

**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

**[PROPOSED] ORDER GRANTING PLAINTIFFS AND CLASS COUNSEL’S  
PETITION FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF  
EXPENSES**

This matter having come before the Court on **PLAINTIFFS AND CLASS COUNSEL’S PETITION FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES** (the “Petition”), the Court having reviewed in detail and considered the Petition, all other papers that have been filed with the Court related to the Petition, the record in this matter, the arguments of counsel, and the brief and arguments of any objectors to the Petition, **HEREBY GRANTS** Plaintiffs and Class Counsel’s Petition.

**IT IS HEREBY ORDERED AS FOLLOWS:**

## **I. Attorneys' Fees**

1. The Court finds that Class Counsel are entitled to reasonable attorneys' fees. Fed. R. Civ. P. 23(h); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Ressler v. Jacobson*, 149 F.R.D. 651, 652 (M.D. Fla. 1992).

2. The Court finds that the percentage of the fund method of determining reasonable attorneys' fees is appropriate here, where the Settlement creates a common fund. *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)). Class Counsel's fee request of \$4,927,500 is 27 percent of the value of the Settlement fund. The Court finds that this fee is appropriate, given the circumstances of the case. *See Camden I*, 946 F.2d at 774–75 (Though "[t]here 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[.]" "[t]he majority of common fund fee awards fall between 20% to 30% of the fund" in this circuit.).

3. The Court has analyzed the reasonableness of Class Counsel's fee request, including by considering the twelve *Johnson* factors. *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)).<sup>1</sup> The Court finds that the taken together, these factors support a 27 percent fee award.

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<sup>1</sup> 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

4. **Novel and Difficult Issues (*Johnson Factor 2*).** The Court finds that this case, like nearly all class action consumer protection litigation, was factually and legally complex, and from the outset of the litigation Class Counsel knew that the outcome was uncertain. *See Stoll v. Musculoskeletal Institute*, 2022 WL 16927150, at \*3 (M.D. Fla. July 27, 2022) (“[T]he novelty and difficulty of the issues in a case are significant factors to be considered in making a fee award.”); *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.”). The novel and difficult issues in this litigation support the requested fee.

5. **Attorney Time and Labor (*Johnson Factor 1*).** Moreover, despite the foregoing risks, over the course of more than five years, Class Counsel devoted over 7,700 hours through the filing of this Petition of attorney and law firm staff time to investigating and litigating the claims, conducting discovery, and negotiating the Settlement in this complex litigation. The requested 27 percent fee award is therefore reasonable. *See Stoll*, 2022 WL 16927150, at \*3 (33 percent fee award reasonable

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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).

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). The Court also finds that the additional time and labor Class Counsel will devote to the case in connection with continuing to administer the Settlement and claims process, any potential appeals, etc. also 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).

6. **Contingent Fee Economics (*Johnson Factors 6 and 12*).** The Court also finds that Class Counsel should be rewarded for assuming representation of Plaintiffs on a purely contingent basis. *See 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.) (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.’”). Further, the Court finds that that the requested fee is reasonable because it will encourage Class Counsel to bring similar cases on behalf of injured plaintiffs who cannot realistically pursue small individual claims in the future. *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.”). Finally, the Court finds that a 27 percent fee award is reasonable given that Class Counsel were the only firms to bring this action, which exposed Class Counsel to greater financial burdens and exacerbated the financial risks. *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1364 (S.D. Fla. 2011) (Class Counsel “should be rewarded for taking on a case from which other law firms shrunk.”) (cleaned up).

7. **Preclusion of Other Work (*Johnson Factor 4*).** Class Counsel undertook this litigation to the preclusion of other employment while receiving no compensation for their work in this litigation, which the Court finds supports the reasonableness of the requested fee. *See Stoll*, 2022 WL 16927150, at \*2; *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”).

8. **Outstanding Result for the Class (*Johnson Factor 8*).** Moreover, the Courts finds that a 27 percent fee award is reasonable because Class Counsel achieved an excellent result for Class Members in high-risk litigation. *See Ressler*, 149 F.R.D. at 655 (“It is well-settled that one of the primary determinants of the quality of the work performed is the result obtained.”); *see also Stoll*, 2022 WL 16927150, at \*3. 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), and therefore treats all Class Members fairly. The Court finds that the Settlement is presumptively fair because it was reached in mediation with a skilled mediator. *See Cooper v. Nelnet, Inc.*, 2015 WL 4623700, at \*2 (M.D. Fla. July 31, 2015). Further, the Court finds that the Settlement will avoid prolonging the litigation, which is already five years old, and whose resolution is uncertain. *See St. Clair Shores*, 2014 WL 12621611, at \*2 (“[I]n the absence of a settlement, continuing with the claims against Defendants would involve lengthy proceedings whose resolution would be uncertain.”). Further, the Court finds that potential Class Members' early reactions to the Settlement demonstrate the quality of the result. Nearly 100,000 valid claims have already been submitted, there is only **one** objection to the Settlement and only **three** opt-out requests, and two notice recipients requested representation from Class Counsel in other matters, indicating their satisfaction with the outcome. *See Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1251–52 (S.D. Fla. 2016) (“In a class of [millions], the low number of opt-outs and objections reflects the Class' [sic] overall satisfaction with the Settlement.”). The Court finds that the foregoing supports the reasonableness of the 27 percent fee request.

9. **Class Counsel's Experience and Skill (*Johnson* Factors 3 and 9).** The Court finds that Class Counsel have extensive experience and knowledge in complex litigation, which justifies the requested fee award. *See Stoll*, 2022 WL 16927150, at \*3

(cleaned up) (“The court considers the experience, reputation, and ability of the attorneys in determining a fee award.”). The Court further finds that Class Counsel provided skillful and diligent advocacy to the Class, and that their efforts are particularly impressive in light of the fact that they did not benefit from any assistance from a government agency. *See St. Clair Shores*, 2014 WL 12621611, at \*2; *Ressler*, 149 F.R.D. at 655. Additionally, the Parties reached settlement after five years of litigation and nearly five months of negotiations, which the Court finds reflects the care and deliberation with which Class Counsel approached the settlement process. *See Ressler*, 149 F.R.D. at 654. Moreover, Class Counsel’s sophistication, experience, and high-quality advocacy were necessary to successfully prosecuting the case, 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”). As such, the Court finds that 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 (“In the private marketplace, . . . counsel of exceptional skill commands a significant premium. So it must be here[.]”).

10. **Awards in Similar Cases (*Johnson Factors 5 and 11*).** The Court finds that the 27 percent requested fee is squarely in line with fees awarded in this Circuit for similar cases. *See Hanley v. Tampa Bay Sports and Enter. LLC*, 2020 WL 2517766, at

\*6 (M.D. Fla. Apr. 23, 2020); (“[D]istrict courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund.”); *Gevaerts*, 2015 WL 6751061, at \*11 (awarding fee of 30% of \$20,000,000 common fund); *Black v. Winn-Dixie Stores, Inc.*, 2011 WL 13257526, at \*6 (M.D. Fla. June 17, 2011) (Corrigan, J.) (approving Class Counsel firm’s requested 30 percent fee in different litigation); *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, 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 1251–52 (similar) (collecting cases); *Ressler*, 149 F.R.D. at 653 (awarding 30 percent fee). The Court also finds that Class Counsel’s 27.1 percent fee request is well-supported by authority instructing that “[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).

11. **Lodestar Cross-Check.** The Court finds that it is not required to consider lodestar when awarding fees. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d at 1278–79. Pursuant to the Court’s foregoing assessment, the requested fees are supported by the considerable time and labor Class Counsel spent and the “excellent” results achieved, such that 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). However, out of an abundance of caution, the 27 percent fee requested by Class Counsel reflects a negative multiplier of 0.82, which the Court finds falls well below the range of positive multipliers approved by courts in the Eleventh Circuit pursuant to lodestar cross-checks of percentage-of-fund awards. *See Wendy v. Electrolux Home Prods., Inc.*, 2018 WL 11351711, at \*2 (M.D. Fla. Apr. 23, 2018) (negative .63 lodestar multiplier justified fee request); *Ressler*, 149 F.R.D. at 653 & n.4 (collecting cases); *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”) (collecting cases); *cf. Stoll*, 2022 WL 16927150, at \*2–3 (1.77 multiplier justified 33 percent fee request). Thus, the application of the lodestar multiplier supports the reasonableness of Class Counsel’s requested fee. The Court also finds that Class Counsel’s standard hourly rates, which courts nationwide have repeatedly approved, are reasonable. Finally, the Court finds that it is appropriate for Class Counsel to rely on their current hourly rates to calculate the lodestar to compensate for a delay in payment given the contingent nature of representation. *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”).

12. **No Prior Relationship between Class Counsel and Named Plaintiffs (*Johnson Factor 10*).** Additionally, the Court finds that the fee request is reasonable given that Class Counsel had not provided the named Plaintiffs with legal representation prior to initiating this litigation. *See Ressler*, 149 F.R.D. at 655 (lack of prior attorney-client relationship between named plaintiffs and class counsel “militates in favor of the [] fee award sought here because plaintiff[s] did not have a ‘track record’ with the law firms”).

13. **No Lack of Time Restraints (*Johnson Factor 7*).** Further, the Court finds that this lawsuit was not subject to any time constraints, and as such this factor is not a reason to deny Class Counsel’s fee request. *See James D. Hinson*, 2016 WL 10459419, at \*3 (“the time limitations imposed by the circumstances” is a factor in the fee award analysis).

14. For the foregoing reasons, the Court concludes that the requested fee award is reasonable, and **GRANTS** attorneys’ fees to Class Counsel in the amount of \$4,927,500.

## **II. Litigation Expenses**

15. Class Counsel are also entitled to reimbursement of reasonable out-of-pocket costs advanced for the Class for which they provide adequate documentation.

*See Hanley*, 2020 WL 2517766, at \*6 (“[C]ourts normally grant expense requests in common fund cases as a matter of course.”); *Stoll*, 2022 WL 16927150, at \*4.

16. The Court finds that Class Counsel provided adequate documentation showing that the expenses incurred in this litigation are primarily attributable to expert costs, and the rest almost entirely reflect costs in connection with depositions, e-discovery hosting and review, travel for meetings and appearances, and mediation. Class Counsel have not sought reimbursement for a limited number of high expenses such as a bottle of wine with dinner or a costly plane ticket. Accordingly, the Court finds that the expenses for which Class Counsel have sought reimbursement were reasonable and necessary to the effective representation of the Class. *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).

17. Further, the Court finds that these expenses demonstrate Class Counsel’s commitment to providing skillful and diligent advocacy, even as they were strongly incentivized to keep expenses at a reasonably low level, because of the high risk of no recovery when the fee is contingent. *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)).

18. Finally, the Court finds that Class Counsel’s requested reimbursement is consistent with expenses reimbursed in other in other similarly-situated complex

class action common fund cases, and is therefore reasonable. *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 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).

19. Accordingly, the Court **GRANTS** Plaintiffs and Class Counsel's request for reimbursement of out-of-pocket litigation expenses in the amount of \$547,500.

**IT IS SO ORDERED.**

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United States District Judge  
The Honorable Timothy J. Corrigan

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