

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

JOHN STEWART, on behalf of the NextEra
Energy, Inc., Employee Retirement Savings
Plan,

Plaintiff,

vs.

NEXTERA ENERGY, INC.,

Defendant.

No. 9:23-CV-81314-AMC

The Honorable Aileen M. Cannon

**PLAINTIFF'S MOTION FOR ATTORNEYS' FEES
AND REIMBURSEMENT OF OUT-OF-POCKET EXPENSES**

John Stewart (“Plaintiff”), individually and on behalf of the NextEra Energy Inc. Employee Retirement Savings Plan (the “Plan”), respectfully submits this Motion for an award of attorneys’ fees and reimbursement of expenses. Plaintiff requests an award of attorneys’ fees of one-third of the Settlement Amount of \$8,000,000.00 (a maximum amount of \$2,666,666.66). Plaintiff also requests reimbursement of out-of-pocket expenses incurred in connection with the prosecution of this action in the amount of \$44,921.18.

Courts in the Eleventh Circuit routinely award counsel fees of one-third of the common fund in analogous ERISA class actions. *See, e.g., Rzepkoski v. Nova Southeastern University, Inc.*, 0:22-cv-61147-WPD (S.D. Fla. June 3, 2025) (ECF 111) (granting class counsel’s request for attorney fee consisting of one-third of common fund, plus litigation costs, in similar ERISA retirement plan case); *Angelo v. NCL Corporation LTD, et al.*, 1:22-cv-22962-AHS (S.D. Fla. Feb. 20, 2024) (ECF 55) (same); *Santiago, et al., v. University of Miami*, 1:20-cv-21784-DPG (S.D. Fla. April 7, 2022) (ECF 66) (same); *Molla v. Gerdau Ameristeel US, Inc.*, Case No.: 8:22-cv-02094-VMC-SPF (M.D. Fla. July 8, 2025) (ECF 97) (same); *Stengl, et al., v. L3Harris Technologies, Inc. et al.*, 6:22-cv-00572-PGB-LHP (M.D. Fla. July 12, 2024) (ECF 133) (same); *Henderson v. Emory Univ.*, No. CV 16-2920-CAP, 2020 WL 9848978, at *1 (N.D. Ga. Nov. 4, 2020) (same); *Pledger v. Reliance Tr. Co.*, No. 1:15-CV-4444-MHC, 2021 WL 2253497, at *5 (N.D. Ga. Mar. 8, 2021) (same).

Courts in sister circuits are in accord with those in the Eleventh Circuit and also routinely award counsel one-third of common funds established in similar ERISA class actions.¹

¹ *See, e.g., Blackmon v. Zachary Holdings, Inc.*, No. 20-CV-00988, 2022 WL 3142362, at *4 (W.D. Tex. Aug. 5, 2022), judgment entered, No. 20-CV-00988, 2022 WL 3142364 (W.D. Tex. Aug. 5, 2022) (an ERISA case holding, “[t]he proposed award of 33 1/3% of the total settlement is reasonable and consistent with awards made by other district courts in this Circuit under the percentage method.”); *Ramos v. Banner Health*, No. 15-cv-2556, 2020 WL 6585849, at *4-5 (D. Colo. Nov. 10, 2020); *Davis v. Magna Int’l of Am., Inc.*, No. 20-cv-11060, 2025 WL 732300, at *3 (E.D. Mich. Jan. 27, 2025); *Hawkins v. Cintas Corp.*, No. 19-cv-1062, 2025 WL 523909, at *3

In addition, the requested fee award is unremarkable when measured not just against awards in similar ERISA cases, but class actions in general. *See Fernandez v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 15-22782-CIV, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (“Courts within this Circuit have routinely awarded attorneys’ fees of 33 percent or more of the gross settlement fund.”) *Wolff v. Cash 4 Titles*, No. 03-cv-22778, 2012 WL 5290155, at *6 (S.D. Fla. Sept. 26, 2012) (collecting cases and concluding that 33% is consistent with the market rate in class actions); *Hanley v. Tampa Bay Sports & Entm’t LLC*, No. 8:19-cv-00550-CEH-CPT, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (“Indeed, district courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund.”). Notably, in *Miranda v. Waste Management, Inc. of Florida*, No. 1:20-cv-23257-AMC (S.D. Fla. Sept. 16, 2021) (ECF 44), this Court approved a fee award of 33% of the common fund in a class action as well.

Because the Court required this motion to be filed before notice issues to the Class, Plaintiff cannot yet report the Class’s reaction to the motion. That is not a defect. Rule 23(h) requires Class members to have an opportunity to object to the fee and expense motion itself, not merely to a notice that a fee and expense motion will later be filed. *Susan Drazen v. Juan Pinto*, 106 F.4th 1302, 1339 (11th Cir. 2024). Plaintiff will supplement this motion and address any objections in the final-approval papers, as the Court has already directed. (ECF 86, ¶ 14.)

(S.D. Ohio Feb. 18, 2025); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 270 (S.D.N.Y. 2020); *Pledger*, 2021 WL 2253497, at *5; *Karpik v. Huntington Bancshares Inc.*, No. 17-cv-1153, 2019 WL 7482134, at *7 (S.D. Ohio Feb. 18, 2021); *Griffin v. Flagstar Bancorp, Inc.*, No. 10-cv-10610, 2013 WL 6511860 (E.D. Mich. Dec. 12, 2013); *Kelly v. Johns Hopkins Univ.*, No. 16-cv-2835, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020); *Marshall v. Northrop Grumman Corp.*, No. 16-cv-6794, 2020 WL 5668935, at *3 (C.D. Cal. Sep. 18, 2020); *Tussey v. ABB, Inc.*, No. 06-cv-04305, 2019 WL 3859763, at *4 (W.D. Mo. Aug. 16, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-cv-02062, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019); *Clark v. Duke Univ.*, No. 16-cv-1044, 2019 WL 2579201, at *3 (M.D.N.C. June 24, 2019); *Cates v. Trustees of Columbia Univ.*, No. 16-cv-06524, 2021 WL 4847890, at *2 (S.D.N.Y. Oct. 18, 2021); *Pinnell v. Teva Pharmaceuticals USA, Inc.*, No. 19-cv-05738, 2021 WL 5609864, at *2 (E.D. Pa. June 11, 2021); *Spano v. Boeing Co.*, No. 06-cv-0743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016).

I. LITIGATION AND SETTLEMENT HISTORY

A. Pre-Suit Investigation

Class Counsel began working on this case roughly three years ago. They conducted a meticulous and exhaustive investigation of the facts and law before filing the original Complaint in this case. (Exhibit 1, Hill Decl. ¶ 8.) The investigation included scrutinizing thousands of Plan related documents, gathering and scrutinizing thousands of documents relating to similar sized retirement plans (to assist in the performance of an “apples to apples” comparison of the administration of this Plan here), interviewing Plan participants, retaining and working with industry experts, researching the evolving legal landscape and fact patterns in similar ERISA cases, and ultimately crafting a precise and well-supported Complaint. (*Id.*)

On September 25, 2023, Plaintiff filed the original Complaint. (ECF 1.) Defendant responded by demanding that Plaintiff submit to the Plan’s administrative exhaustion process. (ECF 15.) Plaintiff complied, agreeing to stay the case while the administrative exhaustion process unfolded. (*Id.*) The Court stayed the case on October 23, 2023, pending completion of the administrative exhaustion process. (ECF 17.)

On October 30, 2023, Plaintiff submitted claims as required by the Plan’s administrative exhaustion process. (Exhibit 1, Hill Decl. ¶ 15.) Defendant denied every claim. (*Id.*) Plaintiff appealed the denial as required by the administrative exhaustion process. Defendant denied the appeal too. On February 14, 2025, Plaintiff moved, without opposition, to lift the stay and to file an Amended Complaint. (ECF 25.) The Court granted the motion the following day. (ECF 26.)

B. Amended Complaint and Motion Practice

On February 19, 2025, Plaintiff filed his First Amended Complaint. (ECF 27.) Defendant responded, filing a Motion to Dismiss and a Motion for Rule 11 sanctions. (ECFs 32, 53.) Plaintiff opposed both motions, defending the claims and the integrity of his Complaint. (ECFs 49, 55.)

After full briefing, the Court heard oral argument on the motions. (ECF 42.) After briefing and oral argument was complete, the Court denied both motions. (ECFs 58, 59.) Two weeks later, on August 28, 2025, Defendant filed its answer to the First Amended Complaint. (ECF 60.)

C. Discovery

The parties engaged in extensive discovery work, exchanging requests for documents, interrogatories, and requests for admissions. (Exhibit 1, Hill Decl., ¶ 23.) Plaintiff gathered tens of thousands of pages of important documents in the process. (*Id.*, ¶ 16.) These documents were uploaded into an electronic database, where they were carefully reviewed by Class Counsel and organized for use in depositions, motion practice, settlement discussions, and trial, if necessary. (*Id.*, ¶ 16.) Plaintiff took a proactive approach noticing a Rule 30(b)(6) deposition and working closely with Defendant to schedule individual Rule 30(b)(1) depositions of the Plan's fiduciaries who were responsible for the day-to-day administration of the Plan. (*Id.*, ¶ 24.) In addition, recognizing the importance of developing a full factual record, Plaintiff also served third-party subpoenas on the Plan's recordkeeper (Fidelity) and also on the Plan's investment advisor (Curcio Webb) for documents and depositions. (*Id.*) Plaintiff was successful in getting documents from those third parties and was in the process of scheduling their depositions when the case was settled. (*Id.*) This thorough approach ensured that Plaintiff was fully prepared to present a complete and coherent record, leaving no stone unturned in building the claims and countering anticipated defenses. (*Id.*)

D. Class Certification and Expert Witness Reports

Under the existing Scheduling Order, Plaintiff's motion for class certification was due on January 16, 2026, with expert witness reports due on May 18, 2026. (ECF 64.) By January 6, 2026 (when the parties reached a tentative settlement), both of Plaintiff's expert witness reports were nearing completion, reflecting extensive investigation and careful analysis. Plaintiff's motion for

class certification was likewise substantially finalized. (Hill Decl., ¶ 25.) This preparation ensured that Plaintiff could present a fully developed, evidence-backed motion, leaving no gaps for challenge or delay. This work and preparation was also instrumental and utilized in settlement negotiations and during the mediation, as discussed below.

E. Settlement Negotiations and Mediation

Class Counsel and Defendant’s counsel each have decades of experience handling ERISA fiduciary-breach cases of comparable complexity. Settlement was not an afterthought. It arose naturally after the administrative exhaustion process concluded, after the Court denied Defendant’s motion to dismiss and motion for sanctions, following the exchange of extensive discovery, and after the motion for class certification and Plaintiff’s expert witness reports were substantially complete. (*Id.*, ¶ 26.)

Recognizing the significance of the issues and the stakes involved, counsel for both sides agreed to convene in New York City for in-person mediation before the distinguished Robert A. Meyer of JAMS. (*Id.*, ¶ 27.) Mr. Meyer is widely regarded as one of the nation’s preeminent mediators in ERISA class actions.² On December 30, 2025, the parties submitted comprehensive mediation statements to Mr. Meyer, including thousands of pages of exhibits. (*Id.*) The substance of Plaintiff’s mediation statement also included opinions and analysis from Plaintiff’s expert witnesses. On January 5, 2026, the parties engaged in a full-day, in-person mediation. Plaintiff was

² *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113 (VAB), 2016 WL 6542707, at *2 (D. Conn. Nov. 3, 2016) (“the parties agreed to mediation before Robert A. Meyer (the “Mediator”), who is experienced with mediating large, complex matters similar to this case, including other ERISA class actions.”); *Bach v. Amedisys, Inc.*, No. 10-CV-00441-BAJ-SCR, 2014 WL 12607789, at *2 (M.D. La. Apr. 14, 2014) (“...the Court preliminarily finds that (a) the proposed Settlement resulted from arm’s-length negotiations under the supervision of Robert A. Meyer, Esq.[], an experienced mediator in ERISA and other complex class actions.”); *Mandi Peterson v. Vivendi Ticketing US LLC*, 2024 WL 3915154, at *5 (C.D. Cal. June 20, 2024) (“The negotiation was under the direction of mutually agreed-upon mediator, Robert Meyers of JAMS, who has extensive experience mediating and managing multiparty and multifaceted cases, which tends to support that the agreement was non-collusive.”)

represented by three attorneys, Defendant by four. Negotiations were exhaustive, candid, persistent, and conducted at arm's length. (*Id.*, ¶ 27.) With Mr. Meyer's guidance, the parties ultimately reached a settlement in principle of all claims and thereafter filed a notice of settlement with the Court. (ECFs 81, 82.)

F. The Settlement Agreement

1. Settlement Benefits

The Settlement provides for a monetary payment of \$8,000,000.00 to the Plan. (ECF 84-3, Settlement Agreement § 1.27.) This "Gross Settlement Amount" will cover the settlement administration costs and any attorneys' fees and reimbursement of out-of-pocket expenses incurred in the prosecution of the case, as approved by the Court. (*Id.* § 1.29.) The remaining "Net Settlement Amount" will be distributed by the Plan to Settlement Class members pursuant to the proposed Plan of Allocation. (*Id.*, Plan of Allocation, Exhibit B to Settlement Agreement.) For Class members who have Plan accounts as of the date of the distribution of the Net Settlement Amount, the distribution will be made automatically into their Plan accounts. (Settlement Agreement, § 5.32.) For Former Participants, distributions will be made by checks written to each Former Participant. (*Id.* at § 5.33.) No claim form is required to receive payments. Any Net Settlement Amount remaining after Settlement distributions are made shall be returned to the Plan to defray administrative expenses of the Plan; there is no *cy pres* payment or reversion to Defendant. (*Id.* at § 5.3.5.)

2. Retention of an Independent Fiduciary

As required by Prohibited Transaction Class Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003), as amended 75 FR 33830 (June 15, 2010), the Settlement provides that Gallagher Fiduciary Advisors, LLC, which has no relationship to any of the parties, will serve as an Independent Fiduciary to review the Settlement and provide, if the Independent Fiduciary concludes that it is

appropriate, the authorization required by that Exemption on behalf of the Plan. (ECF 84-3, Settlement Agreement, § 2.) The Independent Fiduciary will also review and opine on the reasonableness of Class Counsel's request for fees and reimbursement of expenses. Class Counsel will file the report before the final fairness hearing. (*Id.* at § 2.1.6.) Accordingly, in addition to this Court's review, the Settlement and Class Counsel's fee and expense request will be evaluated by an experienced independent fiduciary whose sole loyalty is to the Plan.

3. Release of Claims

Under the terms of the Settlement, the Plan, Plaintiff and the Settlement Class members, on their own behalf and on behalf of their current and former beneficiaries, their representatives, and their successors-in-interest absolutely and unconditionally release and forever discharge Defendant from all Released Claims. (ECF 84-3, Settlement Agreement, §§ 1.39, 7.)

4. Notice and Objections

Pursuant to Federal Rule of Civil Procedure 23(e)(1) and (e)(5), the Settlement provides for notice to Class members and an opportunity for Settlement Class members to object to approval of the Settlement. (ECF 84-3, Settlement Agreement, §§ 1.48, 2.4, 14.16.) The Settlement Notice fully apprises Settlement Class members of the existence of the lawsuit, the Settlement, and information they need to make informed decisions about their rights. (*Id.*) The notice plan delivers the Settlement Notice by email and first-class mail using the Plan's recordkeeper's addresses for Settlement Class members (where Settlement Class members receive their Plan account statements), supports Class members through a dedicated website and a 24/7 toll-free number, and requires follow-up efforts when notices are returned as undeliverable. (*Id.* §§ 2.3-2.4.) Notice is set to go out on April 7, 2026.

5. Attorneys' Fees and Reimbursement of Out-of-Pocket Expenses

Any attorneys' fees and costs the Court may award will be paid from the Gross Settlement Fund. (ECF 84-3, Settlement Agreement, §§ 1.29, 1.5, 6, 12.5.) The Settlement is not contingent on any such fees or costs being awarded. (*Id.*)

II. THE COURT SHOULD AWARD THE REQUESTED FEES AND EXPENSES

A. The Requested Attorneys' Fees and Expenses Are Reasonable

“The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are ‘unjustly enriched’ at the expense of the successful litigant.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). As a result, the Supreme Court and the Eleventh Circuit have recognized that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole. *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) (holding “attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.”) The Eleventh Circuit has expressly approved a one-third fee award in a common fund case and held that the fee may be based on the total fund made available. *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1297 (11th Cir. 1999).

Class Counsel seek a fee award equal to one-third of the common fund of \$8,000,000.00, which is \$2,666,666.66. 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 common fund. *See Camden*, 946 F.2d at 774; *see also Baja v. Costco*, 0:21-cv-61210-AHS (S.D. Fla. Oct. 25, 2022) (ECF. No. 56) (Judge Singhal awarded the Class Counsel fees consisting of one-third of common fund, plus litigation expenses, in ERISA class action case); *Sawyer v. Intermex Wire Transfer, LLC*, No. 19-cv-22212, 2020 WL 5259094,

at *1 (S.D. Fla. Sept. 3, 2020) (awarding one-third of the common fund); *Reyes v. AT&T Mobility Services, LLC*, No. 10-20837-CV, 2013 WL 12219252, at *3 (S.D. Fla. June 21, 2013) (awarding one-third plus costs and explaining that, “[c]ommon-fund attorney fee awards of one-third are “consistent with the trend in this Circuit.”).

B. Application of the Johnson Factors Supports Awarding the Requested Fee

Courts consider the *Johnson* factors when considering common fund related fee requests. The *Johnson* 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*, 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)). The *Johnson* factors demonstrate the fee request here is reasonable.

1. Time and Labor

Class Counsel effectively and efficiently litigated this case from its inception until now. Their extensive efforts included, *inter alia*, the investigation of Plaintiff’s claims, participation in the administrative exhaustion process, defeating Defendant’s motions to dismiss and for sanctions, pursuit of significant informal and formal fact discovery, reviewing tens of thousands of documents, preparation of expert witness reports, class certification briefing, preparation for depositions – including Plaintiff’s noticed deposition, Plaintiff’s noticed expert witness depositions, the Plan’s noticed fiduciary depositions, participation in a full day in-person mediation, and achieving the ultimate settlement of this case. *See Kruger v. Novant Health, Inc.*,

No. 14-cv-208, 2016 WL 6769066, at *3 (M.D.N.C. Sept. 29, 2016) (awarding 33 1/3% of the settlement fund and discussing the extensive pre-filing investigations counsel undertake in ERISA cases); *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 307-08 (S.D. Miss. 2014) (finding this factor satisfied where “Class Counsel spent a substantial amount of time investigating the claims[,]” endured “[t]he process of developing, refining, and finalizing such discovery requests” and “devoted extensive time and effort to researching and preparing various motions and responses.”).

Class Counsel dedicated very substantial time and effort expending over 1,712.3 hours to date. (Exhibit 1, Hill Decl., ¶¶ 8-27, 43.) The above hours do not include time to be spent drafting the motion for final approval, preparing and attending the fairness hearing, communications with Settlement Class members (the Class includes an estimated 30,000 individuals and Class Counsel further estimate they will spend hundreds of hours communicating with Class members before the fairness hearing about the Settlement) and monitoring Defendant’s compliance with the Settlement. (*Id.*, ¶ 43.) If the Court grants final approval of the Settlement, Class Counsel will continue to represent the Class and monitor the completion of the Settlement. (*Id.*) Class Counsel will oversee the Settlement to ensure that Class members receive their Settlement benefits and will continue to respond to inquiries from Class members about their Settlement benefits. (*Id.*) Therefore, Class Counsel will spend significantly more time in this matter to bring it to full and final resolution.

2. This Case Presented Novel and Difficult Questions

“Various courts have recognized that ERISA law is a highly complex and quickly-evolving area of the law.” *Savani v. URS Professional Solutions LLC*, 121 F. Supp. 3d 564, 571 (D.S.C. 2015) (citations omitted); *see also Cates*, 2021 WL 4847890, at *4, 5 (“the difficulty of ERISA litigation justifies the requested fee award” of one-third recovery, as “Class Counsel faced a

significant body of adverse precedent with multiple similar cases being dismissed or resulting in adverse judgments.”). Such was the case here. Not only did Defendant move to dismiss Plaintiff’s operative Complaint, but Defendant moved for sanctions against Plaintiff and Class Counsel. Not only did Plaintiff and Class Counsel fend off these attacks but they secured \$8,000,000.00 for the Plan. The novelty and difficulty of this ERISA case means that it was a risky case and the Settlement was possible because of the skill, expertise and willingness to take on such an undesirable case by Class Counsel.

3. The Skill Requisite to Perform the Legal Services Properly

“ERISA litigation requires specialized expertise, and there are relatively few firms that have that expertise.” *Hawkins*, 2025 WL 523909, at *4; *see also Blackmon*, 2022 WL 3142362, at *5 (“ERISA litigation is notoriously complex, requiring a high level of skill in achieving the settlement.”)

Class Counsel are among the relatively few firms that have the skills and experience necessary to obtain the exceptional results achieved here. Class Counsel have been appointed class counsel in several ERISA breach of fiduciary duty cases similar to this one. They have demonstrated a track record of success. And they have and have consistently been awarded a fee consisting of one-third of the common fund in similar ERISA cases. *See Santiago*, 1:20-CV-21784 (ECF No. 66) (granting the undersigned’s request for attorney fee consisting of one-third of common fund, plus litigation costs, in ERISA retirement plan case); *Angelo*, No. 1:22-cv-22962-AHS, ECF No. 55 (same), *Rzepkoski*, 0:22-cv-61147-WPD (ECF 111) (same); *Molla v. Gerdau Ameristeel US, Inc.*, Case No.: 8:22-cv-02094-VMC-SPF (M.D. Fla. July 8, 2025) (ECF 97) (same); *see also Stengl et al. v. L3Harris Technologies, Inc. et al.*, 6:22-cv-00572-PGB-LHP (M.D. Fla. July 12, 2024) (ECF 133) (granting another law firm’s request for attorney fee consisting of one-third of common fund, plus litigation costs, in ERISA retirement plan case).

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). Applying these factors, Class Counsel have shown themselves to be highly skilled. The complexity of this complex area of class action litigation, the genuine possibility of Defendant’s success in prevailing at the motion to dismiss stage, sanctions, class certification, summary judgment, trial, the dearth of case law in this Circuit on ERISA retirement plan class cases, the ability to achieve a favorable outcome and the complexity inherent with any class action, all demonstrate that Class Counsel are highly skilled ERISA practitioners. This factor weighs heavily in favor of finding the fee sought of one-third of the common fund is reasonable.

Furthermore, “[t]he skill required by Class Counsel is also reflected in the quality of opposing counsel. It has been observed that ‘[a]dditional skill is required when the opponent is a sophisticated corporation with sophisticated counsel.’” *Savani v. URS Prof'l Solutions LLC*, 121 F. Supp. 3d 564, 571 (D.S.C. 2015). (Citation omitted). So it is here. Counsel for Defendant, WilmerHale, a multinational law firm, is one of the leading ERISA class action defense firms in the country and is widely respected as one of the leading law firms in the world. NextEra has a reported market cap of more than \$194 billion. The odds were stacked against Plaintiff and Class Counsel. The pedigree and body of work by Class Counsel and Defendant’s counsel in this action weighs heavily in favor of the requested attorneys’ fee award, because “Class Counsel’s achievement in obtaining a very substantial recovery in this action, defended by such renowned counsel, is a testament to the quality of Class Counsel’s representation.” *Id.* at 571-72.

4. Preclusion of Other Employment

As reflected by the sheer number of hours devoted by the attorneys and staff involved in litigating this case, a substantial amount of their time was devoted to this case at the preclusion of

other work. (See Exhibit 1, Hill Decl., ¶¶ 8-43); see also *Jenkins*, 300 F.R.D. at 308 (“It is uncontroverted that the attorney time spent on the Action was time that could not be spent on other matters.”); *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 677 (N.D. Tex. 2010) (“The reported hours demonstrate that work on other cases was often precluded.”). Indeed, courts analyzing ERISA fee requests have found this factor satisfied because “but for the time and effort they spent in this case and given the demand for their services attributable to their high level of skill and competence, Plaintiffs’ attorneys would have spent significant time on other matters. Class Counsel was compelled at various times during the litigation to work under significant time pressure and had to commit significant resources.” *Pledger*, 2021 WL 2253497 at *7.

5. Customary Fee

Plaintiff is seeking an award of fees in the amount of one-third of the common fund, which satisfies both the customary fee for common fund cases in this Circuit and awards granted in similar ERISA class actions. See *Santiago*, 1:20-CV-21784 (ECF No. 66) (granting class counsel’s request for attorney fee consisting of one-third of common fund); *Angelo*, No. 1:22-cv-22962-AHS (ECF No. 55) (same); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 15-22782-CIV, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (same).

Specifically, one-third of the settlement fund “is consistent with experienced attorneys who handle complex ERISA litigation and has been found reasonable in numerous cases in federal district courts.” *Pledger*, 2021 WL 2253497, at *5, 7; see also *Blackmon*, 2022 WL 3142362, at *4; *Kelly*, 2020 WL 434473, at *3 (“The requested fee of one-third of the monetary recovery is reasonable and appropriate given the ‘significant risk of nonpayment’ in these types of cases due to ‘the novel nature of this case and adverse precedents.’”); *Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-cv-10090, 2023 WL 3679031, at *3 (D. Mass. Mar. 31, 2023) (A 33 1/3% “requested percentage of fee here is identical to other awards in other excessive 401(k) fee cases”); *McDonald*

v. Edward Jones, 791 Fed. Appx. 638, 640 (8th Cir. 2020) (affirming judgment awarding the class counsel attorneys’ fees of one third of the settlement fund); *Pinnell*, 2021 WL 5609864, at *2 (awarding “one-third of the common fund as a reasonable attorneys’ fee.”); *Diaz*, 2021 WL 2414580, at *8 (same); *Hawkins*, 2025 WL 523909, at *3 (one-third is consistent with fees awarded in similar actions “and across the country.”)

Moreover, over the past 20 years, Class Counsel have worked with most if not all firms that have a national ERISA class action practice. While there are invariably differences in rates between different firms – and even between rates for lawyers within the same firm with the same number of years of practice – Class Counsel’s rates are broadly in line with rates of other firms with nationwide ERISA class action practices and in line with attorneys with similar experience and practices in this Circuit.³ (See Hill Decl., ¶¶ 34-43.) Thus, Class Counsel’s request for attorneys’ fees is consistent with attorneys’ fees routinely awarded by courts in ERISA class action cases and the customary fee in this Circuit.

6. The Case was Taken on Contingency

“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 highly-sophisticated and well-funded Defendant represented by one of the most preeminent defense firms in the country. There

³ Class Counsel also are informed and believe their hourly rates are roughly one half of the hourly rates charged by Defendant’s counsel in this case. This factor also justifies the fee request here.

were no assurances that Plaintiff would survive early motion practice, summary judgment, or trial, much less achieve an \$8,000,000.00 recovery. *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781 SRN/JSM, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015) (“Class Counsel was also exposed to great risk. Not only did they face the very real possibility of dismissal or denial of class certification, but ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation.”). Moreover, here, Defendant sought to use its resources and other advantages to seek monetary sanctions against Plaintiff and Class Counsel for even filing the lawsuit. Plaintiff and Class Counsel were thus exposed not just to losing the case, but massive potential personal financial liability as well.

Furthermore, the economical and logistical unattractiveness of this case required a legal team with significant expertise in ERISA class action litigation who could manage this case in a cost-effective and comprehensive way. Courts find it persuasive that, like here, plaintiffs would not have been able to pursue this litigation other than on a contingency fee basis and, realistically, no competent plaintiffs’ lawyer or law firm would take on such risky representation for less than one-third of any monetary recovery. *See, e.g., Sims v. BB&T Corp.*, No. 15-cv-732, 2019 WL 1993519, at *3 (M.D.N.C. May 6, 2019) (“It is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery. A one-third fee reflects a reasonable attorney’s fee in this matter for the attorneys who did assume this risk.”); *Jenkins*, 300 F.R.D. at 309 (“Public policy concerns—in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims—support the requested fee.”).

7. Time Limitations

This case involved significant hours of work and demanded much of Class 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 secured a common fund totaling \$8,000,000.00. This is an excellent result when viewed under any light. The Settlement amount is about 37% of the potential total monetary recovery available to the Plan. In *Blackmon*, an analogous breach of fiduciary duty case, the court noted that a recovery of 14-23% of the plaintiffs’ total estimated damages “exceeds many recoveries received in other class action cases.” *Blackmon*, 2022 WL 3142362, at *4 (listing cases approving settlements as low as 2%); see also *Hawkins*, 2025 WL 523909, at *2 (the fee award was justified because “roughly a third of the settlement class’s estimated maximum potential damages [...] is consistent with other ERISA class action settlements” and, like here “was a favorable result for plaintiffs” because the defendant “has maintained throughout the litigation that the Plan suffered no losses.”); *Sims*, 2019 WL 1995314, at *5 (finding a recovery “represent[ing] 19% of the total investment and recordkeeping damages sought by the plaintiffs” was fair reasonable and adequate); *Davis*, 2025 WL 732300, at *2 (the 31% of maximum potential damages “obtained on behalf of the Class supports the requested fee percentage” because “the Settlement offered Plaintiffs fair and reasonable relief given the complexity of the ERISA law issues presented and the acute risk of continued litigation.”).

The amount obtained is especially impressive because the proposed Settlement occurred before incurring more costs and risks at the formal expert discovery stage, summary judgment stage, trial or any appeals. See *Kruger*, 2016 WL 6769066, *5 (an early settlement in an ERISA case “allows a class to achieve substantial savings and be able to invest those savings immediately – enjoying years’ worth of returns that would not otherwise be available.”); *Griffin v. Flagstar*

Bancorp, Inc., No. 10-cv-10610, 2013 WL 6511860, at *3 (E.D. Mich. Dec. 12, 2013) (“conducting merits and expert discovery in this ERISA action would be time consuming and costly.”). Additionally, Class members will not have to file a claim form but will automatically receive their distributions into their tax-deferred retirement accounts or receive a settlement check without having to make a claim. This factor weighs in favor of the requested fee. *Pledger*, 2021 WL 2253497 at *8.

9. Experience, Reputation, and Ability of the Attorneys

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 the country. Class Counsel set forth their qualifications and prior experience in the attached declarations.

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 makes this case highly undesirable for nearly all other attorneys. Had Settlement not been achieved, Class Counsel was fully prepared to try this case, as they recently did in the 55,000 member ERISA class action *McDonald v. Laboratory Corp. of America Holdings*, 1:22-cv-00680-LCB-JLW (M.D.N.C. Aug. 12, 2025). That trial, though vigorously contested, resulted in a total defense verdict. Class Counsel spent years working on the case and received no compensation. Class Counsel also spent more than \$100,000 advancing costs in that case and received no reimbursement. This real-world example of a recent ERISA case underscores the financial risk counsel assumed in pursuing this litigation.

The undesirability of this case is further illustrated by courts granting summary judgment in defendant’s favor in similar cases very recently, including in this Circuit. *See, e.g., Johnson v.*

Russell Investments Tr. Co., No. 22-21735-CIV, 2025 WL 358197 (S.D. Fla. Jan. 31, 2025); *Huang v. TriNet HR III, Inc.*, 8:20-CV-2293-VMC-TGW, 2023 WL 3092626 (M.D. Fla. Apr. 26, 2023).

11. Nature and Length of the Professional Relationship with the Client

Class Counsel do not expect repeat business from Plaintiff in this case. Given the nature of Counsel's work, "the likelihood that many class members will be seeking additional representation from Class Counsel is slim." *Shaw v. Interthinx, Inc.*, No. 13-CV-01229, 2015 WL 1867861, at *7 (D. Colo. Apr. 22, 2015). Like the wage and hour suits in *Shaw*, ERISA breach of fiduciary duty cases "do not lend themselves to continuous, long-term attorney-client relationships. This factor thus weighs in favor of the requested fee award." *Id.*

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. In similar ERISA excessive fee cases, district courts in this Circuit (and others) have consistently recognized that a one-third fee is the market rate.⁴

C. Lodestar Cross-Check

Although a lodestar analysis is not required in a common-fund case, the Eleventh Circuit permits a lodestar cross-check as a confirmatory tool. *See In re Blue Cross Blue Shield Antitrust Litig. MDL 2406*, 85 F.4th 1070, 1100 (11th Cir. 2023). The one-third percentage of the Settlement that Class Counsel is requesting equals \$2,666,666.66, and thus far Class Counsel's total fees lodestar is \$958,156.00 from expending a total of 1,712.3 hours on this case. (*See Exhibit 1, Hill*

⁴ *See Santiago*, 1:20-CV-21784, ECF No. 66 (granting class counsel's request for attorney fee consisting of one-third of common fund, plus litigation costs, in ERISA retirement plan case nearly identical to this case); *Angelo*, 1:22-cv-22962-AHS (ECF No. 55) (granting class counsel's request for attorney fee consisting of one-third of common fund, plus litigation costs, in ERISA retirement plan case); *Clark v. Duke Univ.*, No. 16-1044, 2019 WL 2579201, at *3 (M.D.N.C. June 24, 2019); *Sims*, 2019 WL 1993519, at *2; *Spano*, 2016 WL 3791123, at *2; *Abbott v Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015).

Decl., ¶¶ 43; Exhibit 2, McKay Decl., ¶ 7; Exhibit 3, Edelman Decl. ¶ 11.)

Plaintiff is requesting a multiplier of 2.78 in this case, but nevertheless “[g]iven the substantial risks involved in ERISA excessive fee cases, a risk multiplier is appropriate.” *Cassell*, 2019 WL 13160853, at *2. The multiplier is reasonable in light of the contingent risk, the quality of the result, the complexity of the issues, and the work still required through final approval and implementation. It is also well within the range endorsed by courts in ERISA cases in this Circuit. *See, e.g., Pledger*, 2021 WL 2253497, at *8 (listing cases from this Circuit approving multipliers between 4.5 and 1.6); *Henderson*, 2020 WL 9848978, at *3 (approving multiplier in ERISA class action settlement and collecting cases in this Circuit approving multipliers of between 5 and 1.6 in class action cases). Accordingly, the lodestar cross-check further supports the reasonableness of awarding one-third of the Settlement in attorney’s fees.

III. THE COURT SHOULD REIMBURSE CLASS COUNSEL FOR OUT-OF-POCKET EXPENSES INCURRED IN PROSECUTING THE CASE

This Court may award reasonable litigation expenses authorized by the parties’ agreement. *See Fed. R. Civ. P. 23(h)*. Pursuant to the Parties’ Settlement Agreement, Class Counsel are entitled to recover their expenses incurred in prosecuting this case. Class Counsel seek \$44,921.18 in reimbursable expenses. “Courts typically allow counsel to recover their reasonable out-of-pocket expenses. Indeed, courts normally grant expense requests in common fund as a matter of course.” *Sawyer*, 2020 WL 5259094, at *2 (citing to *Dowdell v. City of Apopka*, 698 F.2d 1181, 1191-92 (11th Cir. 1983)). Class Counsel’s out-of-pocket expenses of \$44,921.18 are in line with normal expenditures in ERISA class actions like this one and should be awarded here. The costs incurred by each firm are attested to in the attached Declarations of Hill, McKay, and Edelman. The only costs sought are for mediation (\$19,999.98), travel (\$6,471.72), expert witnesses (\$15,050.50), e-discovery (\$2,365.78), filing/service (\$467.00), and subpoena-related costs (\$566.20). (Exhibit 1, Hill Decl., ¶ 44; Exhibit 2, McKay Decl., ¶ 8; Exhibit 3, Edelman Decl., ¶

12.) All of the costs sought are reasonable and were necessary to the prosecution of this case. *See James v. JPMorgan Chase Bank, N.A.*, No. 8:15-cv-2424-T-23JSS, 2017 WL 2472499, at *2 (M.D. Fla. June 5, 2017) (approving recovery of mediation, travel, and other expenses incurred in connection with the matter).

IV. CONCLUSION

Plaintiff respectfully requests that the Court award attorneys' fees equal to one-third of the total common fund (\$2,666,666.66), plus reimbursement of expenses in the amount of \$44,921.18.

Certificate of Compliance with Local Rule 7.1(a)(3)

Pursuant to Local Rule 7.1(a)(3), counsel for Plaintiff conferred with counsel for Defendant regarding the relief sought in this Motion. Defendant does not oppose the relief sought in this Motion, as evidenced by the Parties' Settlement Agreement. A proposed Order is attached as Exhibit 4.

Dated this 6th day of April 2026.

Respectfully submitted,

/s/ Brandon J. Hill

Brandon J. Hill, Esq.

Florida Bar Number: 0037061

Luis A. Cabassa, Esq.

Florida Bar Number: 0053643

WENZEL FENTON CABASSA, P.A.

1110 North Florida Ave., Suite 300

Tampa, Florida 33602

Telephone: 813-337-7992

Email: bhill@wfclaw.com

Email: lcabassa@wfclaw.com

Marc R. Edelman, Esq.

Florida Bar Number: 0096342

MORGAN & MORGAN, P.A.

201 N. Franklin Street, Suite 700

Tampa, Florida 33602

Telephone: 813-577-4722

Email: Medelman@forthepeople.com

Michael McKay, Esq. (*pro hac vice*)

MCKAY LAW, LLC

5635 N. Scottsdale Road, Suite 170

Scottsdale, Arizona 85258

Telephone: (480) 681-7000

Email: mmckay@mckaylaw.us

Attorneys for Plaintiff and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/Brandon J. Hill

BRANDON J. HILL

EXHIBIT 1

DECLARATION OF BRANDON J. HILL

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

JOHN STEWART, on behalf of the NextEra
Energy, Inc., Employee Retirement Savings
Plan,

Plaintiff,

vs.

NEXTERA ENERGY, INC.,

Defendant.

No. 9:23-CV-81314-AMC

The Honorable Aileen M. Cannon

**DECLARATION OF BRANDON J. HILL IN SUPPORT OF PLAINTIFF'S MOTION
FOR ATTORNEYS' FEES AND REIMBURSEMENT
OF OUT-OF-POCKET EXPENSES**

I, Brandon J. Hill, declare:

1. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees and Reimbursement of Out-of-Pocket Expenses. The testimony set forth in this declaration is based on first-hand knowledge, about which I would and could testify competently in open court if called upon to do so.

2. I am a partner at Wenzel Fenton Cabassa, P.A., and I represent the Plaintiff 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 in international 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, the United States District Court of Colorado, and the United States Court of Appeals for the Eleventh Circuit.

5. I have represented clients in all stages of litigation in federal and state courts throughout Florida, and beyond. I have served as co-counsel or lead counsel in more than 700 federal cases.

6. 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 sample of class actions where I have been appointed as class counsel:

- *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, Niyeshia 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 17,000 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 25,000 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);
- *Johnson v. McDonald's Corp.*, 1:21-cv-24339-FAM (S.D. Fla. Feb. 14, 2023)(ECF. No. 50) (served as class counsel in COBRA class action settlement recently granted final approval by Judge Moreno in case involving over 8,000 class members);

- *Baja v. Costco*, 0:21-cv-61210-AHS (S.D. Fla. Oct. 25, 2022)(ECF No. 56)(served as class counsel in COBRA class action settlement recently granted final approval by Judge Singhal in case involving over 38,000 class members);
- *Angelo v. NCL Corporation LTD, et al.*, 1:22-cv-22962-AHS (ECF No. 56) (served as class counsel in ERISA retirement plan class action settlement involving over 10,000 class members);
- *Rzepkoski v. Nova Southeastern University, Inc.*, No. 0:22-cv-61147-WPD (ECF No. 108) (served as class counsel in ERISA retirement plan class action settlement involving over 11,000 class members);
- *Molla v. Gerdau Ameristeel US., Inc.*, No. 8:22-cv-02094-VMC (ECF No. 98) (M.D. Fla. July 8, 2025) (served as class counsel in ERISA retirement plan class action settlement involving more than 5,000 class members).
- *Colon, et al. v. Johnson, et al.*, 8:22-cv-888-TPB-TGW (M.D. Fla. 2024) (served as class counsel in \$19 million dollar ERISA class settlement);

7. No court has ever questioned either my qualifications or my ability to serve as class counsel.

8. Before the Complaint in this case was filed, I worked with my co-counsel to investigate the claims and potential defenses in this case. We carefully scrutinized all of the available Plan documents and information relating to the Plan's investments, fees, and general administration, including tens of thousands of pages of documents. Even before filing the Complaint, we retained and sought the assistance of industry experts to corroborate our findings and to assist us in crafting the Complaint.

9. Along with my staff and co-counsel, I reviewed tens of thousands of pages of relevant documents in connection with litigating this case.

10. These documents required careful review. All the documents were uploaded onto a digital platform and cataloged for use with Plaintiff's expert witnesses, depositions, briefing, mediation, and ultimately trial if needed.

11. The work performed in this case over the last 2.5 years was extensive and laborious. Below are some examples of the work I, along with my staff and co-counsel, performed in this case. This timeline is also made part of Plaintiff's Motion.

12. On September 25, 2023, Plaintiff filed a class action Complaint. (ECF 1.) The Complaint purports to state a putative class action under the Employee Retirement Income Security Act of 1974 ("ERISA".) Specifically, Plaintiff's Complaint alleges Defendant breached its ERISA fiduciary duties and caused the Plan losses. The Plan is governed by a Plan Document which Defendant contended includes mandatory, pre-suit administrative remedies. While Plaintiff believed that exhaustion of those remedies was likely excusable and/or futile, rather than burdening the Court with heavy briefing on a procedural issue, Plaintiff agreed to work cooperatively with Defendant to exhaust administrative remedies.

13. On October 19, 2023, the Parties filed a Joint Motion to Stay, asking the Court to stay the case pending Plaintiff exhausting his administrative remedies. (ECF 15.)

14. The Court granted the Joint Motion to Stay on October 23, 2023. (ECF 16.) The Parties were then required to file a Status Report every 90 days thereafter informing the Court of their progress.

15. On October 30, 2023, I (on behalf of Plaintiff) sent a letter addressed to the "Plan Administrator" which requested relevant documents and I submitted an administrative claim pursuant to the Plan's mandatory administrative claims review process.

16. During the course of the administrative claims process and discovery, Defendant produced thousands of pages of documents relevant to Plaintiff's claims, including (1) the Plan's recordkeeping agreements, amendments and service provider contracts, (2) benchmarking reports, (3) plan document and summary plan description, (4) committee meeting minutes,

(5) investment advisor reports, (6) disclosures to the Plan and disclosures to participants, (7) net trust asset summaries, (8) invoices, and (9) Plaintiff's account statements, among other documents. These documents were uploaded into an electronic database, where they were carefully reviewed by Class Counsel and organized for use in depositions, motion practice, settlement discussions, and trial, if necessary.

17. I, along with my co-counsel, carefully scrutinized all of the documents produced. During the administrative claims process the case was stayed. (ECFs 19-24.)

18. As to the non-forfeiture allegations (which Defendant claimed needed to be exhausted separately), the administrative claims process concluded with the denial of the claim and exhaustion of all appeals. On February 14, 2025, Plaintiff filed an unopposed motion to lift the stay. (ECF 25.) The Court lifted the stay on February 15, 2025. (ECF 26.)

19. On February 19, 2025, Plaintiff filed his First Amended Complaint. (ECF 27.)

20. Defendant filed its motion to dismiss the First Amended Complaint on March 12, 2025. (ECF 32.) Plaintiff filed his opposition to the motion to dismiss on March 26, 2025. (ECF 34.) Defendant filed its reply on April 2, 2025. (ECF 37.) Defendant also filed a Rule 11 motion for sanctions, which was fully briefed by the parties. (ECF 53, 55, 57.)

21. The Court heard oral argument on Defendant's motion to dismiss on May 20, 2025. (ECF 42.) On August 14, 2025, the Court denied Defendant's motion to dismiss and also denied Defendant's motion for sanctions. (ECF 58, 59.)

22. The Parties filed their joint scheduling report on September 5, 2025. (ECF 63.)

23. Plaintiff served written discovery requests on Defendant on October 2, 2025, including requests for admission, requests for production, interrogatories, and served a Fed.R.Civ.P. 30(b)(6) deposition notice.

24. In the fall of 2025, Plaintiff also began working with Defendant to schedule individual depositions of Plan fiduciaries. Additionally, Plaintiff served third party document and deposition subpoenas on the Plan's third-party administrative services providers.

25. Under the operative Scheduling Order, Plaintiff's motion for class certification was due on January 16, 2026, and expert reports were due on May 18, 2026. (ECF 63.) Both sides retained industry experts. Plaintiff retained two experts to prepare reports. By January 6, 2026, those reports were substantially complete. Plaintiff had also substantially completed the class-certification motion by that date and intended to rely in part on those expert reports in support of the motion.

26. Settlement was first discussed among counsel for the Parties after the Court denied Defendant's motion to dismiss. The parties did not raise settlement as an afterthought. It followed the close of administrative exhaustion, the denial of Defendant's motion to dismiss, the denial of its Rule 11 motion, the exchange of meaningful discovery, and the substantial completion of expert reports.

27. On January 5, 2026, the Parties engaged in a full-day mediation in New York City, with highly respected ERISA class action mediator, Robert A. Meyer. Prior to the mediation, I helped prepare a comprehensive mediation statement that included input, analysis, and opinions from expert witnesses Plaintiff retained in this case. The mediation statement was also supported by an array of exhibits and case law. It was similar to a pre-trial statement.

28. The mediation lasted all day. I, along with my co-counsel, participated in lengthy arm's length negotiations on behalf of the Plan with Defendant. With Mr. Meyer's assistance the Parties' ultimately reached an agreement in principle.

29. The Settlement consists of a gross settlement amount of \$8,000,000 that will be deposited into a Qualified Settlement Fund. The Settlement provides an immediate benefit to the Settlement Class in the form of a large cash payment. Most of these Settlement proceeds will be paid into the Plan.

30. I estimate the potential total monetary recovery for the Plan in this case is approximately \$22,000,000.

31. The \$8,000,000 recovery is about 37% of the potential total monetary recovery potentially available to the Plan and therefore falls well within the range of reasonableness in this case. Under Plaintiff's theory of damages, NextEra could have been liable for all forfeitures applied to matching contributions over the class period. That figure was \$19,000,000 through 2024, plus approximately \$3,000,000 in 2025.

32. I believe that Plaintiff's claims are strong, but I also recognize that the claims are subject to an array of defenses and counterarguments. I considered the risks and delays potentially caused by the legal and factual defenses asserted by Defendant. I also considered the fact that this case raises certain issues that have an unpredictable outcome.

33. There is also the possibility of appeals and a significantly delayed resolution no matter who prevails at trial. These concerns are especially important here because we are dealing with retirement funds and some Class Members who are aging.

34. Based on my experience and in my opinion, the hourly rates sought for work performed for Plaintiff and the class are reasonable and are consistent with the rates charged in this community for similar services by attorneys of like experience in similar law firms. The rates Class Counsel seek here are the same rates our respective firms would charge clients.

35. “The relevant legal market is Palm Beach County, Florida, where this case was litigated.” *Family First Life, LLC v. Rutstein*, No. 22-CV-80243-AMC, 2023 WL 4207790, at *2 (S.D. Fla. June 7, 2023), report and recommendation adopted, No. 22-80243-CIV, 2023 WL 4202726 (S.D. Fla. June 27, 2023). In *Family First Life*, this Court adopted a Report and Recommendation by Magistrate Judge Bruce Reinhart finding \$775 a reasonable hourly rate for two different partners in a complex civil matter who had between eleven and thirteen years of experience. *See also DJ Lincoln Enterprises, Inc. v. Google, LLC*, No. 20-CV-14159, 2022 WL 4287640, at *9 (S.D. Fla. July 28, 2022), report and recommendation adopted, No. 2:20-CV-14159, 2022 WL 3754182 (S.D. Fla. Aug. 30, 2022) (\$760 per hour awarded to a twenty-year lawyer in a Florida RICO/FDUTPA case); *CITGO Petroleum Corp. v. Petroleum Logistics Serv. USA, Inc.*, No. 22-MC-20762, 2022 WL 17718802, at *5 (S.D. Fla. Nov. 30, 2022), report and recommendation adopted, No. 22-MC-20762, 2022 WL 17716483 (S.D. Fla. Dec. 15, 2022) (finding fees of ranging from \$850 to \$750 for a partner and \$700 for an associate reasonable); *Caracol TV, S.A. v. Telemundo TV Studios, LLC*, No. 18-23443-CIV, 2022 WL 17583608 (S.D. Fla. Aug. 4, 2022) (recommending fees of \$700 - \$825 for work by partners).

36. Class Counsel’s requested rates are calibrated to the Palm Beach County, Florida market. The hourly rates are as follows: Michael C. McKay, \$775; Luis A. Cabassa, \$775; Marc E. Edelman, \$775; Amanda E. Heystek, \$700; Brandon J. Hill, \$700.

37. Michael C. McKay is a partner and owner of McKay Law, LLC, with twenty-three years of experience and substantial experience litigating ERISA matters. As his declaration reflects, he is widely respected for his ERISA work and has built a national reputation in the field.

38. Marc R. Edelman is a partner at Morgan & Morgan, P.A., with nearly thirty years of experience. He co-manages the firm's Employment Law practice group and focuses on employment and class actions, including ERISA and fiduciary-breach litigation. He has served as class counsel in more than thirty class actions, including multiple ERISA and ESOP fiduciary-breach cases.

39. Similarly, Luis A. Cabassa is a partner at Wenzel Fenton Cabassa, P.A., and has practiced law for more than 30 years, almost exclusively in labor and employment law. He has been Board Certified in Labor and Employment Law since 2005, has handled more than 1,000 federal and state court cases, and has served as class or co-class counsel in more than 50 class actions, including ERISA retirement plan cases.

40. Brandon J. Hill is also a partner at Wenzel Fenton Cabassa, P.A., and has practiced law for more than nineteen years. He has served as lead or co-counsel in more than 700 federal cases and as class counsel in at least forty-six class actions, including multiple ERISA retirement-plan class actions throughout the country.

41. Amanda E. Heystek is an attorney at Wenzel Fenton Cabassa, P.A., with more than 24 years of litigation experience. She has represented employees at every stage of litigation in federal and state courts throughout Florida and has served as lead or co-counsel in hundreds of federal cases.

42. With respect to the hours spent litigating, the below table summarizes time spent by the respective firms, attorneys, and paralegals:

Attorneys	Hours	Hourly Rate	Fees
Michael McKay 23 years practicing law	329.6	\$775	\$255,440
Luis A. Cabassa 31 years practicing law	163.5	\$775	\$126,713
Marc Edelman 29 years practicing law	189.7	\$775	\$147,018
Amanda E. Heystek 24 years practicing law	172.4	\$700	\$120,680
Brandon Hill 19 years practicing law	326.8	\$700	\$228,760
Total:	1,182		\$878,611
Paralegals	Hours	Hourly Rate	Fees
George Venieris 6 years as paralegal	161.4	\$150.00	\$24,210
Kelly Moysh 8 years as paralegal	153.1	\$150.00	\$22,965
Jack McKay 2 years as paralegal	148.6	\$150.00	\$22,290
Grace DeSane 10+ years as paralegal	24.3	\$150.00	\$3,645
Amy Ketelsen 15 years as paralegal	42.9	\$150.00	\$6,435
Total:	530.3		\$79,545

43. The above hours also do not include the substantial time Class Counsel will spend drafting the final-approval motion, preparing for and attending the fairness hearing, communicating with roughly 30,000 Settlement Class Members about the Settlement, and monitoring Defendant's compliance with the Settlement. If the Court grants final approval, Class Counsel will continue to represent the Class by overseeing implementation of the Settlement, ensuring that Class Members receive their settlement benefits, and responding to Class Member inquiries.

44. My firm has expended a total of \$15,578.94 in costs. The costs break down as follows: mileage to MTD hearing, \$242.54; JAMS mediation fees, \$6,666.66; expert witness fees, \$3,800.00; Nimble Systems, (e-discovery vendor), \$2,365.78; hotel rooms for mediation, \$700.02; airline tickets to mediation, \$1,803.94.

45. I respectfully ask that the Court award Class Counsel attorneys' fees and the reasonable litigation expenses sought.

I declare under the penalty of perjury and the laws of the United States of America and the State of Florida that the foregoing is true and correct and that this declaration was executed on the 6th day of April, 2026, in Lithia, Florida.

/s/ Brandon J. Hill
Brandon J. Hill

EXHIBIT 2

DECLARATION OF MICHAEL MCKAY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

JOHN STEWART, on behalf of the NextEra
Energy, Inc., Employee Retirement Savings
Plan,

Plaintiff,

vs.

NEXTERA ENERGY, INC.,

Defendant.

No. 9:23-CV-81314-AMC

The Honorable Aileen M. Cannon

**MICHAEL MCKAY DECLARATION IN SUPPORT OF PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND REIMBURSEMENT OF OUT-OF-POCKET EXPENSES**

I, Michael McKay, declare as follows:

1. I am an attorney duly licensed to practice law in the State of Arizona. I am a member in good standing of the State Bar of Arizona. I am admitted Pro Hac Vice in this case. I am one of the attorneys who represents the Plaintiff and the Class in this case.

2. I submit this Declaration in support of Plaintiff's Motion for Attorneys' Fees and Reimbursement of Out-of-Pocket Expenses. The testimony set forth in this declaration is based on my first-hand knowledge, about which I would and could testify about competently in open court if called upon to do so.

3. I have extensive experience successfully litigating ERISA class actions. The following is a *sample* of ERISA class actions within the past 12 years where I was class counsel and resolved via court-approved class settlements: *Bilewicz v. Fidelity Investments*, (ERISA breach of fiduciary duty claims, \$9 million class settlement) (2015); *Kramer v. Aegon*, (ERISA breach of fiduciary duty claims, \$4 million class settlement) (2016); *Whitley v. JP Morgan*,

(ERISA breach of fiduciary duty claims, \$75 million class settlement) (2017); *Daugherty v. University of Chicago*, (ERISA breach of ERISA fiduciary duty claims, class settlement \$6.5 million) (2018); *Pease v. Jackson National*, (ERISA breach of fiduciary duty claims, \$4.6 million class settlement) (2018); *Short v. Brown University*, (ERISA breach of duty claims, \$3.5 million class settlement) (2019); *Santiago v. University of Miami*, (ERISA breach of duty claims, \$1.8 million class settlement) (2022); *Moon v. E.I. du Pont de Nemours and Company*, (ERISA breach of fiduciary duty claims, \$7 million class settlement) (2023); *Angelo v. NCL Corporations LTD*, (ERISA breach of fiduciary duty claims, \$615,000 class settlement) (2024); *Gotta v. Stantec*, (ERISA breach of fiduciary duty claims, \$2 million class settlement) (2024); *Moler v. University of Maryland Medical System*, (ERISA breach of fiduciary duty claims, \$3.25 million class settlement) (2024); *Rzepakoski v. Nova Southeastern Univ.*, (ERISA breach of fiduciary duty claims, \$1.5 million class settlement) (2025); *Cevasco v. Allegiant Travel Co.*, (ERISA breach of fiduciary duty claims, \$1.9 million class settlement) (2025); *Hagins v. Knight-Swift Transportation Holdings, Inc.*, (breach of fiduciary duty, \$3 million settlement) (2025); *Cannarozzo v. The Nemours Foundation*, (breach of fiduciary duty claims, \$2.275 million settlement) (2025); *Molla v. Gerdau Ameristeel US, Inc.*, (breach of fiduciary duty claims, \$1.5 million settlement) (2025); and *Sealy v. Old Dominion Freight Line, Inc.*, (breach of fiduciary duty claims, \$1.9 million settlement) (2025).

4. The following are representative consumer class action lawsuits where I was counsel of record and settled on a court approved class wide basis: *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, (cost of insurance class action, \$400 million settlement) (2008); *In re: Ins. Brokerage Antitrust Litig.*, (cost of insurance class action, \$121 million settlement) (2009); “Senior Annuity” cases, (class actions against insurance companies for deceptive annuity sales

practices, class settlements in the aggregate value between \$552 million and \$1.2 billion) (2010); “Kitec” cases, (consumer protection class actions against plumbing fitting manufacturer and home builders, settlements in the aggregate valued between \$125 million and \$160 million) (2012); *Theirot v. Celtic Ins.*, (cost of insurance class action, class settlement valued at \$1 million) (2013); “Automobile financing and repossession” cases, (consumer protection class actions in Arizona, Idaho, and North Carolina against automobile finance companies for over charging for credit insurance and unlawful repossession practices, settlements valued in the aggregate at \$22 million) (2015); “Uber airport fees” cases, (consumer protection class actions against Uber for charging riders airport fees for pick up or drop off service at airports when no such fees were charged by airports, settlement valued at approximately \$2 million) (2016).

5. I was fully prepared to try this case if necessary. I recently tried to verdict a 55,000-member ERISA class action in *McDonald v. Laboratory Corp. of America Holdings*, 1:22-cv-00680-LCBJLW (M.D.N.C. Aug. 12, 2025). Unfortunately, although it appeared to be a close call, the *McDonald* trial resulted in a total defense verdict.

6. I, along with my staff and co-counsel, have spent nearly three years working on this case. I conducted an exhaustive investigation of the facts and law before a decision was made to file a complaint in this case. That is because I take seriously the decision to file complaints like the one filed in this case. I reviewed thousands of pages of documents related to the claims in this case. I reviewed thousands of pages of documents relating to similar retirement plans. This work was necessary to perform an “apples to apples” comparison of the administration of the Defendant’s retirement plan with similar retirement plans in the marketplace. I also retained and worked with industry experts to insure the accuracy of the information I was reviewing and to develop and articulate the allegations that ultimately were

presented in the Plaintiff's pleadings in this case. I worked on behalf of Plaintiff and the Plan to navigate through the lengthy administrative exhaustion process Defendant demanded Plaintiff participate in before commencing litigation. I was involved in drafting all pleadings, motions, briefs, discovery requests, discovery responses, subpoenas, mediation materials, etc. that were created on behalf of Plaintiff and the Plan in this case. I appeared and argued and the hearing on Defendant's motion to dismiss and motion for sanctions. I appeared and negotiated on behalf of Plaintiff and the Plan at the in-person mediation. I expect that I will stay actively involved in this case until its final conclusion.

7. With respect to the hours spent litigating, the table below summarizes time spent by my firm and my co-counsel:

Attorneys	Hours	Hourly Rate	Fees
Michael McKay 23 years practicing law	329.6	\$775	\$255,440
Luis A. Cabassa 31 years practicing law	163.5	\$775	\$126,713
Marc Edelman 29 years practicing law	189.7	\$775	\$147,018
Amanda E. Heystek 24 years practicing law	172.4	\$700	\$120,680
Brandon Hill 19 years practicing law	326.8	\$700	\$228,760
Total:	1,182		\$878,611
Paralegals	Hours	Hourly Rate	Fees
George Venieris 6 years as paralegal	161.4	\$150.00	\$24,210
Kelly Moysh 8 years as paralegal	153.1	\$150.00	\$22,965
Jack McKay 2 years as paralegal	148.6	\$150.00	\$22,290
Grace DeSane 10+ years as paralegal	24.3	\$150.00	\$3,645
Amy Ketelsen 15 years as paralegal	42.9	\$150.00	\$6,435

Total:	530.3		\$79,545
---------------	-------	--	----------

8. My firm incurred the following costs: \$283.10 for the Curcio Webb subpoena, witness fee, and proof of service, \$283.10 for the Fidelity subpoena, witness fee and proof of service, \$6,666.66 for JAMS mediation, \$740.97 for airfare for the New York mediation, \$86.79 for ground transportation from the airport to New York City for the New York mediation, \$85.14 for ground transportation from New York City to the airport for the New York mediation, \$498.14 (two nights) for New York City hotel accommodations for the New York mediation, \$315.21 for rental-car and fuel expenses for the motion to dismiss and motions for sanctions hearing, \$643.20 for airfare for the motions to dismiss and sanctions hearing in Florida, \$277.76 (two nights) for hotel accommodations for the motions to dismiss and sanctions hearing in Florida, and \$11,250.50 for the expert witnesses. My out-of-pocket expenses incurred in prosecuting this action total \$21,130.57. Each was necessary and reasonably required for the prosecution of this case.

9. I respectfully ask that the Court award Class Counsel attorneys’ fees and out-of-pocket expenses reasonably required for the prosecution of the case.

I declare under the penalty of perjury and the laws of the State of Arizona that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on the 6th day of April 2026, in Scottsdale, Arizona.

/s/ Michael McKay
 Michael McKay
 Attorney for Plaintiff the Class

EXHIBIT 3

DECLARATION OF MARC R. EDELMAN

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

JOHN STEWART, on behalf of the NextEra
Energy, Inc., Employee Retirement Savings
Plan,

Plaintiff,

vs.

NEXTERA ENERGY, INC.,

Defendant.

No. 9:23-CV-81314-AMC

The Honorable Aileen M. Cannon

**DECLARATION OF MARC R. EDELMAN IN SUPPORT OF PLAINTIFF'S MOTION
FOR ATTORNEYS' FEES AND REIMBURSEMENT
OF OUT-OF-POCKET EXPENSES**

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 will be filed in the above captioned action.

2. I am a partner with the law firm of Morgan & Morgan, P.A., and have been with the firm since 2015. Morgan & Morgan is a nationwide trial advocacy law firm, currently employing over 1,000 attorneys. I am a co-manager of the firm's Employment Law practice group. My office is located at 201 N. Franklin Street, Suite 700, Tampa, Florida 33602.

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 nearly thirty years, more than 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. For the 10 years before I joined

Morgan & Morgan, I was general counsel for a national furniture retailer, overseeing all aspects of compliance and litigation, including the Fair Credit Reporting Act, ERISA, FLSA and Title VII.

4. I am licensed to practice law in the State of Florida. I have also been admitted to practice in several federal district courts and appellate courts. A list of jurisdictions and courts in which I have been admitted is set forth below:

United States District Court Middle District of Florida
United States District Court Southern District of Florida
United States Court of Appeals for the Eleventh Circuit
United States District Court Western District of Tennessee
United States District Court Eastern District Michigan
United States District Court Western District of Wisconsin
Supreme Court of the State of Florida
Circuit Courts State of Florida

5. Since joining Morgan & Morgan, I have focused my efforts on employment law and employment-related class action lawsuits prosecuting violations of the Fair Credit Reporting Act and ERISA, including COBRA and breach of fiduciary duty claims on behalf of participants in 401(k) and ESOP plans.

6. I have been named Class Counsel in approximately 30 class actions, including: *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); 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); *Sharp v. Technicolor Videocassette of Michigan, Inc.*, No.: 2:18-cv- 02325-cgc (W.D.T.N., December 5, 2020); *Smith, et al. v. Kforce, Inc.*, No.: 8:19-cv-02068-CEH-CPT (M.D.Fla. June 28, 2021); *Broughton v. Payroll Made Easy, Inc.*, No.: 2:20-cv-41-NPM (M.D.Fla. July 27, 2021); *Betty Morris, et al. v. US Foods, Inc.*, No.: 8:20-cv-105-SDM-CPT (M.D.Fla. July 14, 2021); *Tweedie v. Waste Pro USA, Inc.*, No.: 8:19-cv-01827-TPB-AEP (M.D.Fla August 5, 2021); *Mendiola v. Home Depot U.S.A., Inc., et al.*, No.: 1:20-cv-04027 (N.D.G.A. October 7, 2021)(ERISA); *McNamara v. Brenntag Mid-South, Inc.*, No.: 8:21-cv-618-MSS-JSS, (M.D.Fla. November 2, 2022); *Washington v. DialogDirect*, No: 2:21-cv-10445-LVP-RSW (E.D.Mich. April 18, 2022); *Lyttle v. Trulieve, Inc.*, Case No.: 8:19-cv-02313-CEH-TGW (M.D.Fla. Aug. 18, 2022); *Moore v Computer Generated Solutions, Inc.* Case No.: 2022-ca-856 (Thirteenth Circuit Fla. Sept. 21, 2023); *Rodriguez v TZ Insurance Solutions d/b/a Tranzact and Willis Towers Watson, U.S. LLC*, Case No.: 23-ca-401 (Thirteenth Circuit Fla. Aug. 17, 2023); *Cothran v. Adams*, Case No.: 23-cv-00518-CEH-CPT (M.D. Fla. October 24, 2024)(ESOP breach of fiduciary duty action); *Forestal v. SH Group Operations, LLC and Sterling Infosystems, Inc.*, Case No. 23-CA-013634, (Thirteenth Cir. Fla. May 22, 2024); *Stewart v. Baptist Memorial Health Care Corporation*, Case No. 2:21-cv-02377-SHM-cgc (W.D. Tenn. September 30, 2024); *Molla v. Gerdau Ameristeel, U.S. Inc.*, Case No.: 8:22-cv-2094-VMC-SPF, (Middle District of Florida, July 8, 2025)(ERISA

breach of fiduciary duty); *Paul Harvey v. Bed Bath & Beyond, Inc., 401(k) Savings Plan Committee*, Case No.: 2:23-cv-20376-CCC-SDA (D.NJ., October 9, 2025)(ERISA breach of fiduciary duty); *Vidal McDowell v. Pluto Acquisition OPCO, LLC*, Case No.: 2:23-cv-12827-RJW-APP (United States District Court Eastern District of Michigan, October 28, 2025).

7. I am of the opinion that the proposed settlement is fair, reasonable, adequate, and is in the best interest of the Class in light of all known facts and circumstances.

8. My co-counsel and I have the resources to continue to litigate this case vigorously on behalf of the class and we are committed to continuing to do so should the class settlement fail.

9. I believe the Plaintiff, John Stewart, is an adequate class representative. At all relevant times he has sought to protect the interests of the Class. I am not aware of any conflicts of interest that the Plaintiff may have with any Class Member.

10. I strongly support the Settlement reached by the Parties in this case as fair, reasonable, and adequate.

11. With respect to the hours spent litigating, the below table summarizes time spent by the respective firms, attorneys, and paralegals:

Attorneys	Hours	Hourly Rate	Fees
Michael McKay 23 years practicing law	329.6	\$775	\$255,440
Luis A. Cabassa 31 years practicing law	163.5	\$775	\$126,713
Marc Edelman 29 years practicing law	189.7	\$775	\$147,018
Amanda E. Heystek 24 years practicing law	172.4	\$700	\$120,680
Brandon Hill 19 years practicing law	326.8	\$700	\$228,760
Total:	1,182		\$878,611
Paralegals	Hours	Hourly Rate	Fees

George Venieris 6 years as paralegal	161.4	\$150.00	\$24,210
Kelly Moysh 8 years as paralegal	153.1	\$150.00	\$22,965
Jack McKay 2 years as paralegal	148.6	\$150.00	\$22,290
Grace DeSane 10+ years as paralegal	24.3	\$150.00	\$3,645
Amy Ketelsen 15 years as paralegal	42.9	\$150.00	\$6,435
Total:	530.3		\$79,545

12. My firm has expended a total of \$8,211.67 in costs. My firm's costs break down as follows: JAMS mediation fees, \$6,666.66; service of process fee, \$65.00; filing fee, \$402.00; airline tickets and hotel stay for mediation, \$1,017.28; taxi to mediation, \$60.73.

13. I respectfully ask that the Court award Class Counsel attorneys' fees and the reasonable litigation expenses sought.

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

Executed this 6th day of April, 2026, in Tampa, Florida.

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

EXHIBIT 4

PROPOSED ORDER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

JOHN STEWART, on behalf of the NextEra
Energy, Inc., Employee Retirement Savings
Plan,

Plaintiff,

vs.

NEXTERA ENERGY, INC.,

Defendant.

No. 9:23-CV-81314-AMC

The Honorable Aileen M. Cannon

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEYS' FEES
AND REIMBURSEMENT OF OUT-OF-POCKET EXPENSES**

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 Motion for Attorneys' Fees and Reimbursement of Out-of-Pocket Expenses is **GRANTED**. Class Counsel is awarded a fee consisting of one-third of the gross common fund, which totals \$2,666,666.66, and an additional \$44,921.18 in litigation costs.

ORDERED in Chambers at Fort Pierce, Florida, this ___ day of September, 2026.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: All counsel of record