

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

SEBASTIAN CORDOBA, individually and)
on behalf of all others similarly situated,)
Plaintiff,)

v.)

DIRECTV, LLC, individually and as)
successor through merger to DIRECTV,)
Inc.,)
Defendant.)

CIVIL ACTION FILE NO.:

1:15-CV-03755-MHC

The Honorable Mark Cohen

**CLASS COUNSEL'S MOTION FOR
ATTORNEYS' FEES AND EXPENSES**

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I. INTRODUCTION

Class Counsel respectfully move the Court for an award of (1) attorneys' fees in the total amount of \$146,666.67, which is one-third of the \$440,000.00 non-reversionary Settlement Fund that Class Counsel obtained for the Classes; and (ii) reimbursement of reasonable out-of-pocket costs advanced for the Classes in the amount of \$89,586.89.¹ Class Counsel respectfully submit that the requested fees and costs are fair, reasonable, consistent with the law of the Eleventh Circuit and this District, and should be approved.

Class Counsel seek fees under the percentage-of-the-fund method. Long-standing Eleventh Circuit authority provides that this is the appropriate method for calculating and awarding fees in a common fund settlement. *See Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). Furthermore, courts in this Circuit have long held that fee awards of one-third of the common fund are appropriate, in addition to reimbursement of reasonable costs. *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1294-95 (11th Cir. 1999) (approving fee request of one-third of common fund and out-of-pocket costs); *In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, 2019 WL 2720818, at *2 (N.D. Ga. June 6, 2019)

¹ The Settlement Agreement ("Agmt.") is attached as Exhibit 1 to Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. Dkt. 285-1. All capitalized terms in this Motion carry the same meaning as defined in the Settlement, unless otherwise stated.

(noting that “costs and expenses are routinely reimbursed in class action litigation in this Circuit”).

Consistent with controlling authority, Class Counsel seek fees of 33 and 1/3% of the non-reversionary cash Settlement Fund. The relevant factors established under this Court’s precedent in *Johnson* amply support the fee award requested here. *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). Moreover, although the settlement claims process is ongoing, as of March 1, 2024, not a single one of the 17,796 Class Members have objected to the Settlement or to Class Counsel’s fee request.

Class Counsel also seek to be reimbursed for the reasonable expenses they incurred in litigating this action on behalf of the Classes. These expenses, largely expert, travel, research, and filing costs, were reasonable and necessarily incurred. *See Pinon v. Daimler AG*, 2021 WL 6285941, at *20 (N.D. Ga. Nov. 30, 2021) (Cohen, J.), *aff’d sub nom. Ponzio v. Pinon*, 87 F.4th 487 (11th Cir. 2023) (awarding costs under Fed. R. Civ. P. 23(h)).

II. BACKGROUND AND PROCEDURAL HISTORY

A. The Settlement Fund and cash payments to the Classes

The Settlement requires DIRECTV to fund a non-reversionary cash Settlement fund of \$440,000.00. *See* Agmt. § 4.01. Each Class Member who

submits a simple claim form online or by mail, and whose claim is verified as valid, will receive a Cash Award. Under no circumstances will any amount of the Settlement Fund revert to DIRECTV.

The amount of each Cash Award is the claiming Class Member's pro rata share of the Settlement Fund. Agmt. § 5.04(a). If an individual is a member of both the NDNC Class and the IDNC Settlement Class, that person is entitled only to a single recovery. *Id.* If uncashed checks permit a second pro-rata distribution equal to or great than \$1.00 per qualifying claimant, the Claims Administrator will make a second pro-rata distribution to qualifying claimants. *Id.* at § 10.06(a). Only if the uncashed amount is insufficient to allow for such a second pro-rata distribution will the uncashed residual be distributed to the Samuelson Law, Technology & Public Policy Clinic, Electronic Privacy Information Center, or another non-profit in which the parties do not have a financial interest or conflict of interest. *Id.*

As of March 1, 2024, not a single Class Member has opted out or filed an objection to the Settlement or to Class Counsel's fee request. *See* Declaration of Daniel M. Hutchinson ("Hutchinson Decl."), ¶ 13. Class Counsel will submit a report on final claims numbers, objections, and opt outs before the May 17, 2024 final approval hearing.

B. Class Counsel’s prosecution of this matter

Class Counsel worked hard for nearly nine years to obtain the non-reversionary Settlement Fund for the Classes. As this Court well knows, this case has been extensively litigated, with three appeals to the Eleventh Circuit² and multiple hotly contested class certification and summary judgment motions.

On October 27, 2015, Plaintiff Sebastian Cordoba filed this class action alleging that DIRECTV violated the TCPA. Dkt. 1. After comprehensive discovery wherein DIRECTV produced 47,425 pages, answered 23 interrogatories and 17 requests for admission, *see* Dkt. 285-2 (Hutchinson Preliminary Approval Decl.), ¶ 29, Mr. Cordoba moved for class certification on October 31, 2016. Dkt. 63.

On July 12, 2017, this Court certified an Internal Do Not Call List Class and National Do Not Call List Class (“NDNC Class”). Dkt. 96. On November 15, 2019, the Eleventh Circuit vacated and remanded this Court’s Internal Do Not Call

² On May 30, 2018, Mr. Cordoba filed a third amended complaint adding Plaintiff Rene Romero to pursue an additional claim under the Satellite Television Extension and Localism Act of 2010 (“STELA”), 47 U.S.C. § 338. Dkt. 142. DIRECTV moved to compel Mr. Romero’s STELA claim to arbitration. Dkt. 154. On November 9, 2018, this Court denied DIRECTV’s motion to compel. Dkt. 163. On February 19, 2020, the Eleventh Circuit reversed and compelled Mr. Romero’s STELA claim to arbitration. Dkt. 186. The AAA arbitrator subsequently ruled in Mr. Romero’s favor and awarded him individual and punitive damages and Class Counsel attorneys’ fees solely for their time spent pursuing Mr. Romero’s individual STELA claims in arbitration. Dkt. 236-3. On January 3, 2022, the Court entered judgment confirming the arbitrator’s award and dismissed Mr. Romero’s claim. Dkts. 251 & 252. This Settlement does not release any STELA claims and Class Counsel are not seeking fees related to their time spent on any STELA arbitrations.

List class certification order. Dkt. 175. Pursuant to that remand, on January 31, 2020, Mr. Cordoba filed a renewed motion to certify an IDNC class. Dkt. 183.

On July 23, 2020, this Court denied, without prejudice, Mr. Cordoba's renewed motion for class certification. Dkt. 201. Thereafter, DIRECTV filed a motion for summary judgment as to the entire NDNC Class and Mr. Cordoba's individual IDNC claims. Dkt. 204. On February 12, 2021, this Court granted DIRECTV's motion. Dkt. 235.

On February 2, 2022, Mr. Cordoba appealed this Court's July 2020 class certification and February 2021 summary judgment orders. Dkt. 265. DIRECTV cross appealed the 2017 class certification order in the event the Eleventh Circuit reversed the District Court's summary judgment order. Dkt. 270.

The parties fully briefed both appeals to the Eleventh Circuit. *See Cordoba v. DIRECTV, LLC*, Case No. 22-10389 (11th Cir.). Prior to scheduled June 23, 2023 Eleventh Circuit oral argument, the parties re-engaged in settlement discussions. Throughout May 2023, the parties had multiple settlement discussions before reaching an agreement-in-principle on a non-reversionary cash \$440,000 settlement. Dkt. 285-2 (Hutchinson Preliminary Approval Declaration), ¶ 61.

The excellent relief obtained for the Classes is the result of Class Counsel's diligent prosecution of this case on the merits and a full understanding of the risks of continuing before the Eleventh Circuit.

III. ARGUMENT

A. Class Counsel should be compensated with a percentage of the common fund created through their efforts.

It is well established that, when a representative party has conferred a substantial benefit upon a class, counsel is entitled to an allowance of attorneys' fees based upon the benefit obtained. *See, e.g., Camden I*, 946 F.2d at 771; *In re Johnson & Johnson Aerosol Sunscreen Mktg., Sales Pracs. & Prods. Liab. Litig.*, 2023 WL 2284684, at *11 (S.D. Fla. Feb. 28, 2023) (citing *Camden I*). The common benefit doctrine "rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 349 (N.D. Ga. 1993) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). Furthermore, "in order to encourage 'private attorney general' class actions brought to enforce laws on behalf of persons with small individual losses, a financial incentive is necessary to entice capable attorneys, who otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, time-consuming cases for which they may never be paid." *Columbus Drywall &*

Insulation, Inc. v. Masco Corp., 2012 WL 12540344, at *1 (N.D. Ga. Oct. 26, 2012) (internal quotation marks and alterations omitted).

Where, as in this case, Class Counsel’s efforts result in a common, all-cash fund that provides direct monetary payments to the Class, attorneys’ fees are determined as a percentage of the fund that Class Counsel’s efforts created for the Class’s benefit. *See Camden I*, 946 F.2d at 774 (“[A]ttorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.”). This Court has substantial discretion to approve and award the amount of fees. *See Waters*, 190 F.3d at 1294 (affirming fee award of one-third of the common fund). There is “no hard and fast rule [to determine fees as a percentage of common fund] because the amount of any fee must be determined upon the facts of each case.” *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *31 (N.D. Ga. Mar. 17, 2020), *aff’d in relevant part*, 999 F.3d 1247, 1281 (11th Cir. 2021).

In this Circuit, fee awards of one-third of a common fund are common. *See In re Johnson & Johnson*, 2023 WL 2284684, at *12 (awarding fee award of one-third); *Waters*, 190 F.3d at 1294-95 (affirming award of one-third attorneys’ fees in common fund case); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1257 (S.D. Fla. 2016) (“[A] fee award of 33% . . . is consistent with attorneys’ fee awards in

federal class actions in this Circuit.”); *In re Profit Recovery Grp. Int’l, Inc. Sec. Litig.*, 2005 WL 8172262, at *3 (N.D. Ga. May 26, 2005) (awarding one-third of settlement fund plus expenses); *In re Clarus Corp. Sec. Litig.*, 2005 WL 8172269, at *3 (N.D. Ga. Jan. 6, 2005) (same).

B. The *Johnson* factors support the requested fee

The Eleventh Circuit has identified a list of potentially relevant factors in determining the appropriate percentage to be awarded as a fee. First are twelve factors identified in *Johnson*, 488 F.2d at 717-19: (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) the 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 length of the professional relationship with the client; and (12) awards in similar cases. *Camden I*, 946 F.2d at 772 n.3, 775. “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. In most instances, there will also be additional factors unique to a particular case which will be relevant to the district court's consideration." *Id.* at 775.

As is evident from the number of factors, district courts are not required to evaluate each and every factor. Rather, "[t]he district court's reasoning should identify all factors upon which it relied and explain how each factor affected its selection of the percentage of the fund awarded as fees." *Id.*; *see also Gunthert v. Bankers Standard Ins. Co.*, 2019 WL 1103408, at *5 (M.D. Ga. Mar. 8, 2019) (factors are "guidelines and are not exclusive"); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) ("These factors are merely guidelines[.]").

Here, each of the relevant *Johnson* factors show that the fee request of one-third is reasonable and should be awarded.

1. Class Counsel obtained an excellent result for the Class.

The eighth *Johnson* factor—the result obtained for the class—is "[t]he most important single element in determining the appropriate fee to be awarded class counsel out of a common fund." *McLendon v. PSC Recovery Sys., Inc.*, 2009 WL 10668635, at *3 (N.D. Ga. June 2, 2009) (citation and alteration omitted) (approving one-third fee award from common fund settlement); *see also Pinto v.*

Princess Cruise Lines, Ltd., 513 F. Supp. 2d 1334, 1342 (S.D. Fla. 2007) (“The result achieved is a major factor to consider in making a fee award.”). This Settlement is an excellent result for the Class, and supports the requested fee.

The Settlement requires DIRECTV to pay \$440,000 in non-reversionary cash, a terrific result both in the abstract and measured against other TCPA class settlements. Against a class number list of 17,796, this amounts to \$15.35 per class member.³

This per-Class Member figure compares well with, and is in fact higher than any other TCPA settlements, including ones approved in this District. *See, e.g., Prather v. Wells Fargo Bank, N.A., et al.*, No. 15-4231, Dkt. 35-2 (N.D. Ga. Feb. 22, 2017) (\$4.65 per class member); *Cross v. Wells Fargo Bank, N.A.*, No. 15-1270, Dkt. 45-1 (N.D. Ga. Aug. 11, 2016) (\$4.75 per class member); *Markos v. Wells Fargo Bank, N.A.*, No. 15-1156, Dkt. 34-1 (N.D. Ga. June 29, 2016) (\$4.98 per class member); *Grogan v. Aaron’s, Inc.*, No. 18-cv-2821-JPM, Dkt. 115 (N.D. Ga. Oct. 8, 2020) (\$7.10 per class member).⁴

³ This calculation is done as follows: the \$440,000 Settlement Fund would be reduced by roughly \$273,253.56 after deducting Settlement Costs for the Claims Administrator (\$37,000), requested attorneys’ fees (\$146,666.67), and expenses (\$89,586.89). While there is overlap between the classes, a simplified calculation of the remaining information divided by the number of class members is \$15.35 ($\$273,253.56 / 17,796 = \15.35).

⁴ *See also Wilkins v. HSBC Bank Nev., N.A.*, 2015 WL 890566, at *3 (N.D. Ill. Feb. 27, 2015) (\$2.95 per class member); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 787 (N.D. Ill. 2015) (\$2.72 per class member); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015)

Most importantly, the Settlement provides Class Members with real monetary relief, despite the fact that this is a purely statutory damages case involving nominal economic damages or actual damages (such as harassment and invasion of privacy) that are difficult to quantify. This Settlement provides direct, monetary benefits to Class Members who realistically would not have filed their own individual lawsuits or arbitrations because each Class Member's case would have been too small to bring on its own. In view of the quality and quantity of the relief obtained for the Class, and the amount per Class Member recovered when compared to other TCPA cases, the eighth *Johnson* factor strongly supports the fee request here.

2. Class Counsel undertook the litigation at significant risk with no guarantee of recovery.

The fourth (preclusion of other employment), sixth (contingent fee), and tenth (undesirability of the case) *Johnson* factors all speak to the risks undertaken by Class Counsel in pursuing this case. Evaluation of that risk supports the requested fee.

First, Class Counsel prosecuted this case on an entirely contingent basis, and to date have spent nearly nine years—more than 2,555.7 hours and \$89,586.89 in out-of-pocket costs—litigating for the benefit of the Class with no guarantee of any

(\$1.20 per class member); *Malta v. Fed. Home Loan Mortg. Corp.*, 2013 WL 444619, at *4 (S.D. Cal. Feb. 5, 2013) (approximately \$4 per class member).

recovery.⁵ Hutchinson Decl. ¶¶ 16, 19, 24; Declaration of Matthew R. Wilson (“Wilson Decl.”), ¶¶ 8-15. That fact supports the requested fee. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1364 (“Numerous cases recognize that the contingent fee risk is an important factor in determining the fee award.”); *see also In re Equifax*, 2020 WL 256132, at *33 (“A larger award is justified because if the case is lost a lawyer realize[s] no return for investing time and money in the case.”); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1335 (S.D. Fla. 2001) (“A contingency fee arrangement often justifies an increase in the award of attorneys’ fees.”) (citation omitted).

Second, that commitment necessarily precluded time and expenses from being committed to different matters. Hutchinson Decl. ¶ 15. *See McLendon*, 2009 WL 10668635, at *2 (approving one-third fee award and explaining that “[i]f Class Counsel had allocated this time to other legal matters[.], . . . Class Counsel [may have] earned significantly more than the sum requested here.”); *In re Equifax*, 2020 WL 256132, at *33 (“[B]ut for the time and effort [Class Counsel] spent on this case the plaintiffs’ lawyers would have spent significant time on other matters . . . the bulk of the work was done by a relatively small number of senior lawyers, and demanded their full attention.”).

⁵ While Eleventh Circuit precedent is clear that courts need not apply the “lodestar method,” *In re Equifax*, 999 F.3d at 1278-79, Class Counsel note that given the above hours and their standard hourly rates, Class Counsel’s lodestar would result in a “negative” multiplier if the Court employed the lodestar method. Class Counsel can detail their lodestar by category, *in camera*, should the Court so desire.

Third, this outcome was no guarantee. *See Pinto*, 513 F. Supp. 2d at 1340 (“The relevant risks must be evaluated from the standpoint of Plaintiffs’ counsel as of the time they commenced the suit and not retroactively with the benefit of hindsight.”). This case carried significant risks. Most obviously, Mr. Cordoba would have needed the Eleventh Circuit to reverse this Court’s order granting summary judgment to DIRECTV and reverse this Court’s denial of Mr. Cordoba’s renewed class certification motion for the IDNC class. These legal issues—proving vicarious liability under the TCPA and proving absent class member standing—were novel, complex, and carried significant risk.

Moreover, DIRECTV’s cross-appeal demonstrates that there were a number of risks that Mr. Cordoba faced even if the Eleventh Circuit were to rule in Mr. Cordoba’s favor on both of the issues up on appeal. DIRECTV raised heavily disputed Article III standing issues for NDNC class members and argued that this was an individualized question that would predominate over common questions. DIRECTV also argued that individualized inquiries would be required to determine whether Class Members had agreed to arbitration with it.

Finally, even if Mr. Cordoba were successful in all of those items, the likelihood of success at trial (and a likely fourth appeal) was also uncertain.

3. Class Counsel are experienced TCPA and class action lawyers who delivered effective representation to the Classes.

The first *Johnson* factor, “time and labor,” is a measure of Class Counsel’s

efforts to prosecute the case and obtain relief for the Class. The Court looks to the amount of work performed in view of the complexity of the case and the quality of Class Counsel, and the result obtained. *See In re Equifax*, 2020 WL 256132, at *32; *see also Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006) (“The key consideration simply is whether Class Counsel’s claimed hours are reasonable given the circumstances of the case and the results achieved.”). The ninth *Johnson* factor examines the “experience, reputation, and ability of the attorneys.” *In re Domestic Air Transp.*, 148 F.R.D. at 349 n.72. Both factors support the requested fee.

First, Class Counsel devoted significant time to obtain relief for the Class. This case was litigated nearly nine years, through class certification and summary judgment, and involved contested motions practice, extensive discovery, and multiple appeals to the Eleventh Circuit. *See supra* Section II.B. In total, Class Counsel committed at least 2,555.7 hours to this case. Hutchinson Decl. ¶ 20; Wilson Decl. ¶ 13.

The quality of Class Counsel’s efforts is demonstrated by the final result: a \$440,000 non-reversionary cash fund providing a per-Class member recovery amount significantly higher than comparable TCPA common funds, achieved in the face of significant litigation risk. *See George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1377 (N.D. Ga. 2019) (discussing extensive discovery and motion practice as demonstrative of quality of representation and approving one-

third fee request); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) (“The quality of work performed in a case that settles before trial is best measured by the benefit obtained.”).

Second, Class Counsel’s diligence and efforts to secure this result for the Class reflect their experience, reputation, and ability. *See In re Equifax*, 2020 WL 256132, at *33; *In re Sunbeam*, 176 F. Supp. 2d at 1334. Class Counsel are veteran class action attorneys who have successfully litigated complex consumer cases in this Circuit and nationwide. Class Counsel have extensive experience in litigating TCPA class actions, and are responsible for many of the largest TCPA settlements recorded. *See* Dkt. 285-2 (Hutchinson Preliminary Approval Declaration), ¶¶ 8(b)-(w), Ex. A; Wilson Decl. ¶ 3.

4. The requested fee award aligns with awards in similar cases and with the customary fees in contingent class actions.

The fifth and twelfth *Johnson* factors examine whether the requested fee is reasonable when juxtaposed against fee awards in similar cases, and against customary fees awarded for contingency-based class representation.

First, in this Circuit, a fee of one-third of the common fund is considered appropriate especially when plaintiffs’ counsel undertake class representation on a contingent-fee basis. *See In re Equifax*, 2020 WL 256132, at *33 (noting customary fee in complex class action litigation ranged between 33.3 and 40%); *In re Arby’s*, 2019 WL 2720818, at *4 (“Awards of up to 33% of the common fund

are not uncommon in the Eleventh Circuit, and especially in cases where Class Counsel assumed substantial risk by taking complex cases on a contingency basis.”); *see also Waters*, 190 F.3d at 1294-95 (affirming one-third fee award); *Dukes v. Air Canada*, 2020 WL 487152, at *7 (M.D. Fla. Jan. 27, 2020) (collecting cases).⁶

Second, the requested fee award of one-third of the common fund comports with fee awards in other TCPA class actions. *See, e.g., Kolinek*, 311 F.R.D. at 502-03 (approving 36% fee award); *Lees v. Anthem Ins. Cos.*, 2015 WL 3645208, at *4 (E.D. Mo. June 10, 2015) (approving 34% fee award); *Soto v. Gallup Org., Inc.*, No. 13-61747, Dkt. 95 (S.D. Fla. Nov. 24, 2015) (approving 33.3% award).⁷

Third, the requested fee is consistent with typical fee arrangements in commercial complex litigation. *See Pinto*, 513 F. Supp. 2d at 1341 (“In private litigation, attorneys regularly contract for contingent fees between 30% and 40%

⁶ *See, e.g., Allapattah Servs.*, 454 F. Supp. 2d at 1204 (awarding 31 and 1/3%, with costs); *In re: Healthtronics Surgical Servs., Inc. Sec. Litig.*, No. 03-02800, Dkt. 62 (N.D. Ga. Dec. 1, 2005) (33% plus costs); *In re Profit Recovery Grp. Int’l, Inc. Sec. Litig.*, No. 00-01416, Dkt. 203 (N.D. Ga. May 26, 2005) (33 and 1/3%, plus costs); *In re Managed Care Litig.*, No. 00-1334, 2003 WL 22850070, at *6 (S.D. Fla. Oct. 24, 2003) (awarding 35.5% in fees and costs).

⁷ *See also, e.g., Brown v. DIRECTV, LLC*, No. 13-cv-1170, Dkt. 538 (C.D. Cal. Mar. 3, 2023) (awarding 33% plus costs); *Hageman v. AT&T Mobility LLC, et al.*, No. 13-0050, Dkt. 68 (D. Mont. Feb. 11, 2015) (awarding 33%, inclusive of costs); *In re Capital One*, 80 F. Supp. 3d at 803-07 (modified fee structure including 36% of the first \$10 million); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (33%); *Cummings v. Sallie Mae, Inc.*, No. 12-9984, Dkt. 91 (N.D. Ill. May 30, 2014) (33%, inclusive of costs); *Hanley v. Fifth Third Bank*, No. 12-1612, Dkt. 86 (N.D. Ill. Dec. 23, 2013) (33%, inclusive of costs); *Desai v. ADT Sec. Servs., Inc.*, No. 11-1925, Dkt. 243 (N.D. Ill. June 21, 2013) (33%, inclusive of costs); *Martin v. Dun & Bradstreet, Inc.*, 2014 WL 9913504, at *3 (N.D. Ill. Jan. 16, 2014) (more than 33 and 1/3%).

directly with their clients.”); *Allapattah Servs.*, 454 F. Supp. 2d at 1209 (“A fee of 31 and 1/3% to Class Counsel is well within the range of customary fees.”).

C. The Requested Reimbursement of Expenses is Reasonable and Appropriate

Class Counsel are also entitled to reimbursement of costs incurred as a result of their efforts to secure substantial benefits for the class. *See, e.g., In re Domestic Air Transp.*, 148 F.R.D. at 306; *Pinon*, 2021 WL 6285941, at *20. Here, Class Counsel seek \$89,586.89 in out-of-pocket costs they have incurred. *See* Hutchinson Decl. ¶ 24; Wilson Decl. ¶ 16. These out-of-pocket costs include common categories of costs and largely relate to paying Plaintiff’s experts, conducting depositions, mediation expenses, traveling for hearings in the Eleventh Circuit, database fees for housing and processing the electronic data at issue in this case, legal research fees, and filing fees. Hutchinson Decl. ¶¶ 24-26; Wilson Decl. at ¶ 16. These fees were reasonably and necessarily incurred on behalf of the Class. *See Pinon*, 2021 WL 6285941, at *20 (approving expenses and citing to attorney declaration categorizing similar expenses totaling \$75,671.38); *Pledger v. Reliance Tr. Co.*, 2021 WL 2253497, at *8 (N.D. Ga. Mar. 8, 2021) (Cohen, J.) (same for similar expenses totaling approximately \$750,000). Accordingly, Class Counsel

respectfully request that the Court reimburse it for \$89,586.89 in out-of-pocket costs.⁸

IV. CONCLUSION

Class Counsel respectfully request that the Court (1) award attorneys' fees in the amount of \$146,666.67; (2) award costs in the total amount of \$89,586.89; and (3) authorize Class Counsel to allocate the awarded fees and costs among Plaintiff's counsel.

Dated: March 6, 2024

Respectfully submitted,

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⁸ The Agreement provides for an incentive award to Mr. Cordoba not to exceed \$2,500, "if, at the time Class Counsel seeks Court approval of their Aggregate Fees, Costs, and Expenses, incentive payments are permissible under Eleventh Circuit law." Agmt. § 6.03. Class Counsel acknowledge that Eleventh Circuit law under *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020) currently prohibits incentive awards. Class Counsel respectfully request that the Court retain jurisdiction to allow Mr. Cordoba to request an incentive award if *Johnson* is overruled. See *In re Johnson & Johnson*, 2023 WL 2284684, at *12 n.8 (retaining jurisdiction in the event that *Johnson* is overruled).

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*Attorneys for Plaintiff, the NDNC Class, and
the IDNC Class*

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1.C and 7.1.D of the Northern District of Georgia, that the foregoing was prepared in 14-point Times New Roman Font.

March 6, 2024.

/s/ Sean A. Petterson
Sean A. Petterson

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

March 6, 2024.

/s/ Sean A. Petterson
Sean A. Petterson

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

SEBASTIAN CORDOBA, individually and)
on behalf of all others similarly situated,)
Plaintiff,)

v.)

DIRECTV, LLC, individually and as)
successor through merger to DIRECTV,)
Inc.,)
Defendant.)

CIVIL ACTION FILE NO.:

1:15-CV-03755-MHC

The Honorable Mark Cohen

**NOTICE OF ERRATA RE: CLASS COUNSEL'S MOTION FOR
ATTORNEYS' FEES AND EXPENSES (DKT. 287)**

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that:

1. Class Counsel made a scrivener's error in reporting the per-class member amount on page 10 of Class Counsel's Motion for Attorneys' Fees and Expenses. Dkt. 287. The correct, per-class member figure is **\$9.37**, not **\$15.35** (i.e., **[\$440,000-\$273,253.56] / 17,796=\$9.37**). *See id.* at 10 n.3.
2. Class Counsel apologize for the foregoing error and will append this errata to the link on the Settlement Website to Class Counsel's Motion for Attorneys' Fees and Expenses.

Dated: March 13, 2024

Respectfully submitted,

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& BERNSTEIN, LLP**

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March 13, 2024.

/s/ Sean A. Petterson
Sean A. Petterson

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

March 13, 2024.

/s/ Sean A. Petterson
Sean A. Petterson