

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO.: 0:21-cv-61210-SINGHAL/VALLE

JOHN G. BAJA, individually
and on behalf of all others
similarly-situated,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

PLAINTIFF’S UNOPPOSED MOTION FOR ATTORNEYS’ FEES AND COSTS

Plaintiff, John G. Baja (“Class Representative”), in accordance with the Parties’ class action settlement, files this Unopposed Motion for approval of Plaintiff’s attorneys’ fees and costs.¹ In further support thereof, Plaintiff respectfully submits the following:

Brief Summary

On June 29, 2022, the Court granted Plaintiff’s Unopposed Motion for Preliminary Approval of the Class-wide Settlement of the claims asserted against Defendant under 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4. (*See* Doc. 43.) Notice was sent to 37,501 Class Members and the reaction to the Settlement overwhelmingly positive. In fact, as demonstrated by the attached sworn declaration from the settlement administrator, to date **zero** objections have been made to the Settlement. Not only that, there’s been only eight requests for exclusion. Considering the large size of the Class, coupled with the fact this is a “claims paid” settlement (meaning all class

¹ All defined terms contained herein shall have the same meaning as set forth in the Class Action Settlement and Release (“Settlement Agreement”), filed on February 18, 2022. (*See* Doc. 41-2, pp. 2-26).

members will automatically receive a check without having to file claims), and no funds revert to Defendant (instead they will be paid to *cy pres* recipient), the \$500,000.00 Settlement obtained by the undersigned from Defendant is an excellent outcome.

In sum, Class Counsel undertook this COBRA class action without guarantee of payment and, despite significant hurdles, achieved an excellent result on behalf of Plaintiff and the Class by securing a gross common fund totaling \$750,000.00. In light of the result achieved, the risks undertaken by Class Counsel, lack of any objections whatsoever, and the public policy need to provide adequate incentive for attorneys to enforce COBRA's important notice process to participants and beneficiaries in a health plan who experience a "qualifying event," Class Counsel's request for attorneys' fees and costs in the amount of one-third of the Settlement Fund, plus costs. Importantly, Defendant does not oppose this Motion. A proposed Order is attached as Exhibit A. In further support of this Motion, Plaintiff respectfully submits the following:

I. BACKGROUND.

A. Overview of Motion and Current Posture of the Case.

As explained above, on June 29, 2022, this Court issued an order preliminarily approving the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") between Plaintiff, on behalf of the Settlement Class, and Defendant. (Doc. 43.) In that Order, the Court found that Settlement terms are "fair, reasonable, and adequate." (*Id.* at ¶ 10.) Following entry of that Order, the Settlement Class Administrator sent a Notice of Settlement via first class mail to all Settlement Class Members and thus far, zero have objected to the Settlement. Only eight people have asked to be excluded. Thus, the reaction by the Class Members could not be more positive. The objection deadline expires on September 25, 2022. The Final Approval Hearing is set for November 4, 2022, at 11:00 a.m., in Courtroom 110 at the United States Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301.

B. Nature of Plaintiff's Claim.

This is a putative class action brought by Named Plaintiff against Defendant under 29 C.F.R. § 2590.606–4(b)(4) et seq. and 29 U.S.C. § 1166(a). The lawsuit generally alleges that Defendant provided Named Plaintiff and other members of his putative class with a deficient COBRA Notice. More specifically, Named Plaintiff asserts that Defendant's COBRA Notice did not adequately inform him and the putative class how to exercise their rights to elect COBRA coverage because, in violation of 29 C.F.R. § 2590.606–4 et seq., Defendant's Notice: (i) included inaccurate and misleading threats of criminal penalties and fines; (ii) was not written in a manner calculated to be understood by the average plan participant; and (iii) did not name and provide contact information for the plan administrator. As a result of the alleged violations in the Complaint, Named Plaintiff seeks statutory penalties, injunctive relief, attorneys' fees, and costs, on behalf of himself and a putative class of all others similarly-situated.

C. Costco's Defenses.

Had mediation been unsuccessful, Defendant had available to it myriad defenses to Named Plaintiff's allegations. Defendant denied, and continues to deny, that it violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4 with regard to Named Plaintiff and/or any putative class member. In fact, as part of the Agreement, Defendant specifically denies that it engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been alleged against it in this case, denies that the claims asserted by Named Plaintiff are suitable for class treatment other than for settlement purposes, and Defendant denies that it has any liability whatsoever. The Agreement and this Motion are not, and shall not, in any way be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of Defendant, nor of any violation of any federal, state, or

municipal statute, regulation, principle of common law or equity. However, Defendant agreed to resolve this action through settlement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented in this case, the inconveniences involved, and the disruption to its business operations.

D. Procedural History of Case.

By way of further procedural background, Named Plaintiff John Baja filed his original Complaint on June 9, 2021. (See Doc. 1). Defendant filed a potentially dispositive Motion to Dismiss on July 21, 2021, raising a variety of arguments, including lack of Article III standing and failure to state a claim. (See Doc. 7). Before the Court ruled on Defendant's Motion to Dismiss, Named Plaintiff filed a First Amended Complaint which, in turn, mooted the first Motion to Dismiss filed by Defendant. (See Docs. 14, 16).

The Parties conferred and filed the required Joint Scheduling Report on August 12, 2021. (Doc. 22). The next day, the Court entered its Scheduling Order. (Doc. 23).

Defendant filed a Motion to Dismiss the First Amended Complaint on August 18, 2021. (Doc. 24). On September 1, 2021, Named Plaintiff filed a comprehensive response in opposition to the Motion to Dismiss. (Doc. 25). Defendant filed its reply brief on September 8, 2021. (Doc. 27).

In the interim, Named Plaintiff propounded on Defendant class-wide written discovery and began the process of scheduling depositions. Specifically, Named Plaintiff propounded on Defendant written discovery requests, a Fed.R.Civ.P. 30(b)(6) deposition notice, as well as notice of intent to serve a third-party subpoena.

Shortly thereafter, on September 17, 2021, Defendant filed a Motion to Stay Discovery. (Doc. 28). Named Plaintiff filed his opposition on September 24, 2021. (Doc. 30). The Court

denied Defendant's Motion to Stay Discovery on September 27, 2021. (Doc. 31).

Following the denial of Defendant's Motion to Motion to Stay Discovery, counsel for both sides explored the possibility of an early class-wide resolution. Based on discussion between counsel for both sides, the Parties then agreed an early class-wide mediation may be productive at this point to try and resolve this case on a class basis.

As a result, on October 12, 2021, the Parties filed a Joint Motion to Stay these proceedings, including as to the Court's ruling on Defendant's pending Motion to Dismiss and as to the Parties' respective discovery obligations, pending completion of mediation. The Court granted that Motion on October 13, 2021 (see Doc. 35), and the case was stayed

E. Mediation and Settlement.

The Parties attended a mediation before highly respected mediator, Antonio Piazza, on December 1, 2021. After extensive arm's length negotiations—between experienced counsel for an entire day and into the evening—a tentative deal was reached. The Agreement, if approved, will resolve all claims of Named Plaintiff and all Settlement Class Members in exchange for Defendant's agreement to pay \$750,000.00 into the Settlement Account. This is a "claims paid" non-reversionary settlement. Every Settlement Class Member who does not timely opt out will receive a check for their respective Settlement Payment, without having to take any action, mailed to their last known address by the Settlement Administrator.

From the Settlement Account will be deducted amounts for the costs of settlement administration, Class Counsel's fees, and litigation costs, and any General Release Payment to Named Plaintiff, resulting in the "Net Settlement Proceeds," which will be allocated among the approximately 38,818 Settlement Class Members equally on a pro rata basis. No funds revert to Defendant. Any funds that are unclaimed (which shall only arise if/when a check is mailed but

then not timely cashed) shall revert to a mutually agreeable cy pres recipient. The Parties have selected Bay Area Legal Services, a 501(c)(3) non-profit legal aid organization, and will ask the Court to approve it as the cy pres recipient.

The Parties negotiated the proposed Settlement on a common fund basis, meaning that the Parties' settlement offers were inclusive of all attorneys' fees and costs, incentive awards, and administrative expenses. The Parties did not negotiate attorneys' fees until after agreeing on all terms related to the size of the common settlement fund and the class definition. With the Settlement Class comprised of approximately 38,818 members, each Settlement Class Member who does not opt out of the Settlement Class is entitled to a gross pro rata amount of the Settlement Account totaling approximately \$19.32. If the requested amounts are granted for attorneys' fees and costs, administrative expenses, and Named Plaintiff's General Release Payment, the parties anticipate that each Settlement Class Member will receive a pro rata Settlement Payment from the Net Settlement Proceeds of approximately \$9.72, an amount consistent with settlements in many other large COBRA notice class action cases like this one.

F. The Court's Order granting Preliminary Approval of the Settlement.

On June 29, 2022, the Court granted Plaintiff's Unopposed Motion for Preliminary Approval of the Class-wide Settlement of the claims asserted against Defendant under 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4. (*See* Doc. 43.) Following entry of that Order, and as further explained by the attached sworn declaration from the Settlement Administrator, Notice was mailed out to the approximately 37,000+ Settlement Class Members.

As set forth herein, the Settlement Class Members' response to the Notice of Settlement confirms that the Court's preliminary analysis was correct. The Settlement Class Administrator sent a Notice of Settlement via first class mail to all Settlement Class Members and **zero** objected

to the Settlement thus far. And, only eight opted out of the settlement. Accordingly, Plaintiff respectfully requests that this Court grant this Unopposed Motion for Attorneys' Fees and Costs.

G. The Class Member's Reactions to the Settlement.

The Settlement Claims Administrator, American Legal Claim Services, LLC ("ALCS"), sent the short form Class Notice approved by the Court to each of the Settlement Class Members on or around July 27, 2022, via first-class mail. A total of 37,501 Class Notices were mailed to members of the Settlement Class. (*See* Declaration of Jeffrey Pirrung from ALCS, ¶ 4) (hereinafter "Pirrung Dec."). Thus, the Settlement Class Members overwhelmingly accepted the Settlement. It is estimated that over 98% of the Settlement Class Members received the Class Notice and none have objected as of the date this Motion was filed.

II. THE COURT SHOULD GRANT THE REQUESTED ATTORNEYS' FEES AND COSTS SOUGHT.

A. The Requested Attorneys' Fees And Costs Are Reasonable And Should Be Awarded.

In accordance with binding precedent from *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 770 (11th Cir. 1991), the Eleventh Circuit and recent courts in this District have ruled that the common fund should be valued at the amount available not the amount claimed. *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295–96 (11th Cir. 1999) (affirming fee award of 33-1/3% of total amount made available to class, and determining that attorney's fees may be determined based on the total benefits available, even where the actual payments to the class following a claims process are lower); *Saccoccio v. JP Morgan Chase Bank, NA.*, 297 F.R.D. 683, 695 (S.D. Fla. 2014) ("The attorneys' fees in a class action can be determined based upon the total fund, not just the actual payout to the class."); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007) (same); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (same).

Camden I is the preeminent case and binding case in this Circuit dealing with the issue of attorneys' fees in common-fund class-action cases like this one. In that case, the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this Circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." 946 F.2d at 774.

"There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *Camden I*, 946 F.2d at 774. As a general proposition, "the majority of common fund fee awards fall between 20% to 30% of the fund," although "an upper limit of 50% of the fund may be stated as a general rule." *Id.* at 774–75. While the objectors in *Muransky* challenged the district court's decision to award class counsel one-third of the settlement fund as fees as being above the Eleventh Circuit's 25% benchmark, the court nonetheless affirmed the fee award under the well-accepted standards for evaluating fee awards, which Plaintiffs discuss below. *Muransky v. Godiva Chocolatier, Inc.*, 905 F.3d 1200, 1205 (11th Cir. 2018), *opinion vacated and superseded*, 922 F.3d 1175 (11th Cir. 2019), *reh'g en banc granted, opinion vacated*, 939 F.3d 1278 (11th Cir. 2019) ("In *Camden I*, this Circuit called 25% of a common fund a benchmark attorney's fee award that 'may be adjusted in accordance with the individual circumstances of each case.'"). In the end, the Court has broad discretion to award attorneys' fees. *Id.* at *10.

Although the value recovered for the Class Members is significant, as discussed in *Hamilton v. SunTrust Mortgage, Inc.*, any concerns as to the value of the claims actually paid when considering Class Counsel's request for attorney's fees and expenses are "contrary to the law in the Eleventh Circuit" 2014 WL 5419507, at *7 (S.D. Fla., Oct. 24, 2014). Rather, attorneys

in a class action “are entitled to an attorney’s fee based upon the total benefits obtained in or provided by a class settlement, regardless of the amounts eventually collected by the Class.” *Id.* (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 676 (1980); *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999)); *Saccoccio*, 297 F.R.D. 683, 695 (“The attorneys’ fees in a class action can be determined based upon the total fund, not just the actual payout to the class.”); *Casey v. Citibank, NA.*, No. 12-cv-00820 (N.D.N.Y.) at (D.E. 223); *David v. Am. Suzuki Motor Corp.*, No. 08-CV-22278, 2010 WL 1628362 (S.D. Fla. Apr. 15, 2010) (treating settlement with ascertainable benefits as a common fund to which a percentage fee may be awarded, even if the fee is separately paid by the defendant).

Here, Plaintiff requests his Counsel be awarded \$250,000 in attorneys’ fees, one-third of the \$750,000.00 gross Settlement Fund that will be distributed on a pro-rata basis to Settlement Class Members. Such a request is in keeping with the Eleventh Circuit’s pronouncements above, as well as the well-recognized precept that percentage-of-the-fund fee awards should be calculated based on the entirety of the fund available for Settlement Class Members. *Camden I*, 946 F.2d at 774; *Carter v. Forjas Taurus, S.A.*, 701 F. App’x 759, 767 (11th Cir. 2017) (“[N]o case has held that a district court must consider only the actual payout in determining attorneys’ fees.”); *Saccoccio*, 297 F.R.D. at 695; *Pinto*, 513 F. Supp. 2d at 1339 (S.D. Fla. 2007) (same); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (same).

Judge Merryday from the Middle District of Florida granted a nearly identical fee and award in a very similar COBRA class action case styled *Valdivieso v. Cushman & Wakefield, Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla. Dec. 7, 2018). Likewise, Middle District of Florida Judge Jung granted a one-third common fund fee request in an equally similar COBRA class action case styled *Carnegie v. FirstFleet, Inc. of Tennessee, Inc.*, Case No.: 8:18-cv-01070-

WFJ-CPT (M.D. Fla. June 21, 2019) (Doc. 63). Additionally, Judge Moody, also from the Middle District of Florida, approved a one-third common fund fee request in another very similar COBRA class action case styled *Hicks v. Lockheed Martin Corp, Inc.*, 8:19-cv-00261-JSM-TGW (M.D. Fla. Dec. 11, 2019) (granting Plaintiff's counsel one-third of gross common fund, plus costs, in COBRA case).

Similar awards have been obtained in other class action matters in which the undersigned have served as class counsel here in the Southern District of Florida, including in *Santiago, et al., v. University of Miami*, 1:20-cv-21784-DPG (S.D. Fla. April 7, 2022)(Doc. 66), in which the Court awarded the undersigned one-third of the common fund in an ERISA retirement plan class action case; *see also Moody, et al. v. Ascenda USA, Inc., et al.*, 0:16-cv-60364-WPD (S.D. Fla., March 12, 2018)(Docs. 113, 114)(Court awarded attorneys' fees of 33 1/3% of common fund in FCRA class action case); *Hargrett v. Amazon.com, DEDC, LLC*, Case No.: 8:15-cv-02456-WFJ-AAS, in which the Court awarded the undersigned 33 1/3% of a common fund in FCRA class action case. (M.D. Fla. Nov., 16, 2018 (Doc. 187); *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL-TBM (M.D. Fla., October 9, 2015, Doc. 64) (same); *Patrick v. Interstate Mgmt. Co., LLC*, 8:15-cv-01252-VMC-AEP (M.D. Fla. April 29, 2016, Doc. 48) (same).

The same result should follow here. Indeed, the customary fee for counsel representing a plaintiff in an employment matter such as this depends on the experience and skill level of the involved attorneys. *See In re U.S. Bancorp. Litig.*, 291 F.3d 1035 (8th Cir. 2002) (fee of 36% affirmed); *Waters*, 190 F.3d 1291 (affirming \$13.3 million in attorneys' fees from \$40 million settlement fund—33-1/3% of total recovery); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (awarding attorney fee of 36%); *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F.

Supp. 280, 285–86 (D. Minn. 1997) (awarding one-third attorney fee); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001). The same outcome should follow in this case.

Case law has clarified the factors to which a district court is to look in determining a reasonable percentage to award class-action counsel. These factors are: (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; (12) awards in similar cases. *Camden I*, 946 F.2d at 772, n.3 (citing factors from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)); *see also Muransky*, 2018 WL 2018 WL 4762434, at *11 (affirming the use of these points). “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.” *Camden I*, 946 F.2d at 775. As a final note, the Eleventh Circuit “encouraged the lower courts to consider additional factors unique to the particular case.” *Walco Invs., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997).

As set forth below, application of the factors used by courts in the Eleventh Circuit when awarding fees from a common fund to the Settlement achieved in this case by Class Counsel, as well as those factors unique to this case, demonstrate that an award of fees totaling one-third of Settlement Fund is appropriate.

1. Time and labor required.

As to the first *Johnson* factor, Class Counsel expended time conducting class action-research; drafting and filing the Complaint and First Amended Complaint; responding to Defendant's Motion to Dismiss and Motion to Stay Discovery; attending the case management and scheduling conference (along with drafting and filing the Joint Scheduling Report); drafting and serving class-wide discovery on Defendant, including requests for production, interrogatories, and a Fed.R.Civ.P. 30(b)(6) deposition notice, along with third-party discovery to Defendant's COBRA administrator; preparing for and attending mediation; drafting, editing, and finalizing the motion seeking preliminary approval of the class Settlement; reviewing and analyzing the proposed Settlement Agreement and supporting attachments, including the proposed class notification documents; responding to inquiries from the class members after Class Notice was sent out; handling questions from the Settlement Administrator; and, of course, drafting this Motion.

Additionally, the Motion for Final Approval still must be drafted and heard, requiring significant preparation time. If the Court grants final approval of the Settlement, Class Counsel will continue to represent the Class and monitor the completion of the Settlement. Class Counsel will also defend the Settlement against appeals by objectors, if any, will oversee the Settlement to ensure that Class Members receive their Settlement benefits, and will continue to respond to inquiries from Class Members. Therefore, Class Counsel will have significantly more time in this matter to bring it to full and final resolution once the case is complete. For these reasons, and based upon the facts and authority cited herein, Class Counsel respectfully submits that this Court should find that the fees sought by Class Counsel in this action are reasonable and warranted.

2 / 3. This case presented novel and difficult questions requiring a high level of skill to perform the legal services properly.

The second *Johnson* factor recognizes that attorneys should be appropriately compensated for accepting novel and difficult cases. *Johnson*, 488 F.2d at 718. The third *Johnson* factor is the "[t]he skill requisite to perform the legal service properly." *Johnson*, 488 F.2d 718. This third factor ties directly to the second *Johnson* factor and requires the Court to "closely observe the attorney's work product, his preparation, and general ability before the court." *Id.* Because the second and third *Johnson* factors are tied together, Plaintiff analyzes them together.

Courts in this Circuit recognize that class actions involving various legal theories are, by their nature, very difficult. *See Yates v. Mobile Cty. Personnel Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) (noting that extremely complicated litigation requires thorough and detailed research of almost every question involved); *Behrens*, 118 F.R.D. at 547 (observing that the size of the class, the difficult theories of liability, and the always-troublesome problems associated with damages demonstrated that the case was an awesome and complex matter masterfully handled by plaintiff's counsel); *R.C. by Ala. Disabilities Advocacy Program v. Nachman*, 992 F. Supp. 1328, 1334 (M.D. Ala. 1997).

Unlike other common employment law-related claims, such as suits brought under the Fair Labor Standards Act, there are relatively few COBRA class action cases. As a result, this case is novel and presented difficult questions of both fact and law. Accordingly, a small subset of the Bar handle these type of cases, evidenced by the relatively few number of COBRA class action cases filed (or pending). Class Counsel had the expertise to bring this case and the expertise to marshal it to a favorable outcome. Few lawyers have the skill and wherewithal to see this case through, against a sophisticated and well-funded Defendant and top-notch Defense Counsel, to achieve the results obtained here. This factor also weighs heavily in favor of the reasonableness of the requested fee.

The Eleventh Circuit recognizes skill as the “ultimate determinate of compensation level,” as “reputation and experience are usually only proxies for skill.” *Norman v. Housing Auth. of Montgomery*, 836 F.2d 1292, 1300 (11th Cir. 1990). In *Norman*, the Eleventh Circuit listed several elements that district courts may consider in determining an attorney’s skill. 836 F.2d at 1300. First, the court explained that skill may be measured by evaluating the degree of prudence and practicality exhibited by counsel at the beginning of the case. *Id.* Second, skill may manifest itself through arduous preparation and efficient organization, particularly if the case goes to trial. *Id.* Next, the court explained that an attorney who has a sharp command of trial practice and a sound understanding of the substantive law governing the case, such that his time may be spent exploring the finer points raised by the issues, should be compensated at a higher rate of pay than one who has to educate himself just to gain a general working knowledge of trial practice and law. *See id.* at 1301. Finally, the court noted that persuasiveness is an attribute of legal skill and defines a good advocate as one who advances his client’s position in a clear and compelling manner. *Id.* The Eleventh Circuit also explained that the complexity of the case at hand may indicate skill. *See Yates*, 719 F.2d at 1535. In evaluating the skill involved, the Court should also consider the quality of Class Counsel’s opponent. *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1334 (S.D. Fla. 2001).

Applying these factors, Class Counsel have shown themselves to be highly skilled. The complexity of this innovative area of class action litigation, the genuine possibility of Defendant’s success in having the case dismissed on standing grounds, the dearth of case law on COBRA class actions, the ability to achieve a favorable outcome despite Defendant’s potentially dispositive motions to dismiss and highly skilled Defense counsel, and the complexity inherent with any class

action, all demonstrate that Class Counsel are highly skilled practitioners. This weighs in favor of finding the fee sought of one-third of the common fund to be reasonable.

4. Preclusion of other employment.

The fourth *Johnson* factor is “[t]he preclusion of other employment by the attorney due to acceptance of the case.” *Johnson*, 488 F.2d at 718. This factor requires the dual consideration of otherwise available business which is foreclosed because of conflicts of interest arising from the representation, and the fact that once the employment is undertaken, the attorney is not free to use the time spent on the case for other purposes.

Here the hours required to prosecute this action limited the amount of time and resources that Class Counsel was available to devote to other matters over the period of this litigation. A significant amount of Counsel’s time was devoted to this case during the time leading up to mediation. Thus, this factor also militates in favor of finding the Requested Fee reasonable.

5. Customary fee.

The customary fee for counsel representing a plaintiff in an employment matter such as this depends on the experience and skill level of the involved attorneys. The fee sought by Plaintiff’s Counsel is reasonable and customary in this area of law, as evidenced by the fact that, as set forth above, Judge Merryday from the Middle District of Florida granted a nearly identical fee and award in a very similar COBRA class action case styled *Valdivieso v. Cushman & Wakefield, Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla. Dec. 7, 2018). Likewise, Middle District of Florida Judge Jung granted a one-third common fund fee request in an equally similar COBRA class action case styled *Carnegie v. FirstFleet, Inc. of Tennessee, Inc.*, Case No.: 8:18-cv-01070-WFJ-CPT (M.D. Fla. June 21, 2019) (Doc. 63). Additionally, Judge Moody, also from the Middle District of Florida, approved a one-third common fund fee request in another very

similar COBRA class action case styled *Hicks v. Lockheed Martin Corp, Inc.*, 8:19-cv-00261-JSM-TGW (M.D. Fla. Dec. 11, 2019) (granting Plaintiff's counsel one-third of gross common fund, plus costs, in COBRA case).

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6. The case was taken on contingency.

The sixth *Johnson* factor concerns the type of fee arrangement (hourly or contingent) entered into by the attorney. *Johnson*, 488 F.2d at 718. "A contingency fee arrangement often justifies an increase in the award of attorneys' fees." *Behrens v. Wometco Enters.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988); *see also Hall v. Board of School Comm'rs*, 707 F.2d 464, 465 (11th Cir. 1983) (concluding that district court abused its discretion where it failed to award an enhancement of the amount of attorneys' fees where plaintiff's counsel was retained under a contingency fee agreement).

Class Counsel undertook significant financial risk in prosecuting this case because it was taken on a contingency basis with no guarantee of recovery. Plaintiff pursued difficult claims, against a well-funded Defendant. There were no assurances that Plaintiff would survive early motion practice, summary judgment, or trial, much less achieve a \$750,000.00 recovery for the class. Plaintiff's Counsel incurred significant fees in prosecuting this action and has received no compensation thus far. Moreover, there was a very real possibility that Plaintiff's Counsel would not recover anything for their work, should Defendant succeed at the pleading stages of litigation with a motion to dismiss, or later at summary judgment, trial or, later still, on appeal. For these reasons, this factor supports the approval of the requested amount of attorneys' fees. *Waters v. Cook's Pest Control, Inc.*, No. 2:07-cv-00394-LSC, 2012 WL 2923542, at *17 (N.D. Ala. July 17, 2012).

7. Time Limitations.

"Priority work that delays the lawyer's other legal work is entitled to some premium. This factor is particularly important when new counsel is called in to prosecute the appeal or handle other matters at a late stage in the proceedings." *Johnson*, 488 F.2d at 718. This case involved significant hours of work and demanded much of Plaintiff's Counsel's time. Thus, this factor also cuts in favor of finding the fee sought reasonable.

8. Amount involved and the results obtained.

Class Counsel recovered a \$750,000.00 settlement on behalf of the Settlement Class, all of which will be paid out and none of which will revert to Defendant. In doing so, Class Counsel effectively and quickly achieved a high-dollar Settlement that provides meaningful monetary relief for all Class Members, despite significant litigation risks which could have resulted in the Class

achieving a significantly worse recovery, or even no recovery at all. Accordingly, given the excellent results achieved, this factor weighs heavily in favor of awarding the Requested Fee.

9. Experience, Reputation, and Ability of the Attorneys.

Plaintiff's Counsel have set forth their qualifications and prior experience in the Declarations they attached to their Motion for Preliminary Approval. (*See* Docs. 41-3, 41-4, 41-5). This case has, at all stages, been handled on both sides by very experienced lawyers whose reputations for effective handling of complex litigation are known throughout Florida, and the country. This factor also weighs in favor of awarding the Requested Fee.

10. Undesirability of the case.

In the above sections Plaintiff highlighted the complexity and skill required to prosecute this action. The expense and time involved in prosecuting such litigation on a contingent basis, with no guarantee or high likelihood of recovery would make this case highly undesirable for many attorneys.

Additionally, the Settlement is even more impressive when considering the substantial risks of non-recovery in this case. COBRA cases are not "sure things" or "slam dunks." Unlike other employment law statutes, attorneys' fees are discretionary. Therefore, this factor, too, supports the requested amount of attorneys' fees.

11. Nature and length of the professional relationship with the client.

Plaintiff's Counsel was not representing a long-term client in this matter. This factor is neutral.

12. Awards in similar cases.

"The reasonableness of a fee may also be considered in light of awards made in similar litigation within and without the court's circuit." *Johnson*, 488 F.2d at 719. The monetary amount

recovered by Class Counsel in this case is comparable and in line with the very few other COBRA class action settlements that exist. For example, as set forth above, Judge Merryday from the Middle District of Florida granted a nearly identical fee and award in a very similar COBRA class action case styled *Valdivieso v. Cushman & Wakefield, Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla. Dec. 7, 2018). Likewise, Middle District of Florida Judge Jung granted a one-third common fund fee request in an equally similar COBRA class action case styled *Carnegie v. FirstFleet, Inc. of Tennessee, Inc.*, Case No.: 8:18-cv-01070-WFJ-CPT (M.D. Fla. June 21, 2019) (Doc. 63). Additionally, Judge Moody, also from the Middle District of Florida, approved a one-third common fund fee request in another very similar COBRA class action case styled *Hicks v. Lockheed Martin Corp, Inc.*, 8:19-cv-00261-JSM-TGW (M.D. Fla. Dec. 11, 2019) (granting Plaintiff's counsel one-third of gross common fund, plus costs, in COBRA case).

Similar awards have been obtained in other class action matters in which the undersigned have served as class counsel here in the Southern District of Florida, including in *Santiago, et al., v. University of Miami*, 1:20-cv-21784-DPG (S.D. Fla. April 7, 2022)(Doc. 66), in which the Court awarded the undersigned one-third of the common fund in an ERISA retirement plan class action cases; *see also Moody, et al. v. Ascenda USA, Inc., et al.*, 0:16-cv-60364-WPD (S.D. Fla., March 12, 2018)(Docs. 113, 114)(Court awarded attorneys' fees of 33 1/3% of common fund in FCRA class action case); *Hargrett v. Amazon.com, DEDC, LLC*, Case No.: 8:15-cv-02456-WFJ-AAS, in which the Court awarded the undersigned 33 1/3% of a common fund in FCRA class action case. (M.D. Fla. Nov., 16, 2018 (Doc. 187); *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL-TBM (M.D. Fla., October 9, 2015, Doc. 64) (same); *Patrick v. Interstate Mgmt. Co., LLC*, 8:15-cv-01252-VMC-AEP (M.D. Fla. April 29, 2016, Doc. 48) (same). For these reasons, this factor also supports granting the requested fee.

In sum, the amount of fees and costs sought here total one third of the Settlement common fund. One-third of a common fund is well in line with fees generally awarded in class action cases, and for settlements of this amount and, pursuant to the factors discussed above, should be deemed reasonable.

B. Costs.

Pursuant to the Parties' settlement agreement, Plaintiff is entitled to recover his costs. To date, Class Counsel has incurred \$14,473.20 in reimbursable litigation costs for the filing fee, process service fee, copying and printing costs, and mediator fees. The undersigned also attested to the costs sought herein in the attached supporting Declarations. In sum, the costs sought herein by Class Counsel are reasonable and should be awarded from the common fund.

C. General Release Payment.

Pursuant to paragraph 43 of the Settlement Agreement, the Class Representative, John G. Baja, also seeks approval of a general release payment of ten thousand dollars (\$10,000) in exchange for his release of all possible claims he may have against Defendant including, but not limited to, the termination of his employment. *See, e.g., Twardosky v. Waste Management, Inc., et al.*, Case No.: 8:19-cv-02467-CEH-TGW (M.D. Fla. June 28, 2021)(Doc. 58)(approving \$10,000 general release payment to class representative in class action case); *McNamara v. Brenntag Mid-South, Inc.*, Case 8:21-cv-00618 (M.D. Fla. Feb. 17, 2022)(Doc. 32)(approving \$5,000 general release payment to class representative in class action case).

WHEREFORE, Plaintiff respectfully moves this Court for an Order awarding his counsel attorneys' fees in the amount of one-third of the total Settlement Fund (\$250,000), plus litigation costs totaling \$14,473.20. Finally, moves the Court for an Order awarding him a general release payment of \$10,000 from the Settlement Fund. A proposed Order is attached as Exhibit A.

LOCAL RULE 7.1(A)(3) CERTIFICATE

The undersigned certifies that Plaintiff's counsel has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and, per the Parties' settlement agreement, Defendant does not oppose the relief sought in this Motion.

Dated this 9th day of September, 2022.

Respectfully submitted,

/s/ Brandon J. Hill

LUIS A. CABASSA

Florida Bar Number: 053643

Direct No.: 813-379-2565

BRANDON J. HILL

Florida Bar Number: 37061

Direct No.: 813-337-7992

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-and-

MARC R. EDELMAN, ESQ.

Fla. Bar No. 0096342

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Tampa, FL 33602

Telephone: 813-577-4722

Fax: 813-257-0572

Email: MEdelman@forthepeople.com

Class Counsel and Attorneys for Named Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been forwarded to counsel of record for all parties via the Court's CM/ECF filing system on this 9th day of September, 2022.

/s/ Brandon J. Hill

BRANDON J. HILL

EXHIBIT A

(Proposed Order)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO.: 0:21-cv-61210-SINGHAL/VALLE

JOHN G. BAJA, individually
and on behalf of all others
similarly-situated,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

_____ /

**[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION
FOR ATTORNEYS' FEES AND COSTS**

UPON DUE AND CAREFUL CONSIDERATION of the procedural history of this case, together with the Plaintiff's counsel's written submission, it is **ORDERED AND ADJUDGED** that the Plaintiff's Unopposed Motion for Attorneys' Fees and Costs, is **GRANTED**. Plaintiff's counsel is awarded a fee consisting of one-third of the Settlement Fund (\$250,000), plus costs from the Settlement Fund totaling \$14,473.20. Finally, Class Representative John G. Baja is awarded a general release payment of \$10,000 from the Settlement Fund.

DONE and ORDERED this _____ day of September, 2022.

THE HONORABLE RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

JOHN G. BAJA, individually
and on behalf of all others
similarly-situated,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant

Case No.: 0:21-cv-61210-SINGHAL/VALLE

**DECLARATION OF AMERICAN LEGAL CLAIM SERVICES, LLC
REGARDING DUE DILIGENCE IN NOTICING**

I, Noah Fiori, declare as follows:

1. I am a competent adult, over the age of eighteen, and this declaration is based on my personal knowledge.
2. I am an Analyst for American Legal Claim Services, LLC (“ALCS”). ALCS was selected the Court to serve as the Settlement Administrator and to otherwise comply with the provisions set forth in the Class Action Settlement Agreement and the Preliminary Approval Order. I was responsible for overseeing the dissemination of the Notice of Settlement (Notice) to class members, exclusion processing, and all other matters required as Settlement Administrator.
3. **Class List Receipt and Processing:** On July 13, 2022, ALCS received the mailing list (“Class List”) from counsel for the Defendant containing 38,818 records with the names and street addresses. Based on a combination of name and address, a total of 1,317 duplicates were identified and removed for the purpose of noticing. The final Class List contained 37,501 class members after the duplicates were removed. Throughout the noticing process, ALCS utilized several means of ensuring the most accurate mailing addresses for class members. These methods included National Change of Address through the USPS, skip-tracing, and manual updates from class members.
4. **Initial Class Notice:** On July 27, 2022, ALCS mailed the Notice substantially in the form approved by the Court (attached hereto as Exhibit A), to 37,501 class members.

5. **Returned Mail Handling:** ALCS processed all Notices returned by the USPS. ALCS conducted address searches using a nationally recognized location service to attempt to locate new addresses for these class members. Of the 37,501 Notices mailed, 2,933 were returned by the USPS. ALCS has remailed 2,721 Notices to updated addresses. Of the 2,721 remailed Notices, 21 were returned by the USPS as of the date of this declaration.
6. **Noticing Campaign Summary:** The following is a summary of the noticing, as of the date of this Declaration:
 - Notices initially mailed via USPS: 37,501
 - Notices returned by USPS: 2,933
 - Notices remailed via USPS: 2,721
 - Rемаiled Notices returned: 21
 - Total number of mailed Notices undeliverable: 233
 - Percentage of Notices deemed delivered: 99.38%
7. **Website:** ALCS created a case website www.bajaCOBRAsettlement.com that provided further information as stated in the Notice. The website contained sections for Important Court Documents, Key Dates, and FAQs. Class members also had the opportunity to update their address online.
8. **Toll-Free Telephone.** ALCS established a toll-free telephone line 800-706-6619 for Class member to contact with questions about the settlement or updating their information.
9. **Exclusions:** The Notice instructed those who wish to opt out of the settlement to write to the Settlement Administrator stating that the class member does not wish to participate. It further states that an opt out request must be postmarked by September 25, 2022. As of the date of this declaration, we have received 8 requests for exclusions.
10. **Objections:** The Notice informed class members who wish to object to the settlement to file their written objection with the Court by September 25, 2022. I am not aware of any objections being filed with the Court as of the date of this declaration.

I declare under penalty of perjury pursuant to the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge. Executed on September 8, 2022, in Jacksonville, Florida.



Noah Fiori

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**COURT ORDERED
NOTICE**

Baja
v.
Costco Wholesale Corp.

Class Action Notice

A Settlement has been reached in a proposed class action lawsuit in which Named Plaintiff John G. Baja alleges that Costco Wholesale Corporation ("Defendant") provided him and other putative class members with a COBRA Notice that did not adequately inform class members how to exercise their right to elect COBRA coverage. Defendant denies Named Plaintiff's allegations and denies that it violated any law or regulation (nor has the Court found that Defendant violated any law or regulation), and Defendant has affirmatively asserted that all COBRA Notices complied with applicable laws, but has agreed to the Settlement to avoid the uncertainties and expenses of continuing the case. Defendant is agreeing to deposit \$750,000 into a Settlement Account and, after deducting amounts for the Named Plaintiff's reasonable attorneys' fees and costs, settlement administration costs, and potential General Release Payment to the Named Plaintiff, each Settlement Class Member will receive a pro rata share of the remaining net settlement proceeds. There are approximately 38,818 Settlement Class Members.

Baja v. Costco Wholesale Corp.
c/o Settlement Administrator
PO Box 23680
Jacksonville, FL 32241-3459

PRSR FIRST CLASS
U.S. POSTAGE
PAID
MAILED FROM
ZIP CODE 32216
PERMIT NO 584



Postal Service: Please do not mark
barcode <<noticeid>> – <<keyline>>

«fname» «lname»
«addrline1» «addrline2»
«addrline3»
«city» «state» «zip»
«country»

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Am I a Class Member? Defendant's records indicate you are a member of the settlement class defined as follows: "All participants and beneficiaries in the Costco Employee Benefits Program ("the Plan") who were sent the COBRA notice by or on behalf of Defendant at any time during the Class Period [i.e., between June 9, 2018, and June 9, 2021] who did not elect COBRA Coverage" (referenced herein as the "Settlement Class").

What Will the Settlement Mean for Me? If the Court approves the Settlement, you will receive a payment by check. After deducting expenses, the "Gross Settlement" amount of \$750,000 will be divided equally on a pro rata basis among all Settlement Class Members who do not opt out of the Settlement. The gross amount payable to each Settlement Class Member (assuming all potential members participate) will be approximately \$19.32. However, certain deductions will be made from the Settlement Account, as approved by the Court. Specifically, Class Counsel will ask the Court to approve (1) Class Counsel's attorneys' fees equivalent to one-third of the Settlement Account (up to \$250,000.00); (2) Class Counsel's litigation costs (up to \$14,473.20); (3) settlement administration costs (estimated to be \$98,097.00) and (4) a General Release Payment of \$10,000.00 for Named Plaintiff. If the Court awards the amounts, the net amount to each Settlement Class Member will be approximately \$9.72.

In exchange for their pro rata shares of the net settlement proceeds, each Settlement Class Member will be releasing Defendant, the Plan, the COBRA administrator and other administrators for the Plan, and other related entities (the "Released Parties") from any and all claims that have been or could have been brought in this action with respect to the COBRA Notice sent to each Settlement Class Member at issue in Named Plaintiff's First Amended Class Action Complaint.

What Do I Need to Do to Receive a Payment? To receive a settlement payment, you do not need to do anything. You will receive your pro-rata portion of the net Settlement Fund provided you do not opt-out of the Settlement, as described in further detail below.

Who Represents Me? The Court appointed lawyers Luis A. Cabassa and Brandon J. Hill from Wenzel Fenton Cabassa, P.A., and Marc Edelman of Morgan & Morgan, P.A. to represent the Settlement Class. As Class Counsel, they will seek to be paid legal fees out of the Settlement Account as described above. You may hire and pay for a lawyer at your own expense if you do not wish to be represented by Class Counsel, but you are not required to retain your own counsel.

(CONTINUED ON REVERSE SIDE)

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What If I Don't Like the Settlement? You may exclude yourself from participating in the Settlement or object to its terms. To exclude yourself ("opt out") and keep any individual rights you may have against Defendant concerning the COBRA Notice at issue in this lawsuit (and Defendant will keep any defenses it has against your claims), you must specifically state in writing that you want to opt out of the Settlement and send your written opt-out request to the Settlement Administrator by September 25, 2022. Your written opt-out request must (i) state the case name and number (Baja v. Costco Wholesale Corporation, No. 0:21-cv-61210); (ii) state your name, address, telephone number, and email address; and (iii) include your personal signature. If you do not opt out of the Settlement, you may still object to the terms of the proposed Settlement by filing a written objection with the Court and sending a copy of your objection to the Settlement Administrator by September 25, 2022. If you object to the Settlement, your written objection must (i) state the case name and number; (ii) provide the specific grounds for your objection; and (iii) state whether your objection pertains to just you individually, or all or some of the proposed Settlement Class (iv) state your name, address, telephone number, and email address; (v) state whether you intend to appear at the Final Approval Hearing, either with or without your own counsel; and (vi) include your personal signature (and your legal counsel's signature, if you have your own representation).

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing on November 4, 2022, at 11:00 a.m. at the United States District Court for the Southern District of Florida, U.S. Federal Building and Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301, in Courtroom 110. The hearing may be postponed to a later date so you should visit the website listed below for updates prior to the hearing date. It may also be conducted via telephone or by Zoom due to COVID without further notice. If the Court approves the settlement, there may be appeals or objections that must be resolved before the settlement will become effective. Settlement payments to members of the Settlement Class will be made only if the settlement is finally approved by the Court and only after all appeals or objections are resolved. This may take some time, so please be patient. You may check on the status of this approval process by visiting this website www.BajaCobraSettlement.com.

How May I Get More Information? For more information, contact the Settlement Administrator, PO Box 23680, Jacksonville, FL, 32241-3459, at (800) 706-6619, via e-mail at info@BajaCobraSettlement.com, or visit www.BajaCobraSettlement.com.

Notice ID: <<noticeid>>

PIN: <<pin>>

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Visit BajaCobraSettlement.com or use this section to update your address.

Notice ID: <<noticeid>>

<<keyline>>

PIN:

<<pin>>

NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

PLACE
STAMP
HERE

*Baja v. Costco Wholesale Corp.
c/o Settlement Administrator
PO Box 23680
Jacksonville, FL 32241-3680*

Administrator Use Only – Do Not Write Below This Line

568

NID: «noticeid»
v1.0



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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO.: 0:21-cv-61210-SINGHAL/VALLE

**JOHN G. BAJA, individually
and on behalf of all others
similarly-situated,**

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

_____ /

DECLARATION OF BRANDON J. HILL

I, Brandon J. Hill, declare under penalty of perjury as follows:

1. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I am a partner at Wenzel Fenton & Cabassa, P.A., and counsel in the above-styled case.

3. I have been a member of the Florida Bar since April of 2007, the Illinois Bar since 2010, and District of Columbia Bar since 2011. I have an LL.M. from George Washington University School of Law, a J.D. from Florida State University College of Law, and two Bachelor's degrees from the University of Kansas.

4. I am admitted in the United States District Courts for the Northern, Middle, and Southern District Courts of Florida, the Northern District of Illinois, the Eastern District of Michigan, and the United States Court of Appeals for the Eleventh Circuit.

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout Florida, and beyond. In the Middle District of Florida alone I have served as co-counsel or lead counsel in 500+ federal cases.

6. I possess the requisite experience necessary to serve as class counsel in this case. I have been appointed as class counsel in multiple class actions, including cases involving a few hundred class members up to nearly half a million class members. Below is a list of class action cases I have been appointed as class counsel by the Court:

- *Brown, et al. v. Lowe's Companies, Inc., and LexisNexis Screening Solutions, Inc.*, Case No.: 5:13-CV-00079-RLV-DSC (W.D.N.C) (appointed as co-class counsel in national FCRA class action matter involving 451,000 class members);
- *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL- TBM (M.D. Fla.) (Fair Credit Reporting Act class action settlement involving 20,000 individuals presided over by Judge Lazzara);
- *Kohler, Kimberly v. SWF Operations, LLC and Domino's Pizza, LLC*, Case No. 8:14-cv-2568-T-35TGH (appointed class counsel in Fair Credit Reporting Act case involving several hundred class members);
- *Hargrett, et al. v. Amazon.com, DEDC, LLC*, 8:15-cv-02456-WFJ-AAS, M.D. Fla. Case No.: 8:15-cv-02456 (appointed as class counsel in FCRA case with 480,000+ class members);
- *Smith, et al. v. QS Daytona, LLC*, Case No.: 6:15-cv-00347-GAP-KRS (M.D. Fla.) (Doc. 45) (appointed as class counsel in FCRA class action involving several hundred class members);
- *Patrick, Nieyshia v. Interstate Management Company, LLC*, Case No. 8:15-cv-1252-T-33AEP (M.D. Fla.) (appointed as class counsel in FCRA class action with approximately 32,000 class members);
- *Molina et al v. Ace Homecare LLC*, 8:16-cv-02214-JDW-TGW (M.D. Fla) (appointed as class counsel in WARN Act case with approximately 500 class members);
- *Moody, et al v. Ascenda, et al.*, Case No. 0:16-cv-60364-WPD (S.D. Fla.) (appointed as class counsel in FCRA class action with approximately 12,000 class members);

- *Mahoney v. TT of Pine Ridge, Inc.*, Case No.: 9:17-cv-80029-DMM (S.D. Fla. Nov. 20, 2017) (served as class counsel in TCPA case with 300,000+ class members).
- *George v. Primary Care Holding Inc.*, Case No. 0:17-cv-60217-BB (S.D. Fla.) (appointed as class counsel in FCRA class action);
- *Vazquez v. Marriott International, Inc.*, Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 20,000 class members);
- *Figueroa v. Baycare Healthcare System, Inc.*, Case No.: 8:17-cv-01780-JSM-AEP (M.D. Fla) (served as class counsel in FCRA case involving approximately 2,009 class members);
- *Valdivieso v. Cushman & Wakefield Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 2,000+ class members);
- *Dukes v. Air Canada*, Case No.: 8:18-cv-02176-TPB-JSS (M.D. Fla) (served as class counsel in FCRA case involving approximately 1,300 class members);
- *Rivera v. Aimbridge Hospitality, LLC*, Case No.: 8:18-cv-02192-EAK-JSS (M.D. Fla) remanded to *Rivera v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in data breach case with 320,000 class members).
- *Blaney v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 17,00 class members);
- *Cathey v. Heartland Dental, LLC*, 2019-CA-000568, Fourth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 9,800 class members);
- *Harake v. Trace Staffing Solutions, LLC*, Case No.: 8:19-cv-00243-CEH-CPT (M.D. Fla) (served as class counsel in Fair Credit Reporting Act case with 8,700 class members);
- *Hicks v. Lockheed Martin Corporation*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 54,000+ class members);
- *Holly-Taylor v. Acadia Healthcare Company, Inc., et al.*, Case No.: 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 25,00 class members);
- *Ali v. Laser Spine Institute, LLC*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel WARN Act case involving 500 class members);
- *Rigney et al v. Target Corporation*, Case No.: 8:19-cv-01432-MSS-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 92,000+ class members)
- *Luker v. Cognizant Technologies Solutions U.S. Corporation*, Case No.: 8:19-cv-01448-WFJ-JSS (M.D. Fla) (served as class counsel in wage case with 308 class members);

- *Lyttle v. Trulieve, Inc., et al.*, Case No.: 8:19-cv-02313-CEH-TGW (M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 1,300 class members);
- *Twardosky v. Waste Management, Inc. of Florida, et al.*, 8:19-cv-02467-CEH-TGW(M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 29,295 class members);
- *Silberstein v. Petsmart, Inc.*, 8:19-cv-02800-SCB-AAS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 12,000+ class members);
- *Benson v. Enterprise Holdings, Inc. et al.*, Case No.: 6:20-cv-00891-RBD-LRH (M.D. Fla) (appointed as class counsel in WARN Act class action involving 900+ class members);
- *Morris et al v. US Foods, Inc.*, Case No.: 8:20-cv-00105-SDM-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 19,000+ class members);
- *Forsyth v. Lucky's Market GP2, LLC et al*, Case No.: 20-10166 (JTD); Adv. Pro. No. 20-50449 (JTD) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court adversarial proceeding involving hundreds of former employees);
- *Taylor v. Citizens Telecom Services Company, LLC*, Case No.: 8:20-cv-00509-CEH-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 16,137 class members);
- *Holmes et al v. WCA Waste Systems, Inc.*, Case No.: 8:20-cv-00766-SCB-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 1,720 class members);
- *Boyd v. Task Management, Inc.*, Case No.: 8:20-cv-00780-MSS-JSS (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 5,500 class members);
- *In re The Hertz Corporation, et al*, Case No.: 20-11218 (MFW) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court involving 6,000+ class members);
- *Kaintz v. The Goodman Group, Inc.*, 8:20-cv-02115-VMC-AAS (appointed as class counsel in deficient COBRA notice case with 2,889 class members);
- *Gorman v. Whelan Event Staffing Services, Inc., et al.*, Case No.: 8:20-cv-02275-CEH-AEP (appointed as class counsel in Fair Credit Reporting Act case involving 29,000+ class members);
- *Benitez v. FGO Delivers, LLC*, Case No.: 8:21-cv-00221-KKM-TGW (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 9,000+ class members);
- *Lopez v. Ollie's Bargain Outlet, Inc.*, 2020-CA-002511-OC, Ninth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 3,500 class members);
- *McNamara v. Brenntag Mid-South, Inc.*, Case No.: 8:21-cv-00618-MSS-JSS (M.D. Fla.) (appointed as class counsel in deficient COBRA notice case with 800+ class members);

- *Santiago et al v. University of Miami*, 1:20-cv-21784-DPG (appointed as class counsel in ERISA class action involving university retirement plan and approximately 20,000 class members).

7. I have been retained by Plaintiff as counsel in the instant case.

8. I am confident that the proposed Class Representative, John Baja (“Plaintiff” or “Mr. Baja”), will adequately represent the putative class members in this case.

9. At all times Mr. Baja has actively participated in this case and represented the interests of the class members. He provided critical information utilized to draft the Complaint, Amended Complaint, and even to the draft discovery propounded in this case. He attended mediation via Zoom, participated in settlement discussions, and has otherwise been an exemplary class representative. No conflicts, disabling or otherwise, exist between Mr. Baja and the class members.

10. My co-counsel and I have the desire, intention, financial resources, and ability to prosecute these claims in the face of strenuous opposition by Defendant. I have no conflicts with any class members.

11. The decision to mediate this case, and resolve this case, on a class basis was well informed. Prior to settling this case we obtained from Defendant substantive information on the class, along with information on Defendant’s COBRA notice.

12. By way of further procedural background, Named Plaintiff John Baja filed his original Complaint on June 9, 2021. (*See* Doc. 1). Defendant filed a potentially dispositive Motion to Dismiss on July 21, 2021, raising a variety of arguments, including failure to state a claim. (*See* Doc. 7). Before the Court ruled on Defendant’s Motion to Dismiss, Named Plaintiff filed a First Amended Complaint which, in turn, mooted the first Motion to Dismiss filed by Defendant. (*See* Docs. 14, 16).

13. The Parties conferred and filed the required Joint Scheduling Report on August 12, 2021. (Doc. 22). The next day, the Court entered its Scheduling Order. (Doc. 23).

14. Defendant filed a Motion to Dismiss the First Amended Complaint on August 18, 2021. (Doc. 24). On September 1, 2021, Named Plaintiff filed a comprehensive response in opposition to the Motion to Dismiss. (Doc. 25). Defendant filed its reply brief on September 8, 2021. (Doc. 27).

15. In the interim, our side propounded on Defendant class-wide written discovery on Defendant and began the process of scheduling depositions. Specifically, we propounded on Defendant written discovery requests, a Fed.R.Civ.P. 30(b)(6) deposition notice, as well as notice of intent to serve a third-party subpoena.

16. Shortly thereafter, on September 17, 2021, Defendant filed a Motion to Stay Discovery. (Doc. 28). Named Plaintiff filed his opposition on September 24, 2021. (Doc. 30). The Court denied Defendant's Motion to Stay Discovery on September 27, 2021. (Doc. 31).

17. Following the denial of Defendant's Motion to Motion to Stay Discovery, counsel for both sides explored the possibility of an early class-wide resolution. Based on discussion between counsel for both sides, the Parties then agreed an early class-wide mediation may be productive at this point to try and resolve this case on a class basis.

18. As a result, on October 12, 2021, the Parties filed a Joint Motion to Stay these proceedings, including as to the Court's ruling on Defendant's pending Motion to Dismiss and as to the Parties' respective discovery obligations, pending completion of mediation. The Court granted that Motion on October 13, 2021 (see Doc. 35), and the case was stayed

19. Furthermore, a settlement was only reached with the assistance of one of the nation's most respected mediators, Antonio Piazza.

20. The terms of the Settlement Agreement were modeled after similar COBRA class action settlements approved by other federal courts, including in *Hicks v. Lockheed Martin Corp., Inc.*, 8:19-cv-00261-JSM-TGW (M.D. Fla. Sept. 5, 2018) (Doc. 34), and *Rigney, et al. v. Target Corp.*, No. 8:19-cv-01432-MSS-JSS (M.D. Fla. July 14, 2020) (Doc. Nos. 49-4).

21. Based upon my involvement in many, many class actions over the last few years, including in deficient COBRA notice cases filed and settled in federal courts over the last few years cited Plaintiff's Motion, the Parties' proposed settlement is fair, reasonable, and adequate.

22. In sum, as Plaintiff's counsel I was well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them, as a result of similar class action cases I've brought in the past. I fully support the settlement.

23. For the reasons set forth above, I respectfully submit that this settlement is fair, reasonable, and adequate and should be approved.

24. Finally, our law firm incurred \$7,473.20 in costs prosecuting this action. An invoice from our firm is attached hereto. Specifically, those costs include: 1) \$402 filing fee; 2) \$60.00 process service fee; 3) \$7,000 mediator fee (half of Plaintiff's total portion); and, finally, 4) \$11.02 in postage.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9th day of September, 2022.



Brandon J. Hill

Wenzel Fenton Cabassa PA

INVOICE

1110 N Florida Avenue, Suite 300
Tampa, FL 33602-3300

DATE
12/2/2021

INVOICE #
14036

TO:

John Baja
6121 SE Landing Way #1
Stuart, FL 34997

DATE	Item	DESCRIPTION OF SERVICES	TIME	RATE	TOTAL
7/12/2021	Process	Process Service	1	60.00	60.00
7/13/2021	Filings	Court Filings & Misc Fees	1	402.00	402.00
10/15/2021	Mediator	Mediator Fees	1	7,000.00	7,000.00
12/2/2021	Postage	Postage.		11.20	11.20

Total \$7,473.20

Payments/Credits \$0.00

Balance Due \$7,473.20

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO.: 0:21-cv-61210-SINGHAL/VALLE

**JOHN G. BAJA, individually
and on behalf of all others
similarly-situated,**

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

_____ /

DECLARATION OF LUIS A. CABASSA

1. I represent Plaintiff in the above matter, along with the other attorneys in my firm.

2. Regarding my relevant educational and professional background, I have been engaged in the practice of law for approximately twenty-six (26) years. The corresponding state and federal bar admissions are:

- Supreme Court of Florida (1995)
- United States Court of Appeals for the Eleventh Circuit (1998)
- United States District Court for the Northern District of Florida (1995)
- United States District Court for the Middle District of Florida (1997)
- United States District Court for the Southern District of Florida (2003)

3. I obtained a *Juris Doctor* in 1995 from the Florida State University College of Law (With Honors) and a B.S. in Industrial Labor Relations from Cornell University in 1992 (With Honors).

4. For over twenty years, my practice has been devoted almost exclusively to Labor and Employment Law. I have extensive trial experience in State and Federal Court, including several collective and class actions.

5. Since 2005, I have been Board Certified by the Florida Bar as a Specialist in Labor and Employment Law. I am also AV rated by Martindale Hubbell and a Fellow of the American Bar Foundation.

6. I have served on the Board Certification Committee for the Labor and Employment Section of the Florida Bar.

7. During my career I have been lead counsel, or co-counsel, in excess of 600 federal and state court lawsuits.

8. I have been retained by Plaintiff as counsel in the instant case.

9. I possess the requisite experience necessary to serve as class counsel in this case. I have been appointed as class counsel in multiple class actions, including cases involving a few hundred class members up to nearly half a million class members. Below is a list of class action cases I have been appointed as class counsel by the Court:

- *Brown, et al. v. Lowe's Companies, Inc., and LexisNexis Screening Solutions, Inc.*, Case No.: 5:13-CV-00079-RLV-DSC (W.D.N.C) (appointed as co-class counsel in national FCRA class action matter involving 451,000 class members);
- *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL- TBM (M.D. Fla.) (served as class counsel in Fair Credit Reporting Act class case involving 20,000 individuals);
- *Banks v. Alorica, Inc.*, Case No.: 8:13-cv-00985-JDW-TBM (M.D. Fla.) (served as class counsel in WARN Act class action in a case involving hundreds of class members);
- *Kohler, Kimberly v. SWF Operations, LLC and Domino's Pizza, LLC*, Case No. 8:14-cv-2568-T-35TGH (appointed class counsel in Fair Credit Reporting Act case involving several hundred class members);
- *Hargrett, et al. v. Amazon.com, DEDC, LLC*, 8:15-cv-02456-WFJ-AAS, M.D. Fla. Case No.: 8:15-cv-02456 (appointed as class counsel in FCRA case with 480,000+ class members);

- *Smith, et al. v. QS Daytona, LLC*, Case No.: 6:15-cv-00347-GAP-KRS (M.D. Fla.) (Doc. 45) (appointed as class counsel in FCRA class action involving several hundred class members);
- *Patrick, Nieyshia v. Interstate Management Company, LLC*, Case No. 8:15-cv-1252-T-33AEP (M.D. Fla.) (appointed as class counsel in FCRA class action with approximately 32,000 class members);
- *Molina et al v. Ace Homecare LLC*, 8:16-cv-02214-JDW-TGW (M.D. Fla) (appointed as class counsel in WARN Act case with approximately 500 class members);
- *Moody, et al v. Ascenda, et al.*, Case No. 0:16-cv-60364-WPD (S.D. Fla.) (appointed as class counsel in FCRA class action with approximately 12,000 class members);
- *Mahoney v. TT of Pine Ridge, Inc.*, Case No.: 9:17-cv-80029-DMM (S.D. Fla. Nov. 20, 2017) (served as class counsel in TCPA case with 300,000+ class members).
- *George v. Primary Care Holding Inc.*, Case No. 0:17-cv-60217-BB (S.D. Fla.) (appointed as class counsel in FCRA class action);
- *Vazquez v. Marriott International, Inc.*, Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 20,000 class members);
- *Valdivieso v. Cushman & Wakefield Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 2,000+ class members);
- *Dukes v. Air Canada*, Case No.: 8:18-cv-02176-TPB-JSS (M.D. Fla) (served as class counsel in FCRA case involving approximately 1,300 class members);
- *Figueroa v. Baycare Healthcare System, Inc.*, Case No.: 8:17-cv-01780-JSM-AEP (M.D. Fla) (served as class counsel in FCRA case involving approximately 2,009 class members);
- *Rivera v. Aimbridge Hospitality, LLC*, Case No.: 8:18-cv-02192-EAK-JSS (M.D. Fla) remanded to *Rivera v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in data breach case with 320,000 class members).
- *Blaney v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 17,00 class members);
- *Cathey v. Heartland Dental, LLC*, 2019-CA-000568, Fourth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 9,800 class members);
- *Harake v. Trace Staffing Solutions, LLC*, Case No.: 8:19-cv-00243-CEH-CPT (M.D. Fla) (served as class counsel in Fair Credit Reporting Act case with 8,700 class members);
- *Hicks v. Lockheed Martin Corporation*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 54,000+ class members);
- *Holly-Taylor v. Acadia Healthcare Company, Inc., et al.*, Case No.: 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida

- (served as class counsel in Fair Credit Reporting Act case with 25,00 class members);
- *Ali v. Laser Spine Institute, LLC*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel WARN Act case involving 500 class members);
 - *Rigney et al v. Target Corporation*, Case No.: 8:19-cv-01432-MSS-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 92,000+ class members)
 - *Luker v. Cognizant Technologies Solutions U.S. Corporation*, Case No.: 8:19-cv-01448-WFJ-JSS (M.D. Fla) (served as class counsel in wage case with 308 class members);
 - *Lyttle v. Trulieve, Inc., et al.*, Case No.: 8:19-cv-02313-CEH-TGW (M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 1,300 class members);
 - *Twardosky v. Waste Management, Inc. of Florida, et al.*, 8:19-cv-02467-CEH-TGW(M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 29,295 class members);
 - *Silberstein v. Petsmart, Inc.*, 8:19-cv-02800-SCB-AAS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 12,000+ class members);
 - *Benson v. Enterprise Holdings, Inc. et al.*, Case No.: 6:20-cv-00891-RBD-LRH (M.D. Fla) (appointed as class counsel in WARN Act class action involving 900+ class members);
 - *Morris et al v. US Foods, Inc.*, Case No.: 8:20-cv-00105-SDM-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 19,000+ class members);
 - *Forsyth v. Lucky's Market GP2, LLC et al*, Case No.: 20-10166 (JTD); Adv. Pro. No. 20-50449 (JTD) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court adversarial proceeding involving hundreds of former employees);
 - *Taylor v. Citizens Telecom Services Company, LLC*, Case No.: 8:20-cv-00509-CEH-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 16,137 class members);
 - *Holmes et al v. WCA Waste Systems, Inc.*, Case No.: 8:20-cv-00766-SCB-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 1,720 class members);
 - *Boyd v. Task Management, Inc.*, Case No.: 8:20-cv-00780-MSS-JSS (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 5,500 class members);
 - *In re The Hertz Corporation, et al*, Case No.: 20-11218 (MFW) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court involving 6,000+ class members);
 - *Kaintz v. The Goodman Group, Inc.*, 8:20-cv-02115-VMC-AAS (appointed as class counsel in deficient COBRA notice case with 2,889 class members);
 - *Gorman v. Whelan Event Staffing Services, Inc., et al.*, Case No.: 8:20-cv-02275-CEH-AEP (appointed as class counsel in Fair Credit Reporting Act case involving 29,000+ class members);

- *Benitez v. FGO Delivers, LLC*, Case No.: 8:21-cv-00221-KKM-TGW (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 9,000+ class members);
- *Lopez v. Ollie's Bargain Outlet, Inc.*, 2020-CA-002511-OC, Ninth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 3,500 class members);
- *McNamara v. Brenntag Mid-South, Inc.*, Case No.: 8:21-cv-00618-MSS-JSS (M.D. Fla.) (appointed as class counsel in deficient COBRA notice case with 800+ class members);
- *Santiago et al v. University of Miami*, 1:20-cv-21784-DPG (appointed as class counsel in ERISA class action involving university retirement plan and approximately 20,000 class members).

10. I am confident that the proposed Class Representative, John Baja (“Plaintiff” or “Mr. Baja”), will adequately represent the putative class members in this case.

11. At all times Mr. Baja has actively participated in this case and represented the interests of the class members. He provided critical information utilized to draft the Complaint, Amended Complaint, and even to the draft discovery propounded in this case. He attended mediation via Zoom, participated in settlement discussions, and has otherwise been an exemplary class representative. No conflicts, disabling or otherwise, exist between Mr. Baja and the class members.

12. My co-counsel and I have the desire, intention, financial resources, and ability to prosecute these claims in the face of strenuous opposition by Defendant. I have no conflicts with any class members.

13. The decision to mediate this case, and resolve this case, on a class basis was well informed. Prior to settling this case we obtained from Defendant substantive information on the class, along with information on Defendant’s COBRA notice.

14. The terms of the Settlement Agreement were modeled after similar COBRA class action settlements approved by other federal courts, including in *Hicks v. Lockheed Martin Corp, Inc.*, 8:19-cv-00261-JSM-TGW (M.D. Fla. Sept. 5, 2018) (Doc. 34), and *Rigney, et al. v. Target Corp.*, No. 8:19-cv-01432-MSS-JSS (M.D. Fla. July 14, 2020) (Doc. Nos. 49-4).

15. Based upon my involvement in many, many class actions over the last few years, including in deficient COBRA notice cases filed and settled in federal courts over the last few years cited Plaintiff's Motion, the Parties' proposed settlement is fair, reasonable, and adequate.

16. In sum, as Plaintiff's counsel I was well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them, as a result of similar class action cases I've brought in the past. I fully support the settlement.

17. For the reasons set forth above, I respectfully submit that this settlement is fair, reasonable, and adequate and should be approved.

18. Finally, my law firm incurred \$7,473.20 in costs prosecuting this action. Specifically, those costs include: 1) \$402 filing fee; 2) \$60.00 process service fee; 3) \$7,000 mediator fee (half of Plaintiff's total portion); and, finally, 4) \$11.02 in postage.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9th day of September, 2022.



Luis A. Cabassa

Wenzel Fenton Cabassa PA

INVOICE

1110 N Florida Avenue, Suite 300
Tampa, FL 33602-3300

DATE
12/2/2021

INVOICE #
14036

TO:

John Baja
6121 SE Landing Way #1
Stuart, FL 34997

DATE	Item	DESCRIPTION OF SERVICES	TIME	RATE	TOTAL
7/12/2021	Process	Process Service	1	60.00	60.00
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Total \$7,473.20

Payments/Credits \$0.00

Balance Due \$7,473.20

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO.: 0:21-cv-61210-SINGHAL/VALLE

**JOHN G. BAJA, individually
and on behalf of all others
similarly-situated,**

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

_____ /

DECLARATION OF MARC R. EDELMAN

I, MARC R. EDELMAN, declare under penalty of perjury as follows:

1. My name is Marc R. Edelman. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I am employed as an attorney with the law firm of Morgan & Morgan, P.A. in the above-styled case. Morgan & Morgan is a nationwide trial advocacy law firm, currently employing over 500 attorneys, with vast resources at its disposal.

3. I am a licensed attorney in Florida. I have been a member of the Florida Bar since October, 1996. I have practiced law for over 20 years, half of which have been dedicated to labor and employment law. I have a J.D. from Florida State University College of Law and a Bachelor's degree from the University of Florida.

4. I am admitted in the United States District Courts for the Northern, Middle and Southern Districts of Florida, Eastern District of Michigan and Western District of Tennessee and the United States Court of Appeals for the Eleventh Circuit.

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout the nation.

6. Since joining Morgan & Morgan, I have focused my efforts on employment law and employment related class action lawsuits. I possess the experience required to represent the proposed class. Recently, I have been approved as class counsel in other class actions, *Graham v. Pyramid Healthcare Solutions*, Case No.: 8:16-cv-1324-T-30AAS (Dkt.58), (M.D. Fla. June 18, 2017)(Moody, J.); *Coles v. Stateserv Medical of Florida, LLC et al.* No. 8:17-cv-829-T-17-AEP, (M.D. Fla., April 10, 2017) (Dkt. 45); *Fosbrink v. Area Wide Protective, Inc.*, 8:17-cv-01154-JSM-CPT, (M.D. Fla., May 8, 2018) (Moody, J.) (Dkt. 58); *Musa v. SOS Security LLC*, No. 2:17-cv-05681-MCA-SCM (D.N.J., Newark Division, April 16, 2018) (Dkt. 42); *Grice v. Pepsi Beverages Company, et al*, Case No:1:17-cv-08853-JPO (S.D.N.Y. May 23, 2018); *Gibbs v. Centerplate, Inc., et al.*, No.8:17-cv- 2187-T-17EAK-JSS (M.D.Fla. July 12, 2018); *Hargrett v. Amazon.comDEDC LLC*, Case No.8:15-cv-2456-T-26EAJ (July 24, 2018); *Gross v. Advanced Disposal Services, Inc.*, No. 8:17- cv-1920-T-36TGW (M.D.Fla. Dec. 10, 2018); *Williams v. Naples Hotel Group*, No: 6:18-cv- 422-Orl-37DCI (M.D.Fla. June 11, 2019); *Sharp v. Technicolor Videocassette of Michigan, Inc.*, No.: 2:18-cv- 02325-cgc (W.D.T.N., December 5, 2019); *Lindsey v. Ring Power Corporation*, No.: 18-CA- 007124 (Fla. 13th Cir.); *Bulgajewski v. R.T.G. Furniture Corporation, d/b/a Rooms To Go*, No.: 18-CA-007000 (Fla. 13th Cir.). *Bryant v. Realogy Group, LLC*, No.: 8:18-cv-2572-T-60CPT (M.D.Fla. April 9, 2020); *Bermudez v. CFI Resorts Management, Inc.*, No.: 6:19-cv-1847-Orl- 37DCI (M.D.Fla. August 3, 2020);

Silberstein v. Petsmart, Inc., No.: 8:19-cv-02800-SCB-AAS (M.D.Fla. August 27, 2020); *Smith, et al. v. Kforce, Inc.*, No.: 8:19-cv-02068-CEH-CPT (M.D.Fla. June 28, 2021); *Betty Morris, et al. v. US Foods, Inc.*, No.: 8:20-cv-105-SDM-CPT (M.D.Fla. July 14, 2021); *Broughton v. Payroll Made Easy, Inc.*, No.: 2:20-cv-41-NPM (M.D.Fla. July 27, 2021); *Tweedie v. Waste Pro USA, Inc.*, No.: 8:19-cv-01827-TPB-AEP (M.D.Fla. August 5, 2021).

7. I have the desire, skills and ability to represent Plaintiff, Mr. Baja, and the putative class through the conclusion of the litigation. I have no conflicts with any class members.

8. Since the onset of this litigation, Mr. Baja has dutifully served the Settlement Class. He has provided insight and information related to his application experience, without which there would have been no lawsuit or proposed class resolution. Mr. Baja has been responsive to inquiries and participated in the proposed resolution. Through his efforts and subject to the Court's approval, the Settlement Class Members will receive monetary compensation for claims they most likely did not even know existed. I am confident Mr. Baja will continue to represent the Settlement Class through the conclusion of this litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of September, 2022 in Tampa, Florida.

/s/ Marc R. Edelman
MARC R. EDELMAN, ESQ.