

NORTH CAROLINA  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
16-CVS-5190

IRIS POUNDS, CARLTON MILLER,  
VILAYUAN SAYAPHET-TYLER, and  
RHONDA HALL, on behalf of  
themselves and all others similarly situated,

Plaintiffs

v.

PORTFOLIO RECOVERY ASSOCIATES,  
LLC,

Defendant.

2024 MAR 26 P 4:31  
DURHAM CO., C.S.C.  
BY CB

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND  
EXPENSES AND FOR CLASS REPRESENTATIVE SERVICE AWARDS**

Class Counsel respectfully submit this brief in support of Plaintiffs' Motion for Attorneys' Fees and Expenses and for Class Representative Service Awards ("Motion").

Pursuant to the Class Action Settlement Agreement and Release ("Settlement Agreement") entered into by Plaintiffs and Defendant Portfolio Recovery Associates, LLC ("PRA") on January 4, 2024, Plaintiffs seek an award of attorneys' fees of \$1.725 million, which is thirty percent of the \$5.75 million settlement fund obtained on behalf of the class, and reimbursement of attorney expenses in the amount of \$22,811.02.<sup>1</sup> The Motion also seeks service awards of \$10,000 for each of the four Class Representatives, whose efforts have enabled thousands of North Carolinians to share in a substantial recovery.

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<sup>1</sup> The parties executed an Amended Class Action Settlement Agreement and Release on March 1, 2024, but the amendment did not alter the parties' original agreement regarding attorneys' fees or class representative service awards.

Having litigated the action for more than seven years, Class Counsel believe the requested award of attorneys' fees is fully justified by the results obtained for the class and also by counsel's expenditure of time and resources; the complexity of the issues; the uncertainty of the ultimate recovery; and the skills and tenacity of opposing counsel.

If the Motion is granted, approximately \$3.962 million will be available for distribution to class members after deduction of the requested attorneys' fees and expenses and the class representative service awards. Pursuant to the Settlement Agreement, all of the \$3.962 million will be distributed to class members—none will revert back to PRA and none will be used to pay settlement administration costs. Moreover, class members will not be required to respond to a mailing or submit a claim form in order to receive their portion of the settlement funds. Additionally, the Settlement Agreement will result in PRA filing cancellations of approximately 12,500 default judgments entered against class members, resulting in the cancellation of an estimated \$35 million in judgment debt.

## **FACTS**

### **I. HISTORY OF *POUNDS V. PORTFOLIO RECOVERY ASSOCIATES, LLC***

#### **A. Legislation to Address Debt Buyer Collection Activities.**

In October 2009, the North Carolina General Assembly enacted S.L. 2009-573, titled "The Consumer Economic Protection Act of 2009." Among other consumer protections, the Act amended the Prohibited Practices by Collection Agencies Engaged in the Collection of Debts from Consumers statute, N.C. Gen. Stat. § 58-70-90, *et seq.* ("PPCA"), establishing specific protections for consumers from the collection activities of debt buyers in North Carolina.

Of particular relevance to the *Pounds* action, the Act established "prerequisites" that a debt buyer must satisfy before obtaining entry of default judgment against a debtor in North Carolina courts. S.L. 2009-573; N.C. Gen. Stat. § 58-70-155. A debt buyer's failure to comply with these

prerequisites constitutes unfair or deceptive acts or practices and subjects the debt buyer to liability for a statutory penalty, as well as for actual damages. N.C. Gen. Stat. § 58-70-130.

**B. Pre-Filing Investigation and Actions**

Prior to filing this class action, Class Counsel engaged in an extensive investigation of PRA's default judgment practices, analyzing hundreds of case files from courthouses across the state. In addition, Class Counsel filed motions to vacate seven default judgments obtained by PRA against North Carolina debtors in Chatham, Wake, and Mecklenburg Counties. In each of the seven cases, Class Counsel succeeded in obtaining orders vacating the default judgments on the grounds that the judgments were void for lack of subject matter jurisdiction and that PRA had failed to comply with the prerequisites of N.C. Gen. Stat. § 58-70-155. Class Counsel discussed the results of these vacatur cases in several paragraphs of the *Pounds* complaint and in the *Pounds* class certification and preliminary injunction motions and briefs.

**C. Pounds v. Portfolio Recovery Associates, LLC.**

On November 21, 2016, Plaintiffs filed a class action complaint, alleging that PRA had a uniform practice of obtaining default judgments against North Carolina debtors without complying with the requirements of N.C.G.S. 58-70-155. Along with the class action complaint, Plaintiffs also filed a motion for preliminary injunction, a motion for class certification, briefs in support of both motions, and 69 exhibits.

PRA removed this case to federal court on December 9, 2016. Plaintiffs filed a motion to remand, based on the *Rooker-Feldman* doctrine, which was granted on March 28, 2018, except for the claims of former named plaintiff, Pia Townes, who voluntarily dismissed her case. PRA petitioned both the Fourth Circuit and the United States Supreme Court for permission to appeal. Neither court agreed to allow the appeal, with the Supreme Court's denial occurring on November 19, 2018.

When the case returned to state court, PRA then moved to compel arbitration. This Court denied PRA's motion on March 21, 2019. The Court of Appeals affirmed the denial of PRA's motion to compel arbitration by opinion dated November 3, 2020. PRA then sought discretionary review by the North Carolina Supreme Court, which was denied November 3, 2021, and certiorari from the United States Supreme Court, which was denied June 6, 2022.

On January 6, 2022, PRA moved this Court for a stay of proceedings pending the North Carolina Supreme Court's decision in *Townes v. Portfolio Recovery Associates, LLC*, a closely related case that involved former named plaintiff Pia Townes and that raised the same claim as in *Pounds* that PRA had violated N.C. Gen. Stat. § 58-70-155 in obtaining entry of a default judgment against her. Class Counsel had filed the *Townes* case and another individual case (*Spector v. Portfolio Recovery Associates, LLC*) in an attempt to obtain a precedential appellate ruling on the merits that would resolve the main issues in *Pounds*. By order entered March 22, 2022, this Court granted PRA's motion for stay. The Supreme Court of North Carolina issued its opinion in *Townes* on November 4, 2022.

Thereafter, the parties pursued discovery. On December 21, 2022 and January 6, 2023, PRA produced documents responsive to Plaintiffs' first set of interrogatories and requests for production. The production contained 874,283 pages and consisted of the complaints and attached exhibits, motions and attached exhibits, and orders that were filed in collection actions filed on or after October 1, 2009, in which PRA had obtained a default judgment against a debtor. On December 20, 2022, PRA also served requests for admissions, interrogatories, and requests for production on each of the Plaintiffs. The Plaintiffs served responses to the written discovery on January 19 and January 26, 2023.

On March 28 and 29, 2023, the parties engaged in a two-day mediation session with the assistance of mediator James Cooley. Thereafter, the parties continued to engage in extended mediated settlement discussions throughout the course of the next six months with the assistance of Mr. Cooley. On November 2, 2023, the parties executed a memorandum of settlement, which set out the main terms for a resolution of the entire case. After additional negotiation over the final terms of the agreement, the parties entered into the Settlement Agreement on January 4, 2024.

## II. THE *POUNDS* SETTLEMENT AGREEMENT

The Settlement Agreement provides substantial monetary and non-monetary benefits to the 18,776 class members.

First, PRA will pay a total of \$5.75 million into a settlement fund. If the Court gives final approval to the Settlement Agreement and approves the requested award of attorneys' fees and expenses and class representative service awards, approximately \$3.962 million will be paid to class members from the settlement fund. Class members will not be required to submit a claim form to receive their portion of the settlement funds; rather, checks will be sent out to each class member who can be located with reasonable effort. None of the settlement funds will be returned to PRA. Instead, to the extent class members cannot be located, the funds intended for them will be distributed to those class members who do cash their checks. In addition, PRA agreed to pay for the costs of administering the settlement so that this expense will not be taken out of the funds available for class members.

If the Court grants final approval to the Settlement Agreement and the requested fees, expenses, and class representative awards, each class member will receive a minimum settlement payment of \$50. In addition, those class members who made payments to PRA or had property seized as a result of the default judgments—approximately 8,800 class members—will also receive a proportional share of the settlement fund, calculated based on the amount they paid to PRA.

Based on data obtained from PRA, Class Counsel anticipate that the average settlement payment for the class members who made payments to PRA or had property seized as a result of the default judgments will be approximately \$385.

Second, PRA has agreed to provide critical non-monetary relief to class members. PRA ceased collections on the accounts that fall within the class definition and agreed to return any payments made on the judgments after October 19, 2023, the date PRA executed the Memorandum of Settlement. PRA also agreed to file cancellations of all default judgments that have not already been marked as satisfied in the court that entered the judgment, which means that approximately 12,500 default judgments, constituting approximately \$35 million of judgment debt, will be cancelled as a result of the Settlement Agreement.

### III. CLASS NOTICE PROGRAM

On or around March 29, 2024, the Settlement Administrator, Kroll, LLC, will mail the Summary Class Notice to all class members at addresses provided by PRA after running the addresses through the National Change of Address system. Kroll will also establish the Settlement Website, on which it will post the Summary and Long-Form Class Notices, Frequently Asked Questions, and other settlement-related documents. Further, Kroll will establish a toll-free telephone number for class members to call for information regarding the settlement. The Notice and the website contain information on how class members could object, including to the requested attorneys' fee award, if they choose to do so.

### IV. ATTORNEY HOURS, ACTIVITIES, AND EXPENSES

Exhibits 1-5 provide affidavits from the lawyers involved in the case, attesting to their expertise and experience, their work on the case, and the reasonableness of their time and expenses.

## ARGUMENT

Under North Carolina law, courts generally may not award attorneys' fees without statutory authority. *See McManus v. Dry, P.A.*, No. 22 CVS 1776, 2023 WL 3479386, \*1 (N.C. Super. May 5, 2023). Notwithstanding this general rule, North Carolina courts have long held that parties may provide in a settlement agreement for the payment of one party's attorneys' fees by the other party. *Ehrenhaus v. Baker*, 243 N.C. App. 17, 28 (2015) (citing *Carter v. Foster*, 103 N.C. App. 110, 114–15, 404 S.E.2d 484, 487–88 (1991)). Giving effect to such a provision “is consistent with the well-established policy of encouraging the settlement of disputes between litigants and is therefore permissible despite a lack of explicit statutory authorization for such an award.” *Id.* In *Ehrenhaus*, the Court of Appeal extended this doctrine to class action settlements, though the court noted that a court must evaluate the fee allocation provision along with all other aspects of the settlement to ensure that it is fair and reasonable. 243 N.C. App. at 17; *see also McManus*, 2023 WL 3479386, at \*1.

In this case, the parties agreed as part of the Settlement Agreement that Plaintiffs could seek an award of attorneys' fees of up to 30% of the settlement fund, and that PRA would not oppose such an award. *See* Settlement Agreement at § 33 (Ex. A to Joint Motion for Preliminary Approval Order). As shown below, the requested attorneys' fees are fair and reasonable based on the “percentage of the fund” standard, Class Counsel's lodestar, and by the factors set forth in Rule 1.5 of the Rules of Professional Conduct.

### I. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE

#### A. The Governing Standard

While North Carolina's appellate courts have not addressed the standard for determining the fairness and reasonableness of attorneys' fees awards in “common fund” cases, the North

Carolina Business Court has articulated the following standard that has been followed by North Carolina trial courts:

In common fund cases, the North Carolina trial courts have routinely adopted a multiple factor or hybrid approach to determining attorney fees which uses both the percentage of the fund method and the lodestar method in combination with a careful consideration of the fee factors set forth in the Rules of Professional Conduct of the North Carolina State Bar.

*Long v. Abbott Labs.*, No. 97-CVS-8289, 1999 WL 33545517, at \*5 (N.C. Super. July 30, 1999); *see also Carl v. State*, No. 06 CVS 13617, 2009 WL 8561911, at ¶ 82 (N.C. Super. Dec. 15, 2009) (“[T]he Court concludes that the princip[al] basis upon which to determine a reasonable attorney’s fees is the percentage-of-recovery method, using the ‘lodestar’ method as a cross-check, and evaluating the amount requested in light of all the relevant factors in the particular case.”) (following *Byers v. Carpenter*, No. 94 CVS 04489, 1998 WL 34031740 (N.C. Super. Jan. 30, 1998)).

The multiple factor or hybrid approach thus examines (1) whether the percentage requested is within an accepted range and appropriate based on the actual benefits obtained for the class (“percentage of fund” method); (2) how the actual hours spent on the case compare to the fee amount sought (“lodestar” cross-check); and (3) whether the fee is reasonable based on the factors set forth in Rule 1.5 of the North Carolina Rules of Professional Conduct. *See Long*, 1999 WL 33545517 at \*5; *Carl*, 2009 WL 8561911, at ¶ 82; *Byers*, 1998 WL 34031740 at \*12.

Movants submit that the requested fee satisfies all three methods of analysis.

B. An Award of Thirty Percent of the Common Fund Is Appropriate Based on the Percentage-of-the-Recovery Approach and Consistent With Awards in Similar Cases.

Class Counsel seeks an award of attorneys’ fees of \$1,725,000, which is thirty percent of the settlement fund obtained for the class. North Carolina courts have routinely held that a request for attorneys’ fees of thirty percent to one third of a common fund is reasonable and appropriate



in consumer class action cases. *See, e.g., Portfolio Recovery Associates, LLC v. Houston*, No. 12-CVS-642, 2018 WL 9439665, at \*7 (N.C. Super. July 26, 2018) (“The [requested] attorneys’ fees of \$1.2 million, representing 30% of the Settlement Fund, are reasonable and appropriate as a percentage of the common fund obtained for the class.”); *Byers*, 1998 WL 34031740, at \*7, \*12 (approving a fee request in the amount of \$1,166.666.66, which represented approximately 33 1/3 percent of the settlement of \$3,500,500); *Meritage Homes of Carolinas, Inc. v. Town of Holly Springs*, No. 20-CVS-014511, 2023 WL 9106696, \*2 at ¶ 12 (N.C. Super., April 11, 2023) (granting class counsel’s request for attorneys’ fees in the amount of one third of the \$7.5 million common fund).

Federal Courts in North Carolina have also regularly approved attorneys’ fees awards of thirty percent or more of a common fund. In *Kruger v. Novant Health, Inc.*, Judge William L. Osteen, Jr., United States District Court for the Middle District of North Carolina, approved plaintiffs’ attorneys’ fees request of \$10,666,666, which was 33 1/3 percent of the \$32 million monetary recovery. *See Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, \*1-2 (M.D.N.C. Sept. 29, 2016). In approving the requested attorneys’ fees, Judge Osteen observed that a one-third percentage was routinely approved in similar common fund cases. *Id.* at \*2. *See also Chrismon v. Pizza*, No. 5:19-CV-155-BO, 2020 WL 3790866, at \*5 (E.D.N.C. July 7, 2020) (granting attorney fee award of one-third of the settlement fund, and stating that “[m]any courts in the Fourth Circuit have held that attorneys’ fees in the amount of 1/3 of the settlement fund is [sic] reasonable.”); *Phillips v. Triad Guar. Inc.*, No. 1:09CV71, 2016 WL 2636289, at \*9 (M.D.N.C. May 9, 2016) (granting motion for an award of attorneys’ fees of 30% of \$1.6 million settlement fund).

As in the above cases, class counsel's request for attorneys' fees of thirty percent of the common fund is not only within the typical range approved by North Carolina courts in common fund cases but is also justified by the benefits achieved on behalf of the 18,776 class members. Each class member will receive a minimum settlement payment of \$50, and those class members who made payments to PRA or had property seized from them as a result of PRA's default judgments will receive an additional proportional share of the \$5.75 million settlement fund. Class Counsel estimate that those class members who made payments to PRA will receive an average settlement payment of approximately \$385. Settlement payments will range from the minimum payment (\$50) up to approximately \$5,200. In addition to this monetary benefit, class members will no longer face the threat of collection activity on the default judgments obtained against them by PRA, and PRA will cancel the default judgments that have not already been marked as satisfied, resulting in the cancellation of approximately \$35 million in judgment debt. The Settlement Agreement further provides that those debts are disputed, and neither the cancellations nor settlement payments give rise to any taxable income for class members.

The requested attorneys' fees award is also justified by the challenges and risks faced by Class Counsel, including complex and uncertain legal questions as to the claims on the merits, as well as the certification of the class; the potential for appellate review of both the merits and certification rulings; and the vigorous defense posed by opposing counsel.

C. The Requested Fees Are Appropriate Under a Lodestar Analysis.

A cross-check of the lodestar confirms the propriety of the requested attorneys' fees. A "lodestar" figure is calculated by "multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate." *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 652 (4th Cir. 2002). Here, Class Counsel expended more than 4,459.4 hours in attorney time, in the preparation for and prosecution of this class action, and another 1,844.4 hours on the two

closely related individual actions (*Townes v. Portfolio Recovery Associates, LLC* and *Spector v. Portfolio Recovery Associates, LLC*) that asserted the same legal claim brought in *Pounds* and were brought to obtain precedential rulings that would be binding in *Pounds*. The affidavits of Class Counsel attest to the reasonableness of the billing rates and time expended on the case. See Exhibits 1-5. A summary of the total hours expended by the lawyers working on behalf of the class and their billing rates are set forth in Exhibit 6 to Plaintiffs' Motion and in the chart below:

Work Performed by:	Years of Experience (in 2024)	Hourly Rate	Hours Worked	Lodestar:
Carlene McNulty, NC Justice Center	40	\$390 (2015-21) \$700.00 (2022-24)  \$390 (2018-21) \$700.00 (2022-24)	<i>Pounds</i> 551.3 254.5 Total: 805.8  <i>Townes/Spector</i> 221.5 18.8 Total: 239.6  Combined Total: 1,045.4	<i>Pounds</i> \$215,007 \$178,150 =\$393,157  <i>Townes/Spector</i> \$86,385 \$13,160 Total: \$99,545  Combined Total: \$492,702
Jason Pikler NC Justice Center	17	\$300 (2015-21) \$550.00 (2022-24)  \$300 (2018-21) \$550.00 (2022-24)	<i>Pounds</i> 815.5 588.9 Total: 1,404.4  <i>Townes/Spector</i> 915.4 235.2 Total: 1150.6  Combined Total: 2,555	<i>Pounds</i> \$244,650 \$323,895 =\$568,545  <i>Townes/Spector</i> \$274,620 \$129,360 =\$403,980  Combined Total: \$972,575
Emily Turner, NC Justice Center	5	\$250 (2016-21)  \$250 (2018-21)	<i>Pounds</i> : 273.1  <i>Townes/Spector</i> : 44.8  Combined Total: 317.9	<i>Pounds</i> : \$68,275  <i>Townes/Spector</i> : \$11,200  Combined Total: \$79,475
J. Jerome Hartzell	46	\$390 (2015-21) \$700.00 (2022-24)  \$390 (2015-21) \$700.00 (2022-24)	<i>Pounds</i> 1,609.2 218.4 Total: 1,827.6  <i>Townes/Spector</i> 144.2 60.5 Total: 204.7	<i>Pounds</i> \$627,588 \$152,880 Total: \$780,468  <i>Townes/Spector</i> \$56,238 \$42,350 Total: \$98,588

			Combined Total: 2,032.3	Combined Total: \$879,056
Travis Collum,	24	\$350	139.20	\$48,720
Adrian Lapas	31	\$385	144.80	\$55,748
<b>TOTAL ATTORNEY HOURS AND LODESTAR</b>			<b>Pounds Only: 4,594.9</b>	<b>\$1,914,913</b>
			<b>Townes/Spector: 1,844.4</b>	<b>\$613,313</b>
			<b>Combined Total: 6,439.3</b>	<b>\$2,528,226</b>

The hourly rates of Class Counsel in the instant case compare favorably with rates approved in other North Carolina class actions. As indicated above, the hourly billing rates of Class Counsel range from \$350 to \$700.<sup>2</sup> A sample of recent class action attorney fee awards in North Carolina shows hourly rates from \$755 for experienced attorneys to \$250 for less experienced attorneys. *See, e.g., McManus v. Dry, P.A.*, No. 22 CVS 1776, 2023 WL 3479386, at \*3 (N.C. Super. May 5, 2023) (discussing the reasonable rates for complex and class litigation attorneys in North Carolina, and awarding rates of \$700 for an attorney with over 30 years of experience, and \$575 for lawyers with 13 and 17 years of experience, respectively); Order Granting Unopposed Motion for Attorneys' Fees and Reimbursement of Expenses to Class Counsel and Service Awards to Class Representatives, *Rodriguez v. Riverstone Communities, LLC*, No. 5:21-CV-486-CD (E.D.N.C. Feb. 2, 2024) (finding "the hourly rates requested by Plaintiffs [including Carlene McNulty and Jason Pikler] are reasonable and consistent with rates charged by other attorneys and paralegals of similar experience working on complex litigation in the Eastern District of North Carolina") and Summary Time Sheet, *Rodriguez v. Riverstone Communities, LLC*, Civil Action No. 5:21-CV-486-CD (E.D.N.C. February 2, 2024) (awarding rates of \$700 for Carlene

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<sup>2</sup> Attorneys Carlene McNulty, Jason Pikler, and Emily Turner work (or worked) at the North Carolina Justice Center, a non-profit organization that provides legal representation to low-income North Carolinians. Because they do not charge their clients for their legal services, they have assigned themselves hourly billing rates that reflect their years of legal practice, their expertise in class actions and consumer law, and the billing rates of consumer attorneys in Wake County where the Justice Center is located, as supported by the caselaw cited herein.

McNulty and \$550 for Jason Pikler) (attached as Exhibit A); Order Approving Settlement Agreement Regarding Attorneys' Fees and Costs, *Franklin v. Kinsley*, 5:17-cv-00581-FL (E.D.N.C. May 31, 2023) and Summary Time Sheet, *Franklin v. Kinsley*, 5:17-cv-00581-FL (E.D.N.C. February 3, 2023) (awarding rates of \$750 and \$755 per hour for non-profit attorneys with more than forty years of experience each, \$450 per hour for attorneys with approximately ten years' experience, and \$350 per hour for attorney with less than five years' experience) (attached as Exhibit B to this Memorandum); *Johnson v. Palms Assocs., LLC*, No. 1:20-CV-1049, 2023 WL 5276348, at \*1-4 (M.D.N.C. Aug. 16, 2023) (granting attorneys' fees request for \$700 for certain class counsel, \$550 for others, and \$350 for one attorney).

North Carolina courts have routinely approved attorneys' fees in common fund cases where the percentage of the fund requested by counsel was from two to four times *higher* than the base lodestar. *See, e.g., Byers*, 1998 WL 34031740 at \*11 (noting that a multiplier of the base lodestar amount of between 2 to 4 would be reasonable in a common fund case). Here, the total lodestar for Class Counsel is \$1,914,913, for the preparation and prosecution of the *Pounds* case, and \$2,528,226, when including the hours spent on the related *Townes* and *Spector* cases. As a result, the requested 30% fee of \$1.725 million is *lower* than Class Counsel's lodestar by at least \$189,913 and as much as \$803,226. Thus, the lodestar cross-check confirms that the 30% fee requested by Class Counsel is reasonable and fair.

D. Rule 1.5 Factors Support the Requested Award.

In addition to reviewing the requested percentage of the fund and lodestar, North Carolina courts consider the factors set forth in Rule 1.5 of the North Carolina Rules of Professional

Conduct to confirm the reasonableness of the requested attorneys' fees in common fund cases.<sup>3</sup>

In the instant case, the Rule 1.5 factors strongly support the appropriateness of the requested attorneys' fees. Each factor is discussed below.

1. "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly"  
[RPC 1.5(a)(1)]

Plaintiffs sought, through their class claims, injunctive relief in the form of a vacatur of all default judgments obtained by PRA since October 1, 2009, a statutory penalty based on PRA's alleged violations of G.S. 58-70-155 in obtaining the default judgments, and actual damages based on class members' payment of money to PRA as a result of the default judgments. When Plaintiffs initiated this action, the statutory language relied on by Plaintiffs had never been construed by North Carolina's appellate courts and therefore involved multiple issues of first impression, including (1) whether the statute's "prerequisites" were jurisdictional, such that failure to comply

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<sup>3</sup> Rule 1.5(a) provides in relevant part:

The factors to be considered in determining whether a fee is clearly excessive include the following:

- (1). the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2). the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3). the fee customarily charged in the locality for similar legal services;
- (4). the amount involved and the results obtained;
- (5). the time limitations imposed by the client or by the circumstances;
- (6). the nature and length of the professional relationship with the client;
- (7). the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8). whether the fee is fixed or contingent.

N.C. Rev. Rules of Professional Conduct, Rule 1.5 ("RPC").

with them rendered any resulting default judgment void for lack of subject-matter jurisdiction; (2) whether the “itemization of charges and fees claimed to be owed” required a debt buyer to provide a breakdown of charges and fees that make up the charge-off balance or only post-charge off charges and fees; and (3) whether the “properly authenticated business records” requirement could be satisfied by an affidavit from the debt-buyer’s employee, as opposed to an employee of the original creditor. N.C. Gen. Stat. § 58-70-155. Prior to initiating this action, Class Counsel conducted extensive investigation into PRA’s practices and court filings so that Plaintiffs could simultaneously file with the class action complaint a motion for preliminary injunction and motion for class certification with supporting exhibits and briefs.

The action also involved other complex legal issues, including whether Plaintiffs’ interpretation of North Carolina’s debt-buyer provisions would impose unconstitutional burdens on PRA (as PRA argued in its counterclaims), whether the *Rooker-Feldman* doctrine applied to PRA’s removal of the action to federal court, and whether PRA was entitled to compel arbitration.

Substantial time and labor and skillful lawyering was required to overcome PRA’s removal of the case and motion to dismiss in federal court, and PRA’s motion to compel arbitration. Both the remand and arbitration issues were litigated all the way to the U.S. Supreme Court. Class Counsel briefed numerous motions, reviewed a tremendous amount of discovery produced by PRA, analyzed hundreds of PRA’s court files, and negotiated on behalf of the class over two days of mediation and seven subsequent months. At all times, Plaintiffs faced a team of opposing attorneys who tenaciously represented PRA.

2. “the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer”  
[RPC 1.5(a)(2)]

In *Ehrenhaus v. Baker II*, the trial court stated, “Given the complex nature of the case and the large number of class members, the Court finds that Plaintiff understood the prosecution of

this action would require the investment of a substantial amount of time and labor by his attorneys.” *Ehrenhaus v. Baker II*, No. 08CVS22632, 2014 WL 5783027 at \*4 (N.C. Super. March 31, 2014). Likewise, in the present case, prior to entering into the retainer agreement with the four Plaintiffs, counsel discussed with them that the class action would require a substantial amount of time and labor by their attorneys because of the complexity of the matter, as outlined in the discussion of factor (1) above. It was anticipated that PRA, unwilling to have its collection practices declared in violation of North Carolina law, would fight the claims and class certification vigorously. It was also anticipated that the action, which involved court filings and notices sent throughout the state, could involve substantial travel, both within North Carolina and to Virginia, where PRA has its headquarters.

3. “the fee customarily charged in the locality for similar legal services”  
[RPC 1.5(a)(3)]

In granting attorneys’ fees of one-third of the common fund in *Byers v. Carpenter*, the Business Court noted that the customary fee for contingency cases in North Carolina is typically 33 1/3 of the total recovery after the filing of the civil action. *Byers*, 1998 WL 34031740, at \*9. Here, Class Counsel request a fee of thirty percent of the common fund, which is lower than the traditional fee charged by attorneys in contingency cases. Additionally, the common fund cases cited in Part I(B), above, suggest that attorneys’ fees of thirty percent to one third are customarily awarded in common fund cases in North Carolina and in federal courts.

Finally, the requested attorneys’ fees are also justified by the lodestar, which is based on hourly rates that are within the range of customary and reasonable fees for complex litigation in North Carolina. *See, e.g., McManus*, 2023 WL 3479386, at \*3 (discussing the reasonable rates for complex and class litigation attorneys in North Carolina, and awarding rates of \$700 for an attorney



with over 30 years of experience, and \$575 for lawyers with 13 and 17 years of experience, respectively).

4. “the amount involved and the results obtained” [RPC 1.5(a)(4)]

The results obtained by Class Counsel in this case—a \$5.75 million settlement fund and the cancellation of approximately \$35 million in judgment debt—is substantial and justifies the requested attorneys’ fees. *See, e.g., Byers*, 1998 WL 34031740, at \*10 (settlement of \$3.5 million was “exceptional result;” attorneys’ fees of 33 1/3 were reasonable); *McManus*, 2023 WL 3479386, at \*3 (“A favorable settlement for the purported class weighs in favor of Plaintiffs’ requested fee award.”). Each class member will receive a minimum payment of \$50, with each class member who made post-judgment payments to PRA receiving an additional proportional share of the settlement fund based on how much they paid. Based on records obtained by PRA, Class Counsel estimate that the median cash payment for class members who made post-judgment payments to PRA will be approximately \$385. Further, each class member whose default judgment has not already been marked as satisfied or vacated will be concretely benefitted by having PRA file a cancellation of the judgment in the court in which the judgment was entered. *See Ehrenhaus v. Baker II*, 2014 WL 5783027, at \*5 (recognizing the meaningful benefit of purely “nonmonetary” relief in a fee analysis). This is not a result where class members receive trivial compensation.

5. “the time limitations imposed by the client or by the circumstances”  
[RPC 1.5(a)(5)]

The instant case involved discovery deadlines and numerous motions and briefs over a more than seven-year period. The time limitations imposed by the circumstances of the case add further support for the attorneys’ requested fees. *See Savani v. URS Professional Solutions, LLC*,

121 F.Supp.3d 564, 572-73 (D.S.C. 2015) (awarding fees of 39.57% of cash paid to class as part of ERISA case litigated to judgment and finding that “regular deadlines imposed by the Federal Rules of Civil Procedure and Appellate Procedure and the local rules of court” supported the attorneys’ fees award). Class Counsel was mindful that continuing with the action would have potentially resulted in years of appellate practice and unacceptable delays to class recovery.

6. “the nature and length of the professional relationship with the client”  
[RPC 1.5(a)(6)]

In *Ehrenhaus*, the trial court noted that while there was no professional relationship between the plaintiff and his attorneys prior to the filing of the class action, the nature of the relationship—involving a large number of class members and very complex litigation—still created a “complex and expansive” professional relationship. *Ehrenhaus v. Baker II*, 2014 WL 5783027 at \*5. Similarly, the circumstances of this matter necessarily created a deep and complex professional relationship between Class Counsel and Plaintiffs, as well as involved years of hard-fought litigation on behalf of nearly 20,000 class members.

7. “the experience, reputation, and ability of the lawyer or lawyers  
performing the services” [RPC 1.5(a)(7)]

The class case was vigorously prosecuted by a team of lawyers composed of attorneys working for a non-profit organization, the North Carolina Justice Center, and attorneys in private practice, Mr. Hartzell, Mr. Collum, and Mr. Lapas. A principal part of the North Carolina Justice Center’s mission is to pursue impact litigation on behalf of low-income North Carolinians. In doing so, the Justice Center often partners with attorneys in private practice to draw upon their expertise and resources. It is important to the mission of the Justice Center that the Center and its partners at private firms obtain compensation that will allow for future impact work.

The considerable experience, reputation, and ability of class counsel—in the fields of class action law, consumer law, and debt-collection defense—are set forth in detail in Exhibits 1-5.

8. “whether the fee is fixed or contingent” [RPC 1.5(a)(8)]

The contingency factor deserves substantial consideration in this case. Plaintiffs’ class claims were filed in November 2016. The work on this case has proceeded for more than seven years, with no compensation. During that time, this case was subject to being lost in its entirety if (a) the claims were dismissed pursuant to PRA’s 12(b)(6) motion in federal court; (b) PRA’s motion to compel arbitration was granted; (c) PRA’s arguments concerning the meaning of the N.C. Gen. Stat. § 58-70-155 were upheld; (d) PRA’s arguments regarding the unconstitutionality of the Act as construed by Plaintiffs were upheld; or (e) class certification was not granted. None of these issues was trivial.

Class Counsel undertook this case on a contingency-fee basis and invested substantial time and resources at considerable risk given the high level of uncertainty associated with this case in order to pursue a favorable outcome for nearly 19,000 class members across the state. This factor strongly supports the reasonableness of the requested fees.

E. Summary

The attorneys’ fee award requested by Plaintiffs is authorized, fair, and reasonable based on the percentage-of-the-fund method, as well by the lodestar cross-check and Rule 1.5(a) factors. The requested fee of 30% of the settlement fund is in line with other fee awards in North Carolina common fund cases. The requested fee is also justified by the work expended, the results obtained, and the difficulties surmounted by Class Counsel on behalf of the class.

II. EXPENSE REIMBURSEMENT

Awarding reasonable litigation expenses to counsel who have created a common fund for the benefit of the class is appropriate and customary. *See, e.g., Savani*, 121 F.Supp.3d at 576 (“Reimbursement of reasonable costs and expenses to counsel who create a common fund is both necessary and routine.”).

Class Counsel seek reimbursement of \$22,811.02 in out-of-pocket litigation expenses. These expenses are summarized in Exhibit 6 and discussed in counsel's affidavits (Exhibits 1-5). Class Counsel believe the expenses to be more than reasonable, considering that the litigation spanned more than seven years, involved numerous court hearings, consultation with an expert, the cost of obtaining and analyzing court records from across the state, and months' of private mediation. *See Byers*, 1998 WL 34031740 at \*11 (finding that counsel's total expenses of \$96,758 were reasonable for a hard-fought class action spanning five years); *Wallace v. Greystar Real Est. Partners, LLC*, 1:18CV501, 2022 WL 3908800, at \*4 (M.D.N.C. August 30, 2022) (finding that counsel was entitled to reimbursement of \$24,893.92 in expenses in addition to one third of the common fund).

### III. CLASS REPRESENTATIVE SERVICE AWARDS

Counsel have also asked the Court to grant service awards to the four Plaintiffs of \$10,000 each. Courts routinely approve service or incentive awards to compensate named plaintiffs for their efforts on behalf of absent class members and the risks they incurred during the course of the class action litigation. "Without incentive awards, the class representatives would not be rewarded for their participation or for the risk of pursuing this action with no promise of a successful outcome." *Speaks v. U.S. Tobacco Coop., Inc.*, No. 5:12-CV-729-D, 2018 WL 988083, at \*3 (E.D.N.C. Feb. 20, 2018).

Service awards of \$10,000 or more have regularly been granted to class representatives by North Carolina and federal courts in recognition of their efforts on behalf of the class and the public interest. *See, e.g., Wallace*, 2022 WL 3908800, at \*4 (awarding \$10,000 service award for class representative); *Chrismon*, 2020 WL 3790866, at \*6 (awarding \$10,000 service award to Plaintiff who had not gone through trial or discovery, but who "provided valuable insight to his Counsel throughout the case, and [whose] efforts resulted in substantial payments to at least 200

minimum wage pizza delivery drivers.”); *Lorenzo v. Prime Commc'ns, L.P.*, No. 5:12-CV-69-H-KS, 2020 WL 1970042, at \*2 (E.D.N.C. Jan. 21, 2020), *report and recommendation adopted*, No. 5:12-CV-69-H, 2020 WL 13157805 (E.D.N.C. Feb. 6, 2020) (granting \$20,000 service award for Class Representative who had participated in litigation for approximately 6 years).

Here, in their more than seven years' history with this litigation, Plaintiffs have been heavily involved with Class Counsel in the prosecution of this case. They have willingly responded to discovery requests from PRA, which requested them to provide intimate details about their personal financial situation. Plaintiffs were on call during the two-day mediation, and they have been otherwise available to meet with counsel to review and sign documents throughout the prosecution of this case. Class Counsel regularly conferred with Plaintiffs during the pendency of the case, including during the extended mediation.

As the Class Representatives in this case, Plaintiffs have expended significant time and effort on behalf of the class. The requested service awards of \$10,000 (\$40,000 total) is 0.69% of the \$5.75 million settlement made possible in large part by their willingness to prosecute this action on behalf of thousands of North Carolinians.

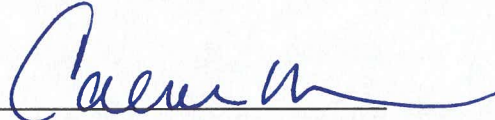
## CONCLUSION

For the reasons set out above, Class Counsel request that the Court award attorneys' fees in the amount of \$1.725 million (30% of the settlement fund), reimburse class counsel's expenses in the amount of \$22,811.02, and award \$10,000 to each Class Representative as a service award, as set forth in the parties' Settlement.

This the 26<sup>th</sup> day of March, 2024.

Respectfully submitted,

NORTH CAROLINA JUSTICE CENTER



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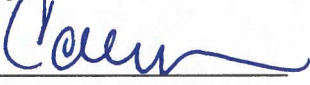
*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

Undersigned counsel for Plaintiffs hereby certifies that on this 2<sup>nd</sup> day of March, 2024, a true and correct copy of the foregoing was served upon counsel of record for Defendant PRA by U.S. mail and electronic transmission as follows:

Jon A. Berkelhammer  
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ELLIS & WINTERS, LLC  
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Carlene McNulty

## **EXHIBIT A**



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:21-CV-486-CD

IRMA RODRIGUEZ and ETHEL )  
DOLORES LAWSON, on behalf of )  
themselves and all others similarly situated, )

*Plaintiffs,* )

v. )

RIVERSTONE COMMUNITIES, LLC, )  
INDIAN CREEK PARENT, LLC, )  
INDIAN CREEK MHP, LLC, )  
INDIAN CREEK DEALER, LLC, and )  
INDIAN CREEK ASSOCIATION, LLC, )

*Defendants.* )

FILED IN OPEN COURT  
ON 2 / 2 / 2024  
Peter A. Moore, Jr., Clerk  
US District Court  
Eastern District of NC



**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES  
AND REIMBURSEMENT OF EXPENSES TO CLASS COUNSEL AND SERVICE  
AWARDS TO CLASS REPRESENTATIVES**

WHEREAS, the Court granted preliminary approval of the parties' class action settlement agreement, preliminarily certified a class and subclass for settlement purposes only, and directed class counsel to submit their application for attorneys' fees and expenses and service awards for the class representatives within thirty days from the mailing of notice to the class. [DE 49].

WHEREAS, pursuant to the Court's order and Fed. R. Civ. P. 23(h) and 54(d)(2), Plaintiffs filed an Unopposed Motion for Attorneys' Fees and Reimbursement of Expenses to Class Counsel and Service Awards to Class Representatives ("Motion"), within thirty days of the settlement administrator's mailing of the class notice.

WHEREAS, the preliminary approval order provided that the Court would consider the application for attorneys' fees, expenses, and service awards at the February 2, 2024 final approval hearing, as part of the Court's assessment of whether the settlement agreement was "fair, reasonable, and adequate" and merited final approval.

Now having duly considered the unopposed Motion, the supporting exhibits and the memorandum of law, the arguments of counsel, and the reaction of class members to the proposed attorneys' fees and class representative service awards, it is hereby ORDERED that the motion is GRANTED. The Court makes the following findings of fact and law in support of its order:

**A. FINDINGS REGARDING ATTORNEYS' FEES AND EXPENSES**

1. "In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by . . . the parties' agreement." Fed. R. Civ. P. 23(h).

2. Pursuant to the parties' Settlement Agreement, Defendants agreed to pay \$1,020,000 into a qualified settlement fund for distribution to settlement class members. The Settlement Agreement also provides that Defendants will not oppose an application by class counsel for attorneys' fees, provided the requested fees do not exceed thirty percent of the settlement fund, as well as for expenses reasonably incurred in the prosecution of the action.

3. Class Counsel has requested approval of an award of attorneys' fees in the amount of \$300,000, which is approximately 29.4% of the settlement fund, in addition to \$5,866.32 in expenses.

4. The Court finds that the requested attorneys' fees, representing 29.4% of the common fund obtained for distribution to settlement class members, are reasonable under the "percentage-of-recovery" method. Cases in the Fourth Circuit routinely find that attorneys' fees representing thirty-three and one-third percent of the common fund are reasonable.

5. Each of the factors used by courts in the Fourth Circuit in determining whether to approve an award of attorneys' fees under the percentage-of-recovery method demonstrate the reasonableness of Class Counsel's request for attorneys' fees equaling 29.4% of the settlement fund. Fourth Circuit courts often use the following factors in determining reasonableness of fees pursuant to the percent-of-recovery method: (1) the results obtained for the Class; (2) objections by members of the Class to the settlement terms and/or fees requested by counsel; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) public policy; and (7) awards in similar cases. *See, e.g. Hall v. Higher One Machines, Inc.*, No. 5-15-CV-670-F, 2016 WL 5416582, at \*7 (E.D.N.C. Sept. 26, 2016) (citing *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 261 (E.D. Va. 2009) (cleaned up)).

6. In this instance, the Court finds that Class Counsel obtained significant monetary benefits for the settlement class members, averaging in the thousands of dollars per Class Household, as well as providing non-monetary relief and enforcement of consumer protections for members of the class and subclass. There have been no objection(s) to the settlement terms or the requested award of attorneys' fees and expenses. The attorneys involved as Class Counsel are skilled and experienced and litigated the case on a contingent basis even at risk of non-payment. Public policy supports the granting of attorneys' fees in consumer protections cases so that attorneys will be incentivized to enforce consumer protection laws on behalf of consumers who may not be able to afford an individual attorney, or whose cases are not worth enough to merit individual representation. Finally, Plaintiffs' requested attorneys' fees award of 29.4% of the settlement fund is within the range of percentage-of-recovery awards that routinely receive approval in this District and the Fourth Circuit.



7. The Court finds that the reasonableness of the requested attorneys' fees is confirmed by a lodestar crosscheck.

8. The Court finds that the hourly rates requested by Plaintiffs are reasonable and consistent with rates charged by other attorneys and paralegals of similar experience working on complex litigation in the Eastern District of North Carolina.

9. The Court finds that the number of hours expended by Class Counsel and their staff are reasonable based on the complexity of the issues involved in the litigation and the excellent results achieved on behalf of the settlement class members.

10. The amount of attorney's fees agreed to in the Settlement Agreement represents only 37% of the lodestar that Class Counsel could have received, i.e., the product of the hours expended multiplied by the hourly rates requested. This supports the Court's finding that the amount of fees is fair and reasonable.

11. The Court finds that the expenses incurred by Class Counsel are reasonable.

12. As required by Rule 23(h)(1), notice of the joint motion was "directed to class members in a reasonable manner" by informing settlement class members that Class Counsel would be seeking the Court's approval of attorneys' fees of thirty percent of the settlement fund or \$300,000, in addition to expenses.

13. Class members had until January 6, 2024 to object to the proposed attorneys' fees.

No objection(s) have been filed.

#### **B. FINDINGS REGARDING CLASS REPRESENTATIVE SERVICE AWARDS**

14. The Court finds that Irma Rodriguez and Ethel Dolores Lawson are entitled to receive service awards in recognition of their efforts on behalf of the class. Without their willingness to pursue their claims on a class basis, rather than simply pursue their individual


recovery, the settlement class members would have not enjoyed the benefits achieved in this action.

15. Class members had until January 6, 2024 to object to the proposed service awards to the class representatives. No objection(s) have been filed.

16. The Court finds that \$7,000 is a reasonable amount to award each of the class representatives based on the results they helped achieve for the settlement class and for their work on the case, which includes assisting with the factual investigation of the claims, providing key evidence to support the case theory, and actively participating in the full-day mediation and the settlement negotiations that extended for months after mediation ended.

WHEREFORE, having found that the parties' Settlement Agreement merits final approval, the Court hereby approves the requested award of attorneys' fees for Class Counsel in the amount of \$300,000, the requested reimbursement of expenses in the amount of \$5,866.32, and the requested service awards of \$7,000 each for Ms. Rodriguez and Ms. Lawson.

SO ORDERED. This the 2 day of February, 2024

  
\_\_\_\_\_  
JAMES C. DEVER III  
United States District Judge

The following is a summary of the hours expended by Class Counsel and their paralegal, and a calculation of the lodestar based on those hours and their hourly rates, as outlined further in the declarations of Class Counsel in Exhibits 1-5 attached to *Plaintiffs' Unopposed Motion for Order Awarding Attorneys' Fees*:

<u>Attorney</u>	<u>Hourly Rate Requested</u>	<u>Years of Experience As of 2023</u>	<u>Number of Hours To Date</u>	<u>Lodestar</u>
Stuart Rossman	\$700.00	45	106.2	\$74,340.00
Charles Delbaum	\$700.00	50	39.6	\$27,720.00
Katharine Woomer-Deters	\$550.00	18	484.3	\$266,365.00
Jason Pikler	\$550.00	17	578	\$317,900.00
Carlene McNulty	\$700.00	39	150.8	\$105,560.00
Sarah Laws	\$300	2	64.2	\$19,260.00
Azalea Lopez (Paralegal)	\$125	2	11.7	\$1462.50
<b>TOTALS:</b>			<b>1434.8</b>	<b>\$812,607.50</b>

The following is a summary of expenses of Class Counsel in this matter, as outlined further in the declarations of Class Counsel Woomer-Deters and Rossman in Exhibits 1 and 5 attached to *Plaintiffs' Unopposed Motion for Order Awarding Attorneys' Fees*:

<u>Category</u>	<u>Amount of Expense as of 12/19/2023</u>
Filing fee, Wake County Superior Court	\$200.00
Obtaining copies of Certificates of Good Standing ( <i>Class Counsel from NCLC</i> )	\$30.00
Translation of Co-Counsel Agreement/Retainer into Spanish	\$741.42
Service of Process/Mailing Fees	\$144.04
Mediator Fee, Hon. Judge James Gale (Ret.)	\$2500.00
Investigation; online home value report	\$30.60
Translation of Class Notice into Spanish	\$711.70
Translation of class website and phone script into Spanish	\$1250.56
Travel for Class Counsel Rossman to Raleigh for Final Approval Hearing	\$258.00
<b>TOTAL:</b>	<b>\$5866.32</b>

## **EXHIBIT B**



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

Civil Case No.: 5:17-cv-00581-FL

ALICIA FRANKLIN and REINA )  
GUZMAN, on behalf of herself and minor )  
child E.L., on behalf of themselves and all )  
others similarly situated, )

Plaintiffs, )

v. )

KODY KINSLEY, in his official capacity as )  
Secretary of the North Carolina Department )  
of Health and Human Services, )

Defendant. )

**ORDER APPROVING  
SETTLEMENT AGREEMENT  
REGARDING ATTORNEY'S FEES  
AND COSTS**

This matter is before the Court based on the Parties' Joint Motion for Approval of their Settlement Agreement Regarding Attorney's Fees and Costs. Having reviewed the motion, agreement, and other filings, the Court now makes the following findings of fact and conclusions of law.

1. The Parties reached a Settlement Agreement regarding the amount of attorney's fees and costs to be paid to class counsel for the period ending January 13, 2023, the date of Court Approval of the Settlement of the Merits in this case. The agreement calls for payment by Defendant of the sum of \$725,000.00 to Plaintiffs' Attorneys.

2. The Court has reviewed the summary showing the number of hours expended by attorneys and paralegals working on the case for the Plaintiffs, their



positions, and their years of experience, and the hourly rates requested for each of them as well as contemporaneous time records for those working on the case for the Plaintiffs.

3. The Court finds that the hourly rates requested by Plaintiffs are reasonable and consistent with rates charged by other attorneys and paralegals of similar experience working on complex litigation in the Eastern District of North Carolina.

4. The Court finds that the number of hours expended by Class Counsel and their staff were reasonable considering the excellent results obtained, the very large number (over 2.8 million currently) of Medicaid beneficiaries protected from improper termination or reduction of their benefits, and the large number and significant complexity of the issues required to be addressed both during litigation and in the extensive, protracted negotiations between the Parties. The reasonableness of the time expended is also supported by Findings 3 and 4 of this Court's January 13 Order approving the settlement of the merits.

5. The amount of attorney's fees agreed to in the Settlement Agreement represents a 13.3% reduction from the product of the hours expended multiplied by the hourly rates requested. This supports the Court's finding that the amount of fees is fair and reasonable.

6. This case sought and obtained only injunctive relief. Therefore, the fees paid to Class Counsel in no way could have reduced any monetary recovery obtained by class members. Moreover, the settlement of the merits was completed and approved by the Court before any negotiations occurred regarding fees. This Court has previously found that there was no collusion and that the results obtained for the class were excellent. ECF No. 132, Finding 10. Thus, there is no risk that Class Counsel accepted a


lesser settlement on the merits in order to obtain fees for themselves. In these circumstances, the underlying purpose of the Rule 23(h) requirement for court review of the settlement of fees in a class action has been satisfied. *See Braggs v. Dunn*, 321 F.R.D. 653, 675 (M.D. Ala. 2017) (“[E]ven when both sides agree to an award of attorneys’ fees, the court has an independent responsibility to assess its reasonableness, in order to guard against the risk that class counsel might agree to enter into a settlement less favorable to their clients in exchange for inappropriately high fees.”)

7. As required by Rule 23(h)(1), notice of the joint motion was “directed to class members in a reasonable manner” by prominently posting a notice at the websites of Class Counsel, where it remained for a period of four weeks. The notice included links to the parties’ motion, the Settlement Agreement, and a summary of the time expended and hourly rates sought by Plaintiffs, along with instructions for any class member who wanted more information or who wished to file a written objection to approval of this motion. The Court finds that this notice met the requirements of Rule 23(h)(1).

8. The deadline for filing objections was March 3, 2023. No written objections have been filed.

WHEREFORE, pursuant to Fed. R. Civ. P. 23(h), the Court hereby approves the Parties’ Settlement Agreement Regarding Attorney’s Fees.

This the 31st day of May, 2023.

  
Louise Wood Flanagan  
United States District Court Judge

**Hawkins Summary Timesheet (Through January 13, 2023)**

CCLA:

Name	L. Sch. Grad.	Time	Hourly Rate	Total
Doug Sea	1980	698.85	\$ 755.00	\$ 527,631.75
Cassidy Estes-Rogers	2013	407.6	\$ 450.00	\$ 183,420.00
Madison Hardee	2012	31	\$ 450.00	\$ 13,950.00
Emily Kim	2019	7.5	\$ 300.00	\$ 2,250.00
				\$ 727,251.75

Name	Years of Experience	Time	Hourly Rate	Total
Nan Allison	17	54.2	\$ 300.00	\$ 16,260.00
Elizabeth Setaro	7	5.9	\$ 230.00	\$ 1,357.00
Johanna Parra	5	8.15	\$ 230.00	\$ 1,874.50
Maggie Farrell	1	16	\$ 200.00	\$ 3,200.00
				\$ 22,691.50

Expenses:

Travel, Lodging, Meals	\$1092.11
Hawkins Hotline	\$2630.19

**CCLA Total: \$753,665.55**

NHeLP:

Name	L. Sch. Grad.	Time	Hourly Rate	Total
Jane Perkins	1981	50.8	\$ 750.00	\$38,100.00
Joe McLean	2015	104.7	\$ 425.00	\$44,497.50
				\$82,597.50

**Attorneys Fees and Costs Total: \$836,263.05**