permit Plaintiffs and Class Counsel to submit the Proposed Order attached hereto, pursuant to Local Rule 3.01(j).

Date: July 24, 2025 */s/ Jason L. Lichtman*

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Class Counsel

LOCAL RULE 3.01(g) CERTIFICATION

Under Middle District of Florida Local Rule 3.01(g), I, Sarah D. Zandi, certify that Plaintiffs' counsel have conferred with counsel for Defendant, and Defendant takes no position on the requested relief.

CERTIFICATE OF SERVICE

On July 24, 2025, I caused to be electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will deliver the document to all counsel of record.

/s/ Sarah D. Zandi