

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

JO ANNE SILVA, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

CONNECTED INVESTORS, INC.,

Defendant.

CASE NO. 7:21-cv-74-D

**MOTION FOR ATTORNEYS' FEES,
AND INCENTIVE AWARD**

Plaintiff Jo Anne Silva ("Plaintiff"), through the undersigned hereby moves for entry of an Order granting Plaintiffs' Motion for Attorneys' Fees and Incentive Award ("Motion").

Plaintiff's Motion will be accompanied by Plaintiff's Motion for Final Approval of Class Action Settlement.

The grounds for this Motion are set forth in a Memorandum filed contemporaneously herewith.

Dated: March 27, 2023

By: s/ David Wilkerson

Larry McDevitt

N.C. State Bar No. 5032

David Wilkerson

N.C. State Bar No. 35742

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Attorneys for Plaintiff and the Putative Class

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

JO ANNE SILVA, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

CONNECTED INVESTORS, INC.,

Defendant.

CASE NO. 3:21-cv-00174-D

**BRIEF IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES,
AND INCENTIVE AWARD**

I. INTRODUCTION

The Settlement Agreement¹ makes \$2,000,000 available to the Settlement Class. Plaintiff respectfully submits that the settlement is an excellent result for the Settlement Class which allows the Settlement Class to receive monetary compensation and avoids uncertainty. Despite the fantastic result, Class Counsel have received no monetary compensation for their time and effort and Plaintiff has received no monetary compensation despite her time and effort. Plaintiff hereby respectfully requests that this Court award her a \$6,000 Incentive Award for her efforts which included sitting for deposition and responding to written discovery and requests that Class Counsel receive 33.3% of the Settlement Fund or \$666,000.00 as attorneys' fees.

II. LEGAL STANDARD

A. Attorney's Fees

Federal Rule of Civil Procedure 23(h) permits "the court [to] award reasonable attorney's fees ... that are authorized by ... the parties' agreement." Fed. R. Civ. P. 23(h). As the Settlement Agreement allows this Court to award attorneys' fees, Class Counsel

¹ Terms defined in the Settlement Agreement and Release dated June 14, 2022 have the same meaning herein.

requests a fee award of 33.3% of the Settlement Fund or \$666,000.00. Here, settlement was not conditioned on any amount of attorneys' fees for Class Counsel or Incentive Award for Plaintiff, which speaks to the fundamental fairness of the process. *See* Declaration of Manuel Hiraldo ("Hiraldo Decl.") ¶ 2, attached hereto as **Exhibit A**. Indeed, the attorneys' fee request was negotiated only after the substantive terms of relief to the Class had been agreed upon, affording the protections of the adversary system to the fee-setting process. *Id.* at ¶ 3.

1. Class Counsel Is Entitled to be Reimbursed for their Efforts and the Results Achieved

It has long been the case that Plaintiff's attorneys in a successful class action lawsuit may petition the court for compensation relating to any benefits to the class that result from the attorneys' efforts. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). Rule 23(h) allows for the award of "reasonable attorneys' fees and nontaxable costs that are authorized by law or the parties' agreement." In determining a reasonable fee in a class action, courts generally use two different methods, the "lodestar" method and the "percentage of the fund" method. *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 786 (E.D. Va. 2001). The percentage of the fund method awards fees as a percentage of the benefit secured for the Class; the lodestar method awards fees based on the value of Counsel's time spent litigating the claims. *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 681 No. 11-CV-1823, 2013 WL 5506027, at *10 (D. Md. Oct. 2, 2013).

District courts in the Fourth Circuit "overwhelmingly" prefer the percentage method in common-fund cases, *Phillips v. Triad Guar. Inc.*, No. 1:09CV71, 2016 U.S. Dist. LEXIS 60950, 2016 WL 2636289, at *2 (M.D.N.C. May 9, 2016). Indeed, several district courts in this Circuit have commented that "the percentage-of-recovery approach is the *preferred* approach to determine attorney's fees." *Savani v. URS Prof'l Solutions LLC*, 121 F. Supp. 3d 564, 568-69 (D.S.C. 2015) (citations omitted) (emphasis added); *see also In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246,

260 (E.D. Va. 2009) (explaining that “[w]hile the Fourth Circuit has not definitively answered this debate, other districts within this Circuit, and the vast majority of courts in other jurisdictions consistently apply a percentage of the fund method[.]”); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 758-59 (S.D. W. Va. 2009) (“The percentage method has overwhelmingly become the preferred method for calculating attorneys’ fees in common fund cases.”). Ultimately, “[w]ith either method, the goal is to make sure that counsel is fairly compensated.” *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 575 (E.D. Va. 2016). The “most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” *Carroll v. Wolpoff & Abramson*, 53 F.3d 626, 629 (4th Cir. 1995) (citations and quotations omitted).

Here, Plaintiff respectfully submits that the Court should use the percentage of the fund method. As this Court has found in prior class action settlements the “percentage-of-recovery method often better aligns the interests of class counsel and class members because the method ties the attorney fee award to the overall result achieved rather than the hours that the attorneys expended.” *See Speaks v. U.S. Tobacco Coop., Ins.*, No. 5:12-CV-729-D, 2018 U.S. Dist. LEXIS 26597, 2018 WL 988083, at *2 (E.D.N.C. Feb. 20, 2018) (Dever III, J.); *see also In re Outer Banks Power Outage Litig.*, 2018 U.S. Dist. LEXIS 161714, at *8 (E.D.N.C. September 21, 2018) (“the court finds that applying the percentage-of-recovery method is appropriate in this case”) (Dever III, J.). The percentage of the fund method aligns Class Counsel’s interests with the Settlement Class’s interests because the *more* the Settlement Class recovers, the *more* Class Counsel recovers.

2. The Fee Request is Reasonable Under Percentage of the Fund Method

District courts in the Fourth Circuit have acknowledged that “[f]ees awarded under ‘the percentage-of-recovery method in settlements under \$100 million have ranged from 15% to 40%.”

Boyd v. Coventry Health Care Inc., 299 F.R.D. 451, 465 (D. Md. 2014). “Within the Fourth Circuit, **contingent fees of roughly 33% are common.**” *Earls v. Forga Contracting, Inc.*, No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921, at *4 (W.D.N.C. June 9, 2020) (emphasis added); see also *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758, at *3 (M.D.N.C. Sept. 25, 2019) (“**Contingent fees of one-third are common** in this circuit in cases of similar complexity.”) (emphasis added); *Kelly v. The Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at *3 (D. Md. January 28, 2020) (“**Contingent fees of up to one-third are common** in [the 4th] circuit.”) (emphasis added).

In the past this Court has determined that a “fee award of one-third falls within the range of reasonable-fee awards within the Fourth Circuit and elsewhere[.]” *In re Outer Banks Power Outage Litig.*, 2018 U.S. Dist. LEXIS 161714, at *8 (E.D.N.C. September 21, 2018) (Dever III, J.); see also *Hampton v. KPM LLC.*, 2021 U.S. Dist. LEXIS 91995, at *9 (E.D.N.C. May 14, 2021)(finding a 33.3% attorney fee request as reasonable) (Dever III, J.)..

Other district courts in this Circuit also routinely award 33.3% from a common fund as attorneys’ fees. See, e.g., *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-CV-00361, 2018 WL 2382091, at *5 (E.D. Va. Apr. 18, 2018) (“Fee awards of one-third of the settlement amount are commonly awarded in cases analogous to this one” and awarding 33.3% of \$94 million settlement in class action case); *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV- 00318 RDB, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding attorneys’ fees of 33% of \$163 million settlement). *Myers v. Loomis Armored US, LLC*, 3:18-cv- 00532-FDW-DSC, 2020 WL 1815902, at *6-7 (W.D.N.C. Apr. 8, 2020) (“Class Counsel’s request for one-third of the Gross Maximum Settlement Amount is reasonable.”); *Lambert v. Navy Federal Credit Union*, Case No. 1:19-cv-00103-LO-MSN, Dkt. No. 61 (E.D. Va. Apr. 8, 2021) (granting 33.33% of \$16 million settlement

fund because “Class Counsel’s expertise, perseverance, and skill allowed them to obtain an excellent result for the Settlement Class.”).

While *there is no reverter in this matter*, Court’s in this Circuit have found even where there is a reverter, “a request for one-third of the Gross Maximum Settlement Amount is reasonable.” *Myers v. Loomis Armored US, LLC*, 2020 U.S. Dist. LEXIS 62941 at *15 (W.D.N.C. Apr. 9, 2020) (Whitney, J.). In reaching that conclusion, this Court also found that “[i]n applying the common fund method, the Supreme Court and Circuit Courts across the country have held that it is appropriate to award attorneys’ fees as a percentage of the entire maximum gross settlement fund, even where amounts to be paid to settlement class members who do not file claims will revert to the Defendant.” *Id.* at *16 (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 481-82, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007); *Waters v. International Precious Metals Corp.*, 190 F.3d 1291, 1296-97 (11th Cir. 1999)). Again, here there is no reverter to Defendant.

Although the Fourth Circuit has not designated factors for courts to apply under the “percentage of the fund method,” in *In re Outer Banks Power Outage Litig.*, this Court applied the following factors: (1) the results obtained for the class, (2) the quality, skill, and efficiency of class counsel, (3) the complexity and duration of the case, (4) the risk of nonpayment, (5) awards in similar cases, (5) objections, and (7) public policy. 2018 U.S. Dist. LEXIS 161714, at *7.

Here, these factors all support an award of the requested fee of 33.3%.

1. Results Obtained for the Class

In the Fourth Circuit, “the most critical factor in calculating a reasonable fee award is the degree of success obtained.” *McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998) (citation and internal quotation omitted). Here, the Settlement provides an excellent result for the

Settlement Class. Class Counsel successfully negotiated a Settlement Agreement (1) that makes \$2,000,000 available to the Settlement Class; and (2) that requires Defendant's agreement to review and update its policies and procedures to ensure compliance with the Telephone Consumer Protection Act ("TCPA"). *See* Settlement Agreement at II (B)(2) at pg. 13.

The practice change is certainly a factor that the Court should consider in determining a reasonable percentage of the fund to award. In order to incentivize class counsel to pursue meaningful practice changes, they must be rewarded when they do so. Perhaps for that reason, courts have consistently recognized as much when evaluating the fairness of fee requests. *See Farrell v. Bank of Am. Corp., N.A.*, 827 F. App'x 628, 631 (9th Cir. 2020) (overruling objector in part because the settlement included a practice change which generated benefits far "beyond the cash settlement fund."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002) (discussing non-monetary benefits as partial justification for a larger fee award); *Savani*, 121 F. Supp. 3d at 572 (approving class counsel's request for 39.57% of the cash paid, where the "cash paid represents approximately 16.88% of the potential \$2.24 million current and future value of the recovery"). No objections or requests for exclusion to the Settlement or attorneys' fee request have been received and the deadline for both has now passed. The fact that the settlement has been well received by the Settlement Class speaks to the excellent results obtained. In sum, the Settlement is excellent by any measure and Class Counsel's fee request for 33.3% of the Settlement Fund is reasonable.

2. Quality, Skill, and Efficiency of Attorneys

Class Counsel possesses extensive knowledge of and experience in prosecuting class actions in courts throughout the United States. Hiraldo Decl., at ¶ 4. Class Counsel has successfully litigated and resolved many other consumer class actions against major corporations,

including those related to violations of the TCPA, recovering tens of millions of dollars for those classes. *Id.* at ¶ 5. Class Counsels’ experience, resources, and knowledge—especially in the specialized area of the TCPA—is extensive and formidable. *Id.* at ¶ 6. Moreover, Class Counsel litigated this action efficiently. Based in no small part on their skill and expertise, Class Counsel were able to negotiate a Settlement prior to a ruling on (and potential appeals related to) class certification and the pending motions for summary judgment, allowing Class Members to receive their settlement benefits now—without the extensive delay entailed by pursuing this case through judgment. The swift resolution of the case benefits the Settlement Class and emphasizes the skill and efficiency of Class Counsel. This factor also weighs in favor of approval.

3. Risk of Nonpayment

From the outset, Class Counsel litigated this matter on a contingent fee basis and placed their own resources at risk to do so. Hiraldo Decl., at ¶ 7. Absent this Settlement, the Settlement Class and Class Counsel risked obtaining no recovery at all. *Id.* at ¶ 8. The contingent nature of the case therefore favors the award of fees. *See Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 482 (D. Md. 2014) (finding that “public policy favors the requested award” where risk of non-payment exists “because the relevant public policy considerations involve the balancing of the policy goals of encouraging counsel to pursue meritorious ... litigation.”) (citation and internal quotations omitted).

The Fourth Circuit has recognized the importance of the risk of non-payment in awarding fees. In a 2010 case, the Fourth Circuit reversed the district court’s “reduction of attorney’s fees from thirty-three percent to a mere three percent,” noting that “[t]he chief error in the district court’s analysis was its failure to recognize the significance of the contingency fee in this case.” *Pellegrin v. Nat’l Union Fire Ins. (In re Abrams & Abrams, P.A.)*, 605 F.3d 238, 245, 249 (4th

Cir. 2010). The Fourth Circuit noted that “contingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining representation,” stating, “[t]he contingency agreement was, as the saying goes, the key to the courthouse door that allowed [plaintiff] to retain the attorneys who eventually provided for his son’s ongoing needs.” *Id.* at 245-46. The Fourth Circuit further noted that “contingency fee agreements transfer a significant portion of the risk of loss to the attorneys taking a case,” and “[a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk.” *Id.* at 246. Stated differently, “plaintiffs may find it difficult to obtain representation if attorneys know their reward for accepting a contingency case is merely payment at the same rate they could obtain risk-free for hourly work, while their downside is no payment whatsoever.” *Id.*

In this case, Class Counsel bore a significant risk of nonpayment as “eviden[ced] in the fact that they undertook this action on an entirely contingent fee basis.” *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 263 (E.D. Va. 2009). The risk here was only magnified, given the complexity of the claims at issue in a class action. The road to recovery here was far from certain. Class Counsel’s ingenuity and creativity in developing this case—and pursuing it successfully without a financial safety net —ought to be rewarded.

4. Objections

As of the date of this filing, no objections or requests for exclusion to the Settlement or attorneys’ fee request have been received and the deadline for both has now passed.

5. Awards in Similar Cases

Courts approving fee requests in other class actions have approved awards similar to the award requested here. Indeed, the requested fee of 33.3% is in line with what has been routinely approved by judges who have ruled on the fairness of settlements in other cases concerning TCPA

violations. *See* *Gottlieb v. Citgo Petroleum Corp.*, No. 9:16-cv-81911, 2017 U.S. Dist. LEXIS 197382, at *7 (S.D. Fla. Nov. 29, 2017) (granting fees and costs amounting to one-third of the \$8,000,000.00 settlement fund); *ABC Bartending School of Miami, Inc., v. American Chemicals & Equipment, Inc.*, No. 15-CV-23142-KMV (S.D. Fla. April 11, 2017) (granting fees and costs amounting to one-third of the \$1,550,000.00 settlement fund); *Guarisma v. ADCAHB Med. Coverages, Inc.*, Case No. 1:13-cv-21016 (S.D. Fla. June 24, 2015) (granting fees and costs amounting to one-third of the \$4,500,000.00 settlement fund); *see also* *Lambert v. Navy Federal Credit Union*, Case No. 1:19-cv-00103-LO-MSN, Dkt. No. 61 (E.D. Va. Apr. 8, 2021) (granting 33.33% of \$16 million settlement fund because “Class Counsel’s expertise, perseverance, and skill allowed them to obtain an excellent result for the Settlement Class.”).

6. Duration and Complexity of the Case

This case was filed in April of 2021 and has been heavily litigated the entire time. For example, Defendant had moved for Judgment on the Pleadings and then for Summary Judgment. Plaintiff opposed both. *Id.*; *see also* [DEs # 15-16; 19; 22; 53-56; 58-59]. Both Parties also engaged in significant discovery. Hiraldo Decl. ¶ 13. For example, Plaintiff was deposed by Defendant and Plaintiff had successfully moved to compel Defendant to amend its discovery responses, which Defendant opposed. *Id.*; *see also* [DEs # 31,42, 48]. This was a very complex case, with complicated arguments on both sides regarding the merits of class certification and Plaintiff’s claims under the TCPA. At the time of settlement, Defendant’s Motion for Summary Judgment was fully briefed and awaiting a decision by this Court. [DEs # 53-55, 58-59]. As this Court could have ruled either way on the issues presented, settlement was the best choice to ensure the Settlement Class would receive a benefit.

7. Public Policy

When assessing the reasonableness of a fee award in a class action settlement, the “court must strike the appropriate balance between promoting the important public policy that attorneys continue litigating class action cases that ‘vindicate rights that might otherwise go unprotected. and perpetuating the public perception that ‘class action plaintiffs’ lawyers are overcompensated for the work that they do.’” *Fangman*, 2017 WL 86010, at *6 (quoting *Singleton*, 976 F. Supp. 2d at 687). The settlement of this case and the attorneys’ fees requested do not raise serious public policy concerns, and no Settlement Class Members have presently objected to the requested fee. Accordingly, this factor supports approval of the requested award.

In sum, the seven factors that the Fourth Circuit uses to assess the reasonableness of a fee award all weigh in favor of approving the requested award.

D. The Court Should Award an Incentive Award to the Class Representatives.

Courts generally recognize that “[i]ncentive or service awards reward representative plaintiffs’ work in support of the class, as well as their promotion of the public interest.” *Deem v. Ames True Temper, Inc.*, No. 6:10-CV-01339, 2013 WL 2285972 at *6 (S.D. W. Va. May 23, 2013) (citing *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d at 767). Plaintiff requests, and the Defendant does not oppose, an incentive award of \$6,000 for her service as Class Representative. (Settlement Agreement, II.D.1, p. 12.) In this case, the Plaintiff chose to serve as the named Plaintiff in this lawsuit after Class Counsel explained to her the responsibilities required. Cognizant of those responsibilities, Plaintiff began this lawsuit with the intent to vigorously pursue it, for herself and the benefit of the Class Members she represents. Incentive awards have been regularly approved by courts in cases such as this one where the class representative took a role in prosecuting the claims on behalf of the class. *See, e.g., Ryals, Jr. et al. v. HireRight Solutions, Inc.*, No. 3:09cv625 (E.D. Va. Dec. 22, 2011) (incentive award to each class representative in the

amount of \$10,000). Here, the named Plaintiff amply fulfilled her duties as Class Representative, making the modest \$6,000 incentive award appropriate.

Other judges in this Circuit have approved incentive awards in other class action lawsuits. *See, e.g., In re Cotton*, No. 14-30287, 2019 WL 1233740, at *4 (W.D.N.C. Mar. 15, 2019) (Conrad, J.) (approving an incentive award to each class representative in the amount of \$10,000); *see also Ryals v. HireRight Sols., Inc.*, No. 3:09cv625, Dkt. No. 127 at 10 (E.D. Va. Dec. 22, 2011) (approving incentive award to each class representative in the amount of \$10,000); *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 3:14CV238, 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016) (approving a \$10,000 incentive award).

Here, Plaintiff took a risk, and provided a valuable public service, by putting herself forward as the class representatives in this case. Hiraldo Decl., at ¶ 9. She also sat for a deposition and aided Class Counsel in responding to discovery. *Id.* at ¶ 11. Lastly, Plaintiff kept abreast of the case's status, reviewed documents provided by her counsel, and discussed with counsel various aspects of the case, including the Settlement. *Id.* at ¶ 10. Without the help and aid of Plaintiff, the Settlement would have been impossible for Class Counsel to achieve. *Id.* at ¶ 12.

III. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court award the Class Representative \$6,000 and Class Counsel an attorneys' fee award of \$666,000 (33.3% of the Settlement Fund), in compensation for the benefit conferred on Settlement Class.

Dated: March 27, 2023

Respectfully submitted,

By: s/ David Wilkerson

Larry McDevitt

N.C. State Bar No. 5032

David Wilkerson

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WORD-COUNT CERTIFICATION

The undersigned certifies that, according to the word count feature in Microsoft Word, the text of this memorandum of law, excluding the case caption, table of contents, table of authorities, and certificates of counsel, does not exceed 6,000 words.

By: /s/ Michael Eisenband

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“EXHIBIT A”

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

JO ANNE SILVA, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

CONNECTED INVESTORS, INC.,

Defendant.

CASE NO. 3:21-cv-00174-D

**DECLARATION IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, EXPENSES AND
INCENTIVE AWARD**

Manuel S. Hiraldo declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement and Release (“Settlement” or “Agreement”) entered into with Defendant.¹ I submit this declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Expenses and Service Award. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.
2. Settlement was not conditioned on any amount of attorneys’ fees for Class Counsel or Service Award for Plaintiff, which speaks to the fundamental fairness of the process.
3. The attorneys’ fee portion of the settlement was negotiated only after the substantive terms of relief to the Class had been agreed upon
4. Class Counsel possesses extensive knowledge of and experience in prosecuting class actions in courts throughout the United States.

¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

5. Class Counsel has successfully litigated and resolved many other consumer class actions against major corporations, including those related to violations of the Telephone Consumer Protection Act, recovering tens of millions of dollars for those classes.

6. Class Counsel are particularly experienced in the litigation, certification and settlement of nationwide class action cases. *See* Firm Resumes, attached as **Exhibit 1**.

7. Class Counsel have litigated this matter on a contingent fee basis and placed their own resources at risk to do so.

8. Absent this Settlement, the Settlement Class and Class Counsel risked obtaining no recovery at all.

9. Plaintiff took a risk, and provided a valuable public service, by putting herself forward as the class representatives in this case.

10. Plaintiff kept abreast of the case's status, reviewed documents provided by her counsel, and discussed with counsel various aspects of the case, including the Settlement.

11. Plaintiff sat for a deposition and aided Class Counsel in responding to discovery.

12. Without the help and aid of Plaintiff, the Settlement would have been impossible for Class Counsel to achieve.

* * *

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Fort Lauderdale, Florida, on March 27, 2023.

/s/ Manuel S. Hiraldo

Manuel S. Hiraldo

“EXHIBIT 1”



Manuel S. Hiraldo

Mr. Hiraldo has extensive experience in all aspects of litigation in state and federal courts, including motion practice, oral argument, discovery, mediation, trial, and appellate practice.

Prior to opening Hiraldo P.A., Mr. Hiraldo was Of Counsel at Blank Rome LLP. His practice focused on defending loan originators and servicers in consumer claims under the Telephone Consumer Protection Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and state collection and deceptive trade practices statutes.

Practice Areas

Commercial Litigation
Financial Services Litigation
Class Actions
Appellate Litigation
Real Estate Litigation
Construction Defect
Wrongful Death
Catastrophic Injury

Education

J.D., Emory University School of Law – 2006
BBA, Emory University, Goizueta Business School – 2003

Experience

Hiraldo P.A.: 2016 – present
Blank Rome LLP: 2011 – 2016
Rumberger, Kirk & Caldwell, P.A.: 2008 – 2011
Wicker, Smith, O'Hara, McCoy & Ford, P.A.: 2006 – 2008

Recognitions

2012 – 2016, "Florida Rising Star" by Super Lawyers

Court Admissions

Florida

U.S. District Court - Middle District of Florida

U.S. District Court - Northern District of Florida

U.S. District Court - Southern District of Florida

United States Court of Appeals for the Eleventh Circuit

Notable Cases

- *Horn v. iCan Ben. Grp., Ltd. Liab. Co.*, 2018 U.S. Dist. LEXIS 98777 (S.D. Fla. 2018) (\$60,413,112 Consent Judgment)
- *Goldschmidt v. Rack Room Shoes, Inc.*, 1:18-cv-212200-KMW (S.D. Fla. 2018) (\$25,969,965 (cash) + \$51,939,930 (purchase vouchers) Class Settlement) (pending final approval)
- *Pena v. Lexington Law Firm*, 1:18-cv-24407-UU (S.D. Fla. 2018) (\$11,450,863 Class Settlement) (pending final approval)
- *Albrecht v. Oasis Power, LLC*, 1:18-cv-1061-HDL (N.D. Ill. 2018) (\$7,000,000 Class Settlement) (pending final approval)
- *Eisenband v. Schumacher Automotive, Inc.*, 9:18-cv-80911-BB (S.D. Fla. 2018) (\$5,000,000 Class Settlement)
- *Papa v. Grieco Ford Fort Lauderdale, LLC*, 1:18-cv-21897-JEM (S.D. Fla. 2018) (\$4,800,000 Class Settlement)
- *Bloom v. Jenny Craig, Inc.*, Case No. 1:18-cv-21820-KMM (S.D. Fla. 2018) (\$3,000,000 Class Settlement)
- *Jairam v. Colourpop Cosmetics, LLC*, Case No. 1:19-cv-62438-RAR (S.D. Fla. 2019) (\$2,862,191 Class Settlement)
- *Picton v. Greenway Chrysler-Jeep-Dodge, Inc.*, Case No. 6:19-cv-00196-GAP (M.D. Fla. 2019) (\$2,745,000 Class Settlement)
- *Banks v. Fuccillo Aff. of Fl., Inc.*, Case No. 2:19-cv-00227-JES-MRM (M.D. Fla. 2019) (\$1,864,260 Class Settlement)
- *Dipuglia v. US Coachways, Inc.*, 2018 U.S. Dist. LEXIS 72551 (S.D. Fla. 2018) (\$2,600,000 Class Settlement)
- *Mohamed v. Off Lease Only, Inc.*, Case No. 1:15-cv-23352-MGC (\$1,450,750 Class Settlement)
- *Marengo v. Miami Resch. Assocs., LLC*, No. 1:17-cv-20459-KMW, 2018 U.S. Dist. LEXIS 122098 (S.D. Fla. 2018) (\$1,236,300 Class Settlement)
- *Flores v. Village Ford, Inc.*, 2:19-cv-12368-LVP-RSW (E.D. Mich. 2019) (\$1,050,000 Class Settlement) (pending final approval)

- *Wijesinha v. Susan B. Anthony List, Inc.*, 1:18-cv-22880-JEM (S.D. Fla. 2018) (\$1,017,430 Class Settlement)
 - *King v. Classic Chevrolet, Inc.*, 4:19-cv-00429-CVE-JFJ (N.D. Okla. 2019) (\$850,000 Class Settlement) (pending final approval)
 - *Masson v. Tallahassee Dodge Chrysler Jeep, LLC*, No. 17-22967-CIV-M ORE, 2018 U.S. Dist. LEXIS 77916 (S.D. Fla. 2017) (\$850,000 Class Settlement)
 - *Poirier v. Cubamax Travel, Inc.*, No. 1:18-cv-23240-CMA (S.D. Fla. 2018) (\$808,000 Class Settlement)
 - *McLean v. Osborn, D.O., PLLC*, No. 9:18-cv-81222-DMM (S.D. Fla. 2018) (\$800,000 Class Settlement) (pending final approval)
 - *Whitworth v. HH Entm't, Inc.*, No. 9:17-cv-80487-KAM, 2018 U.S. Dist. LEXIS 112223 (S.D. Fla. 2017) (\$750,000 Class Settlement)
 - *Gerstenhaber v. Galleria Fitness Club, LLC*, No. 1:18-cv-62108-CMA (S.D. Fla. 2018) (\$600,000 Class Settlement)
 - *Ramos v. Pandora, et al*, No. 0:17-cv-62100-FAM (S.D. Fla. 2017) (\$525,000 Class Settlement) (pending final approval)
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Ignacio Javier Hiraldo, Esq.

Mr. Ignacio J. Hiraldo's practice focuses on consumer protection class action lawsuits. He has represented individuals and businesses in a wide range of matters in federal, state court, and administrative agency proceedings.

Mr. Hiraldo received his B.A. in Economics from the University of Chicago in 2005 and his J.D. from Harvard Law School in 2008. After graduating from Harvard Law School, Mr. Hiraldo began practicing law at the Washington, D.C. office of the international law firm Hogan Lovells, LLP. His practice included class action litigation, False Claims Act litigation, and white-collar investigations.

In 2011, Mr. Hiraldo joined the Washington, D.C. office of Buckley Sandler, LLP, a national consumer finance boutique. His practice focused on government enforcement defense, consumer finance regulatory and compliance consulting, and internal investigations.

In 2018, Mr. Hiraldo relocated to Miami, FL and founded IJH Law, focusing on consumer protection class action litigation. Mr. Hiraldo has been approved as class counsel by a number of Federal District Courts.

Education

Harvard Law School, J.D. - 2008

The University of Chicago, B.A. in Economics, Dean's List - 2005

Practice Areas

Commercial Litigation

Financial Services Litigation

Consumer Protection

Class Actions

White Collar Investigations

Government Enforcement and Investigations

Experience

Hogan Lovells LLP, Washington, D.C. – 2008-2011

Buckley Sandler LLP, Washington, D.C. – 2011-2018

IJH Law, Miami, FL – 2018-Present

Court Admissions

Florida Bar – Bar No. 56031
Washington DC Bar – Bar No. 485610
United States Court of Appeals for the Eleventh Circuit
U.S. District Court - Middle District of Florida
U.S. District Court - Southern District of Florida
U.S. District Court – Eastern District of Michigan
U.S. District Court – Western District of Oklahoma
U.S. District Court – Northern District of Ohio
U.S. District Court – Northern District of Illinois
U.S. District Court – District of Colorado

Notable Cases

- *Horn v. iCan Ben. Grp., Ltd. Liab. Co.*, 9:17-cv-81027-RLR (S.D. Fla. 2018) (\$60,413,112 Consent Judgment)
 - *Wijesinha v. Susan B. Anthony List, Inc.*, 1:18-cv-22880-JEM (S.D. Fla. 2018) (\$1,017,430 Class Settlement)
 - *Gerstenhaber v. Galleria Fitness Club, LLC*, No. 1:18-cv-62108-CMA (S.D. Fla. 2018) (\$600,000 Class Settlement)
 - *Banks v. Fuccillo Affiliates of Florida, Inc.*, No. 2:19-cv-00227-JES-MRM (M.D. Fla. 2019) (\$1,864,260 Class Settlement)
 - *Picton v. Greenway Chrysler-Jeep-Dodge, Inc.*, No. 6:19-cv-00196-GAP-DCI (M.D. Fla. 2019) (\$2,745,000 Class Settlement)
 - *Flores v. Village Ford, Inc.*, No. 2:19-cv-12368-LVP-RSW (E.D. Mich. 2019) (\$1,050,000.00 Class Settlement, Pending Final Approval)
 - *King v. Classic Chevrolet, Inc.*, No. 4:19-cv-00429 (N.D. Okl. 2019) (\$850,000.00 Class Settlement)
 - *Jairam v. Colourpop Cosmetics, LLC*, No. 0:19-cv-62438 (S.D. Fla. 2019) (\$2,862,191.25 Class Settlement)
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Michael Eisenband

Mr. Eisenband has represented both plaintiffs and defendants in both state and federal courts. He has significant experience with motion practice, oral argument, discovery, mediation, and appellate practice. Prior to opening Eisenband Law, P.A., Mr. Eisenband was an associate at Blank Rome LLP and before that Greenspoon Marder LLP. Prior to opening Eisenband Law, P.A., Mr. Eisenband's practice focused on representing national lenders and mortgage servicers in contractual disputes and consumer protection lawsuits under the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act and the Fair Debt Collection Practices Act.

Education:

J.D., University of Miami School of Law – 2010
BBA, University of Miami, Miami Business School – 2006

Experience:

Eisenband Law, P.A.: 2018- Present
Blank Rome LLP: 2014-2018
Greenspoon Marder LLP: 2013-2014
Smith Hiatt & Diaz, P.A.: 2011-2013

Practice Areas:

Commercial Litigation
Appellate Litigation
Real Estate Litigation
Financial Services Litigation
Class Actions

Court Admissions:

Florida
U.S. District Court - Southern District of Florida
U.S. District Court - Northern District of Florida
U.S. District Court - Middle District of Florida

Recognitions:

2016-2022, “Florida Rising Star” by Super Lawyers

Notable Class Cases:

- *Gerstenhaber v. Galleria Fitness Club, LLC*, No. 1:18-cv-62108-CMA (S.D. Fla. 2018) (Class Settlement);
- *Picton v. Greenway Chrysler-Jeep-Dodge, Inc. d/b/a Greenway Dodge Chrysler Jeep*, No. 6:19-cv-196-GAP-DCI (M.D. Fla. 2019) (Class Settlement);
- *Banks v. Fuccillo Aff. of Fl., Inc.* Case No. 2:19-cv-00227-JES-MRM (M.D. Fla. 2019) (Class Settlement).

The Van Winkle Law Firm

The Van Winkle Law Firm's experience in class action litigation includes cases filed in state and federal courts in North Carolina and outside the state, including appearances as lead counsel by several of its attorneys in the Federal District Courts and before the Fourth Circuit Court of Appeals. In addition, its attorneys have served as local and *de facto* liaison counsel in other complex litigation in association with firms outside the state.

Van Winkle is the largest law firm in North Carolina west of Charlotte. While the Firm's practice is principally throughout North Carolina, it has a growing practice nationally, especially in the southeast. It has enjoyed an "AV" rating for decades in Martindale-Hubble's listing of attorneys.

David M. Wilkerson

Mr. Wilkerson is a Senior Principal in the Firm with over 20 years of experience in civil litigation practice. He is admitted to practice in numerous Federal Districts and is licensed in both North Carolina and South Carolina. He is currently involved in numerous class action cases in North Carolina and around the country. Mr. Wilkerson is also experienced in complex litigation. His other current complex class action cases include liaison class counsel in *In Re Sanderson and Koch Broiler Chicken Grower Litigation*, No. 7:10-cv-00031 (E.D.N.C); co-counsel for the class in *Gettys Bryant Millwood, et al. v. State Farm*, District of South Carolina, Case No. 19-cv-01445; class counsel in *In Re Broiler Chicken Grower Litigation*, Case No. 17-v-033 (E.D.O.K); and class counsel in *Reaves v. Crescom Bank*, 2:20-cv-00254 (D.S.C). He was appointed interim co-liaison counsel in *Piazza's Carpet v. Hickory Springs, et. al.* (W.D.N.C. 5:10-cv-11), prior to the cases being consolidated by the MDL panel in another district. Other recent class cases include *In Re Cast Iron Soil Pipe and Fittings Antitrust Litigation* (E.D.T.N 1:14-md-02508), and *Peters v. Aetna, Inc., et. al.*, 1:15-cv-00109 (W.D.N.C). Mr. Wilkerson serves on the Discovery Committee in *In Re Blue Cross Blue Shield* (MDL 2406) (N.D.A.L 2:13-cv-2000), and participated in the filing of that litigation. He served on the section council of the Antitrust and Complex Business Disputes Law Section of the North Carolina Bar Association from 2011 to 2017, where he chaired both the Legislative and Pro Bono Committees. He recently served on the North Carolina Business Court Rules Committee.