IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

STEPHEN THAXTON and PATRICIA THAXTON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

COLLINS ASSET GROUP, LLC, COLLINS & HILTON ASSET GROUP, LLC, DIVERSIFIED FINANCING, LLC, MARK W. MILLER, ALT MONEY INVESTMENTS, LLC, ALT MONEY INVESTMENTS II, LLC, ALT MONEY INVESTMENTS III, LLC, ALT MONEY INVESTMENTS IV, LLC, and SONOQUI, LLC,

Defendants.

Case No.: 1:20-CV-00941-ELR

PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEY'S FEES, COSTS, EXPENSES AND SERVICE AWARD WITH INCORPORATED MEMORANDUM OF LAW

The proposed settlement that Class Counsel negotiated will recover nearly $16 million out of approximately $23 million ultimately lent to Collins Asset Group, LLC in a scam that used unregistered salespersons and now-defunct shell companies

to trick investors into investing money in exchange for promissory notes. The scheme fell apart in 2017 when the shell companies' principals were indicted.

The victims may have viewed the situation as hopeless and questioned whether they would ever receive a dime back from the scheme. But Plaintiffs, Stephen and Patricia Thaxton, did not give up. In mid-2019, they brought the situation to the attention of Class Counsel. Over the rest of that year, Class Counsel dug deeply into the background of the scam, eventually concluding that Plaintiffs possessed valid claims against solvent third parties. Plaintiffs filed this lawsuit and — within the course of a year and despite jurisdictional wrangling before this Court and the Southern District of New York — achieved a settlement on behalf of all investors that recovers a significant amount back from the Collins Defendants.

To compensate them for this extraordinary result, Class Counsel request a fee of $3,938,750, which includes reimbursement of $14,926.90 in current expenses incurred on behalf of the class, pursuant to settlement provisions that were negotiated only after all other terms of relief for the class. The fee—representing 25% of the $15,755,000 cash fund—is reasonable under the percentage approach, which is the exclusive method in this Circuit for calculating fees in a common fund case such as this one. The request for fees and expenses should therefore be approved.

The Court also should approve service awards of $5,000 to each class representative, as provided by the settlement to compensate them for their efforts on behalf of the class. The awards are warranted legally and factually.

FACTUAL BACKGROUND

Consistent with the 2018 amendments to Rule 23 requiring "front loading" of information pertaining to a proposed class action settlement, Plaintiffs' memorandum supporting their motion for preliminary approval describes the background of this litigation and Class Counsel's work up to the filing of that motion. [Docs. 53 and 58]. In this brief, Plaintiffs summarize their previous work, describe the additional work Class Counsel have done since the Court directed notice, and address the future time and expenses they anticipate spending throughout the process of settlement approval and claims administration.

In support of this motion, Class Counsel submits the Declaration of Michael B. Terry, a partner with the law firm of Bondurant Mixon & Elmore LLP, and an attorney's fees expert in class actions. Michael Terry states in his Declaration that Class Counsel obtained an extraordinary result for the class in this highly complex and problematic case and unequivocally renders the expert opinion that Class Counsel's request for attorney's fees, expenses and service awards is reasonable and appropriate. See attached Exhibit A, Declaration of Michael B. Terry ("Terry Decl.").

A. Overview of the Class Action and Interpleader Litigation

Plaintiffs allege that Collins Asset Group, LLC is a debt buyer that purchases debt at a discount and then profits from collecting on that debt. Plaintiffs allege that to fund its business operations, Collins Asset Group orchestrated a fraudulent scheme that used unregistered salespersons and a network of shell companies (the other named Defendants) to illegally raise money from individual investors. [Doc. 53-1, Declaration of Jason R. Doss and Jason K. Kellogg at ¶7.] The alleged shell companies — Diversified Financing LLC, Sonoqui LLC and/or any of the ALT Money Investments entities — issued promissory notes and/or provided membership interests to Plaintiffs and Settlement Class Members in exchange for their money. *Id*.

Relying on these allegations, Plaintiffs filed a class action suit on January 27, 2020, in the Superior Court of Gwinnett County, Georgia. *Id*. at ¶8, citing [Doc. 7 at 4]. There, Plaintiffs sought to certify a nationwide class. *Id*. Shortly thereafter, on February 4, 2020, the Collins Defendants filed an interpleader action in the United States District Court for the Southern District of New York (the "Interpleader Action"). *Id*. at ¶8, citing [Doc. 23 at 12].

Class Counsel successfully opposed Collins Asset Group's Interpleader Action, which Collins Asset Group filed in the Southern District of New York after

the Thaxtons' class case was filed in the Northern District of Georgia. See Terry Decl. at ¶14; See also attached Declaration of Jason Doss and Jason Kellogg at ¶7-9 ("Counsel Counsel Decl."). Had the Interpleader Action continued unabated, class members would have suffered irreparable harm. *Id*. For example, on March 10, 2020, Class Counsel, Jason Doss, flew to the Southern District of New York on only several hours' notice and successfully defeated Defendant Collins Asset Group's attempt to obtain an *ex parte* TRO, which, if granted, would have forced class members to litigate any future disputes in the Southern District of New York and limited class members' ability to recover anything from Collins Asset Group. *Id*. Plaintiff's counsel, Jason Doss, also protected the interests of the class by obtaining an Order extending the deadline for class members to file answers in the Interpleader Action. *Id*. But for Class Counsel's actions, the vast majority of class members who were named as defendants in the Interpleader Action would have defaulted, because they would not have hired an attorney (and never did) or otherwise answered the Interpleader complaint. *Id*.

Without any guarantee of being paid for his time, Plaintiff's counsel, Jason Doss, worked with and helped dozens of class members, who were unrepresented defendants in the Interpleader, file a joint motion to dismiss the Interpleader Action and then successfully transferred the Interpleader Action to the Northern District of Georgia, so that both the Interpleader Action and this class case could be decided by

the same Court to avoid conflicting rulings. *Id*. Indeed, the efforts of Class Counsel positioned this case to mediate and resulted in this extraordinary result. *Id*.

B. Mediation & Settlement

In an attempt to obtain a global resolution to both the instant class case and the Interpleader Action, CAG and the Thaxton's participated in a formal mediation on September 11, 2020. Well-respected mediator, Hunter Hughes, was selected by the settling parties to serve as the mediator. *Id*. at ¶23-24. Class Counsel paid half of the cost of the mediator (i.e., $10,000) without any guarantee that they would recoup their expenses. See Class Counsel Decl. at ¶ 10.

The settling parties through their counsel participated in multiple mediation sessions that spanned over the course of more than a month. [Doc 53-1]. Class Counsel spent more than 100 hours preparing for and attending the mediation sessions and drafting and negotiating numerous versions of the settlement documents. *Id.* The Collins Defendants also provided proposed Class Counsel with hundreds of documents to support the affidavits that CAG filed in the Interpleader Action. *Id*. The documents substantiated the amount of loan proceeds that CAG received from Diversified, Sonoqui, and the ALT Money entities as well as the terms of repayment under the various loan documents that CAG entered into with those entities. *Id*. at ¶24-27. The settling parties reached a class-wide settlement that provides significant relief to Plaintiffs and Settlement Class Members. *Id*. at ¶28.

C. Class Counsels' Work on Behalf of the Class

Class Counsel's substantial work in delivering this settlement is well documented in their declaration filed in support of preliminary approval. [Doc. 53-1]. In the months since the Court approved notice, Class Counsel have remained hard at work. For example, Class Counsel has received phone calls and answered hundreds of questions from class members and to date, has helped over 45 class members file their proof of claim forms, gather their documentation to support their claim and drafted their declarations as required by the claims process help ensure that their claim is filed properly. See Class Counsel Decl. at ¶ 11.

Class Counsel's work will not end once the settlement is finally approved. Class Counsel's oversight obligations and other responsibilities will continue until the settlement is fully implemented, which will not occur for many months in the future. The claims period does not end until May 13, 2021. Once the settlement administrator begins verifying the claims that have been and will be made, Class Counsel will need to monitor the process, communicate with impacted class members, and help resolve any disputes or issues as they arise. See Class Counsel Decl. at ¶ 12.

ARGUMENT AND CITATION OF AUTHORITY

I. The Requested Fee is Reasonable Under the Percentage Method

A. The Common Benefit Doctrine and Eleventh Circuit Law

It is well established that counsel whose work results in a substantial benefit to a class are entitled to a fee under the common benefit doctrine. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1202 (N.D. Ill. 1989). The doctrine also ensures those who benefit are not "unjustly enriched." *Van Gemert*, 444 U.S. at 478. The controlling authority in the Eleventh Circuit is *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991), which holds that fees in common fund cases must be calculated using the percentage rather than the lodestar approach. *Camden I* does not require any particular percentage. The court stated: "There is no hard and fast rule … because the amount of any fee must be determined upon the facts of each case." 946 F.2d at 774; *see also, e.g., Waters v. Int'l. Precious Metals Corp.*, 190 F.3d 1291, 1294 (1999).

In selecting the percentage in a particular case, a district court should apply the factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974), as well any other pertinent factors. *Camden I*, 946 F.2d at 776. Following *Camden I*, percentage-based fee awards in the Eleventh Circuit have averaged

around 33% of the class benefit. *See, e.g., Wolff v. Cash 4 Titles*, 2012 WL 5290155 at *5-6 (S.D. Fla. Sept. 26, 2012) (noting that fees in this Circuit are "roughly one-third"); T. Eisenberg, et al., Attorneys' Fees in Class Actions: 2009- 2013, 92 N.Y.U. Law Rev. 937, 951 (2017) (the median fee from 2009 to 2013 was 33%); B. Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 J. Empirical L. Stud. 811 (2010) (during 2006 and 2007 the median fee was 30%); *Decl. of H. Hughes, Champs Sports Bar & Grill Co. v. Mercury Payment Systems, LLC*, No. 1:16-CV-00012-MHC (N.D. Ga.) (Doc. 82-1 at 4-5) (90% of the hundreds of common fund settlements a leading Atlanta mediator has negotiated provide for a fee of one-third of the benefit).

As stated in the attached Terry Declaration, Class Counsel seeks a recovery of 25% of the Settlement Amount, which is significantly less than what is considered a customary fee in such a case. A "one-third recovery . . . is a customary fee" for class actions. *Diakos v. HSS Sys., LLC*, No. 14-61784, 2016 WL 3702698, at *6 (S.D. Fla. Feb. 4, 2016). For that reason, a fee of 25% of the common fund—the amount Class Counsel seeks here—is significantly below what numerous other courts have awarded in similarly complex class actions and is appropriate here. For example, most recently, in *Owens v. Metropolitan Life Insurance Co.*, Case No. 2:14-cv-00074, in the U.S. District Court for the Northern District of Georgia, Judge Richard Story awarded class counsel 33.3% of the common fund of $80 million

dollars in November 2019. *See also e.g., Fernandez v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (35%); In *re Clarus Corp. Sec. Litig*., No. 1:00-cv-02841 (N.D. Ga. Jan. 6, 2005) (33.33%); *In re Pediatrics Servs. of Am., Inc. Sec. Litig*., 1:99-cv-00670 (N.D. Ga. Mar. 15, 2002) (33.33%); *In re Profit Recovery Group Int'l, Inc*. Sec. Litig., No. 1:00-CV-1416-CC (N.D. Ga. May 26, 2005) (33.33%); *In re Theragenics Corp., Sec. Litig*., No. 1:99-CV-0141-TWT (N.D. Ga. Sept. 29, 2004) (33.33%); *In re Harbinger Corp. Sec. Litig*., No. 1:99-CV-2353-MHS (N.D. Ga. Oct. 18, 2001) (33.33%); *In re The Maxim Group, Inc. Sec. Litig*., No. 1:99-CV- 1280-CAP (N.D. Ga. July 20, 2004) (33.33%); *In re Medirisk, Inc. Sec. Litig*., No. 1:98-CV-1922-CAP (N.D. Ga. Mar. 22, 2004) (33.33%); *Meyer v. Citizens & S. Nat'l Bank*, 117 F.R.D. 180 (M.D. Ga. 1987) (33.3%). *See also Zinman v. Avemco Corp*., No. 75-1254, 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (50%); *Aamco Automatic Transmissions, Inc. v. Tayloe*, 82 F.R.D. 405 (E.D. Pa. 1979) (43.87%); *In re Ampicillin Antitrust Litig*., 526 F. Supp. 494 (D.D.C. 1981) (40.4%); *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987) (40%); *In re Terazosin Hydrochloride Antitrust Litig*., 1:99-MD-01317-PAS (S.D. Fla. April 19, 2005) (33 1/3 % of settlement of over $30 million); *In re Managed Care Litig. v. Aetna*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (fees and costs of 35.5% of settlement of $100 million); *Gutter v. E.I. Dupont De Nemours & Co.*, 1:95-cv-02152 [Dkt. 626] (S.D. Fla. May 30, 2003) (33 1/3 % of settlement

of $77.5 million); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291 (11th Cir. 1999) (33 1/3 % of settlement of $40 million); *Morgan v. Public Storage*, No. 1:14-cv-21559 [Dkt. 407] (S.D. Fla. Mar. 10, 2016) (awarding 33%); *Grier v. Chase Manhattan Auto. Fin. Co*., No. 99-180, 2000 WL 175126, at *16 (E.D. Pa. Feb. 16, 2000) (33.33% of the net settlement fund); *Ratner v. Bennett*, No. 92-4701, 1996 WL 243645 (E.D. Pa. May 8, 1996) (35%); *In re Crazy Eddie Sec. Litig*., 824 F. Supp. 320 (E.D.N.Y. 1993) (33.85% of settlement fund).

And although it was in the Georgia State Court system, in 2020 the Superior Court of DeKalb County approved a fee of 33.0 percent of a settlement of $117.5 million in post-remand proceedings in *DeKalb Cty. Sch. Dist. v. Gold*, 307 Ga. 330 (2019). See ¶11, Terry Declaration.

B. The Fee is Reasonable and Supported by the Johnson Factors.

Courts routinely apply a 12-factor analysis when evaluating the reasonable percentage to award class counsel: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length

of the professional relationship with the client; and (12) awards in similar cases. *See id.* at 772 n.3 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

These 12 factors are nonexclusive. "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Id.* at 775. In addition, the Eleventh Circuit has encouraged lower courts to consider any other factors unique to the particular case. *See Id.* Most fundamentally, however, "monetary results achieved predominate over all other criteria." *See Id.* at 774.

Finally, when analyzing the various factors, a lodestar cross-check is unnecessary, and in the view of many class action scholars, is counterproductive and therefore undesirable. In fact, "in the Eleventh Circuit, 'the lodestar approach should not be imposed through the back door via a 'cross-check.'" *Wilson v. EverBank*, No. 14-cv-22264, 2016 WL 457011, at *13 (S.D. Fla. Feb. 3, 2016) (quoting *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011)). The Eleventh Circuit "made clear in *Camden I* that percentage of the fund is the *exclusive* method for awarding fees in common fund class actions." *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 (emphasis added) (citing Alba

Conte, ATTORNEY FEE AWARDS § 2.7, at 91 n.41 ("The Eleventh . . . Circuit[ ] repudiated the use of the lodestar method in common-fund cases.")). Lodestar "encourages inefficiency" and "creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation." *Id.* at 1362-63. Thus, "courts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all." *Id.* at 1363; *see also Reyes v. AT&T Mobility Servs., LLC*, No. 10-20837, at *6 (S.D. Fla. Jun. 21, 2013) (Cooke, J.); *In re Takata Airbag Prods. Liability Litig.*, No. 15-02599, at *9-10 (S.D. Fla. Nov. 1, 2017).

In light of these factors, Class Counsel respectfully submits that a 25% fee recovery is reasonable and warranted. As explained above, the reasonableness of Class Counsel's request has been examined by Michael B. Terry, an Atlanta-based attorney who has negotiated many class action settlements and has been accepted as an expert on the reasonableness of attorney's fees in class actions. *See* Terry Decl. at ¶8. Mr. Terry reviewed the file in the context of the *Camden I* factors and concluded that Class Counsel's request for a fee equal to 25% of the Settlement Amount is reasonable under all of the circumstances and is, in fact, below what is considered customary, despite the special circumstances of this case which would warrant a greater fee than is customary. *See Id.* at ¶17.

1. The Action required a significant amount of attorney time and labor

Because prosecuting the Action required Class Counsel to expend a significant amount of time and labor, the first factor supports the reasonableness of Class Counsel's fee request. Indeed, the scope and complexity of this Action required Class Counsel to focus on it *exclusively* for extended periods of time.

Prior to filing the class action complaint, it took several months of pre-suit investigation by Class Counsel to determine that Daryl Bank had used a network of agents to illegally raise money, then loaned those proceeds to companies like CAG through at least twenty-five (25) shell companies such as the ALT Money Investments entities, Diversified Financing and Sonoqui. Daryl Bank had been operating an opaque, multi-layered fraudulent scheme that was intentionally designed to conceal the fraudulent scheme. [Doc. 53-1 at ¶4-6].

It was equally difficult to uncover that CAG, a debt collection firm that purchases large pools of distressed accounts receivable debt and has filed collections actions in courts all over the country, was borrowing money from shell companies such as Diversified Financing LLC and Sonoqui LLC. *Id*. To uncover CAG's role, the Doss Firm purchased hundreds of pages of Delaware UCC filings against the assets of CAG. *Id*. The shell companies named in the Complaint were identified as the secured lenders and CAG as the borrower in the UCC filings. *Id.* The UCC filings also identified large pools of debt (hundreds of millions of dollars in distressed debt) that were collateral for the loans. *Id*. The names of the shell companies changed over

time from 2013 to 2017. *Id.* This led Class Counsel to conclude that this was a large and sophisticated fraud and that spanned over several years and involved a class of victims. *Id*. In addition, the Firm researched and reviewed enforcement actions filed by the Securities Exchange Commission against Daryl Bank and other shell companies that he operated to better understand Bank's modus operandi. It was only after four months of factual and legal research that the Doss Firm filed the class action on behalf of the Class Representatives, Stephen and Patricia Thaxton. *Id*.

In addition, after the filing the class action complaint in this case, the Collins Defendants aggressively defended the action, vehemently denied involvement in the alleged scheme, and filed an Interpleader Action in the Southern District of New York. Class Counsel successfully opposed the Interpleader Action, defeated the attempted *ex parte* TRO, and then successfully transferred to this Court. There is no question that Class Counsel's actions positioned this case to settle for this extraordinary result and it is beyond legitimate dispute that substantial time and labor were required of Class Counsel in prosecuting this case.

2. Class Counsel achieved an excellent result for the Settlement Class despite the complexity of the case.

The second factor examines the novelty and difficulty of the questions involved, while the related eighth factor looks to the amount involved in the litigation with particular emphasis on the "monetary results achieved" in the case. *See Allapattah Servs., Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1202 (S.D. Fla.

2006). Again, "the result achieved by counsel is a major factor to consider in making a fee award." *Wilson*, 2016 WL 457011, at *14.

Here, Class Counsel have obtained an extraordinary result for the class in this highly complex and problematic case. Terry Decl. at ¶15. In fact, Michael Terry stated in his Declaration that given the result, factors that would suggest an even higher percentage than is customary in this particular case because the case is purely contingent; has been pending for over a year (delaying any fee and expense payment to Class Counsel for all of that time); the case was difficult and but for Class Counsel's efforts to investigate the complicated facts over many months and ultimately uncovered the multi-layered fraudulent scheme at issue in this case, members of the class likely would have received none of their money back. *Id*. The case also involved complicated legal issues related to state securities laws, state RICO laws, the Federal Interpleader Act, and class certification issues. *Id*. at ¶13.

3. The Action posed considerable risks to Class Counsel

As to the sixth factor, Class Counsel took on considerable financial risk to obtain the results here, prosecuting this complex action entirely on a contingency fee basis. *See, e.g., In re Checking Account Overdraft Litig*., 830 F. Supp. 2d at 1364 ("A contingency fee arrangement often justifies an increase in the award of attorney's fees.") (quoting *In re Sunbeam Secs. Litig*., 176 F. Supp. 2d at 1335)). The many defenses posed by the Collins Defendants, including the risks posed by

the Interpleader Action as well as the likelihood of an appeal, all militate in support of Class Counsel's fee request.

Class Counsel devoted well over 1,200 hours of time and fronted thousands of dollars in expenses with no guarantee of any recovery or reimbursement of expenses. The Doss Firm has only two attorneys and the commitment of labor and up-front payment of expenses posed a considerable risk to the financial security of the law firm had the lawsuit failed to achieve a recovery for the Class. *See* Class Counsel Decl. ¶ 4.

If Class Counsel had not achieved a recovery, they would have received nothing and, in fact, suffered a substantial out-of-pocket loss. *See* Class Counsel Decl. at ¶ 4. Such risk merits a higher fee:

> It is axiomatic that attorneys who work on a contingent-fee must charge a higher fee than those who work on a noncontingent-fee basis. . . . This "higher" fee … is not a bonus… From a pure dollars-and-cents economic view, this higher fee is the appropriate measure of a reasonable fee that is required in the marketplace of services: (1) to induce an attorney to agree to assume the risk that no compensation will be received unless she or he successfully achieves a benefit for the client; and (2) if ultimately successful, to compensate for the costs suffered and investment income forgone by delay in payment.

H. Newberg and A. Conte, 1 Attorney Fee Awards § 1.8 (3d ed.); see, e.g., *In re Friedman's, Inc. Sec. Litig*., 2009 WL 1456698, at *3 (N.D. Ga. May 22, 2009); Case 1:17-md-02800-TWT Document 858 Filed 10/29/19 Page 16 of 31; *Behrens v. Wometco Enters., Inc*., 118 F.R.D. 534, 548 (S.D. Fla. 1988), aff'd, 889 F.2d 21 (11th Cir. 1990).

4. No other lawyers pursued similar claims

As to the tenth factor, the absence of any other class action seeking the same relief suggests it was an "undesirable" one for the Plaintiffs' bar. Despite the fact that the claims raised affected a nationwide group of investors, Class Counsel were the only lawyers in the country to bring a class action lawsuit. Class Counsel uncovered the problem and pursued it diligently. No other lawyer did the same. These facts strongly support Class Counsel's fee request. *See* Class Counsel Decl. at ¶ 6.

5. This case required a high level of skill

The third factor and the ninth factor — the skill required to perform the legal services properly and the experience, reputation, and ability of the attorneys — confirm the reasonableness of the fees sought. As described in the motion for preliminary approval as well as above, Class Counsel skillfully performed the complex legal services necessary to obtain a recovery for the Class.

The case was difficult and but-for Class Counsel's efforts to investigate the complicated facts over many months and ultimately uncovered the multi-layered fraudulent scheme at issue in this case, members of the class likely would have received none of their money back. Terry Decl. at ¶13-15. The case also involved complicated legal issues related to state securities laws, state RICO laws, the Federal Interpleader Act, and class certification issues. *Id*. at ¶13.

The quality and vigor of opposing counsel is also important in evaluating the services rendered by class counsel. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1363 (citing *Camden I*, 946 F.2d at 772 n.3); *Walco Invs., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (explaining that "[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results.")

Here, Class Counsel faced highly skilled counsel who not only aggressively defended this class action, but also aggressively pursued the Interpleader Action against approximately ninety (90) class members who were victims of the scheme and named them as interpleader defendants in the Southern District of New York, which significantly increased the complexity of the case.

There is no question that the Collins Defendants' attorneys were formidable and sophisticated opposing counsel with Blank Rome LLP, a law firm that according to its website, has 600 attorneys, as well as that firm's former partner Jonathan Robbin. The fact that Class Counsel achieved this Settlement for Class in the face of substantial opposition by skilled and well-funded lawyers further evidences the quality of their work.

6. Preclusion from other employment and time limits imposed justify the requested fee.

The fourth and seventh factors — preclusion of other employment and time limitations imposed — also support the reasonableness of Class Counsel's fee

request.

This Action represented a significant allotment of resources by Class Counsel. *See* Class Counsel Decl. ¶ 5. The prosecution of this case on a contingency fee basis precluded Class Counsel from taking other, hourly employment. *Id.* The case required an even more significant allotment of resources by The Doss Firm, which has just two lawyers. *Id.*

But for this case, Class Counsel would have spent significant time on other matters. For many months, this case was all consuming. Nearly every major issue up to settlement was potentially case-dispositive and thus demanded Class Counsel's full attention, unlike in many cases where substantial work can be delegated to less experienced lawyers. Because this time commitment precluded Class Counsel, including especially the most senior lawyers, from working on other matters, a larger fee is justified.

Work done under significant time pressure is entitled to additional compensation and justifies a larger percentage of the recovery. *See, e.g.*, *Johnson*, 488 F.2d at 718 ("priority work that delays the lawyer's other legal work is entitled to some premium"); *Allapattah Services, Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1215 (S.D. Fla. 2006) (citing the "frantic pace" of the litigation in "giv[ing] significant weight to this factor in setting the [fee] percentage.") This case epitomizes one in which work was done under incredible time pressure as detailed in the supporting declarations. Class Counsel Decl. at ¶ 7.

(7) The Economics Involved in Prosecuting a Class Action

The eleventh factor identified in *Camden I*, 946 F. 2d at 775—the economics involved in prosecuting a class action—further supports the requested fee. Class Counsel's business model involves prosecuting a relatively small number of major class actions, going for some time without revenue, and relying on periodic fee awards to pay overhead, generate profits, and finance the millions of dollars needed to cover litigation expenses. *Id.* at ¶ 5. Accordingly, where, as in this case, the lawyers for a class have expended substantial amounts of time and money, a substantial award is both appropriate and necessary. Indeed, without such an award, the incentive to undertake a case of this magnitude against experienced and well-paid defense counsel will be undercut, discouraging competent lawyers from acting as private attorneys general, and thus weakening the deterrent impact of our laws. *See, e.g., Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2012 WL 12540344, at *1, 7 (N.D. Ga. Oct. 26, 2012); *In re Checking*, 830 F. Supp. 2d at 1367-68.

8. The requested fee award is consistent with customary fees and awards in similar cases.

The fifth factor and twelfth factor, the customary fee and awards in similar cases, also support approval of the fee award.

As stated in his declaration, given the complexity, burden and risk associated with this case, the requested fee of 25% is well in line with the case law. Terry Decl. at ¶ 12 citing *Johnson v. Midwest Logistics Sys., Ltd.*, No. 2:11-CV-1061, 2013 WL

2295880 (S.D. Ohio May 24, 2013) (approving 33% attorneys' fees and expense award in common fund settlement); *In re Se. Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (approving 33% attorneys' fees award [totaling $52.9 million] in common fund settlement and noting that "the percentage requested is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Rotuna v. West Customer Mgmt. Grp.*, No. 4:09-CV-1608, 2010 WL 2490989, at *7 (N.D. Ohio June 15, 2010) (approving attorneys' fees award of 33% in common fund case); *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-CV-95, 2007 WL 3173972, at *4 (W.D. Mich. Oct. 26, 2007) (approving 31-32% attorneys' fees award and noting that "'[e]mpirical studies show that . . . fee awards in class actions average around one-third of the recovery'") (citation omitted) (emphasis added); *Dallas v. Alcatel-Lucent USA, Inc.*, No. 09-14596, 2013 WL 2197624, at *12 (E.D. Mich. May 20, 2013) (preliminarily approving 33% attorneys' fees award in common fund settlement of collective action and noting that "[v]arious courts have expressed approval of attorney fees in common fund cases at similar or higher percentages").

In sum, *each* of the factors outlined in *Camden I* supports Class Counsel's request for approval of attorneys' fees equal to 25% of the Settlement Amount.

II. THE REQUESTS FOR REIMBURSEMENT OF EXPENSES AND FOR AN INCENTIVE AWARD SHOULD BE GRANTED

Class Counsel requests that the Court grant reimbursement of $14,926.90 in litigation costs and expenses incurred. S*ee* Class Counsel Decl. at ¶ 10. Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses. *See, e.g., In re Checking Account Overdraft Litig.*, No. 1:09-02036, 2015 WL 12641970, at *18 (S.D. Fla. May 22, 2015); *Gevaerts*, 2015 WL 6751061, at *14. Class Counsel further submit that these expenses, which include costs such as mediation fees, transcripts, process servers, photocopying, postage, and travel expenses, were necessarily incurred in furtherance of the litigation and should therefore be reimbursed. *See* Class Counsel Declar. at ¶ 13. *See, e.g., In re Checking Account Overdraft Litig.*, 2015 WL 12641970, at *18 (granting request for expenses of $976,191.34 from the settlement fund, where the expenses included expert fees, court reporter fees and transcripts, and mediator fees, which "were necessarily incurred in furtherance of the litigation of the Action and the Settlement").

Historically, Courts routinely approve service awards to compensate class representatives for the services they provide and the risks they incur on behalf of the class. See, e.g., *Ingram*, 200 F.R.D. at 695-96; *Allapattah Servs*., 454 F. Supp. 2d at 1218; *In re Checking*, 2014 WL 11370115 at *12-13. However, recently the 11th

Circuit in *Johnson v. NPAS Solutions, LLC*, No. 18-12344, 2020 WL 5554412 (11th Cir. Sept. 17, 2020) held that incentive fees in class action were barred. Because of this ruling and the fact that plaintiffs in *Johnson* are seeking Rehearing En Banc in the hope of reversing the opinion, the Settlement Agreement provides that if the Johnson decision is reversed, overturned, expunged or otherwise rejected as the law in the United States Eleventh Circuit Court of Appeals, then Plaintiffs Stephen and Patricia Thaxton shall each receive a $5,000 incentive award for their service as class representatives. *See* Settlement Agreement at ¶8.3.

This modest service award of $5,000 to each class representative is warranted because they devoted substantial time and effort to this litigation working with their lawyers to prosecute the claims and were instrumental in achieving a settlement benefitting the entire class. But for the class representatives' service, other class members would have received nothing. Class Counsel thus request that payment of the service awards be approved subject to a ruling in the Johnson case. If the *Johnson* case is reversed, the Settlement Agreement states that the Incentive Award shall be paid from the Settlement Amount or, if any portion of the Distributable Settlement Amount has already been distributed to class members, then the Incentive Award shall be paid by Class Counsel from the attorney's fees earned in this case. *Id*.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court approve the requested fee of $3,938,750, reimbursement of current expenses in the amount of $14,926.90 (subject to being updated before the final approval hearing), and services awards of $5,000 to each of the class representatives.

Dated: February 27, 2021.

Respectfully submitted,

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Class Counsel for Plaintiffs and the Settlement Class

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(D) of the Local Rules of the District of Georgia, the undersigned counsel for Plaintiffs hereby certifies that the foregoing document was prepared in a font and point selection approved by this Court and authorized in Local Rule 5.1(C).

By: /s/ Jason R. Doss

Jason R. Doss
Georgia Bar No. 227117

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Plaintiffs' Motion for Attorney's Fees, Costs, Expenses and Service Award with Incorporated Memorandum of Law with the Clerk of the Court using the CM/ECF system.

This 27th day of February 2021.

By: /s/ Jason R. Doss

Jason R. Doss
Georgia Bar No. 227117