UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

YOLANDA TURNER ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v. Case No. 6:21-CV-00161-CEM-GJK

ROSEN HOTELS AND RESORTS, INC.,

Defendant.

CLASS COUNSEL'S UNOPPOSED MOTION FOR APPROVAL OF CLASS COUNSEL'S FEES, CLASS COUNSEL'S EXPENSES AND THE GENERAL RELEASE PAYMENT

Class Counsel file this Motion, and incorporated Memorandum of Law, seeking approval of Class Counsel's Fees and Class Counsel's Expenses in accordance with the Settlement Agreement[1] and this Court's Order preliminarily approving the Settlement Agreement ("Preliminary Approval Order"). (Doc. 49). Class Counsel also seek approval of the General Release Payment for Plaintiff in accordance with the Settlement Agreement.

A proposed Order approving the relief sought herein is attached as Exhibit 1. In further support thereof, Class Counsel respectfully submit the following:

Brief Summary

[1] All defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement, filed on April 28, 2022. (*See* Doc. 43-1).

On August 2, 2022, this Court issued the Preliminary Approval Order (Doc. 49), preliminarily approving the Settlement Agreement reached between Yolanda Turner ("Class Representative"), on behalf of herself and on behalf of the individuals named on Schedule 1 to the Settlement Agreement, on the one hand, and Rosen Hotels and Resorts, Inc. ("Defendant"), but deferred ruling on the General Release Payment. *Id*.

Following entry of the Preliminary Approval Order, the Settlement Administrator, at Class Counsel's request and instruction, mailed the Court-approved Notice of Settlement, to all of the three thousand six hundred thirty-one (3631) Class members in this matter on August 23, 2022 at their last known addresses provided by Defendant. *See* Olsen Decl. II, ¶ 3 and attached WARN Noticing Report. Also on August 23, 2022, the Settlement Administrator caused the settlement website (www.rosenwarnsettlement.com) to go live, which includes two translated Class Notices, one in Spanish and one in Haitian Creole. *Id*. Thus far, there are no objections and 57 opt-out forms have been completed and returned.[2] *Id*. The deadline for opt-outs and objections is September 27, 2022.

As explained below, Class Counsel undertook this class action without guarantee of payment and, despite significant hurdles, achieved an excellent result on behalf of Plaintiff and the Class by securing the Gross Settlement Fund of $2,300,000.00 that is unreduced by opt-outs nor subject to a "blow-up clause" based on the level of opt-outs.

[2] Four of the opt-outs, however have since indicated that they submitted the opt-out form in error and rescinded it.

This request for approval of Class Counsel's Fees comports with the Eleventh Circuit's decision in *Camden*, holding that "[h]enceforth 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"). *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991). In light of the results achieved, including a common fund of $2,300,000.00, coupled with the risks undertaken by Class Counsel, lack of any objections whatsoever thus far, and the public policy need to provide adequate incentive for attorneys to enforce the Worker Adjustment and Retraining Notification Act of 1988 29 U.S.C. §§ 2101-2109 (the "WARN Act") for aggrieved employees, like Plaintiff and the Class members here, Class Counsel's request for payment of Class Counsel's Fees in the amount of one-third of the Gross Settlement Fund, net of the one-time General Release Payment, plus Class Counsel's Expenses, is reasonable and should be awarded. Class Counsel also submit that the General Release Payment for the Plaintiff is appropriate and should be paid, considering the more fulsome release provided by Plaintiff and absence of Class member objections to such payment. In further support of this Motion, Class Counsel state the following:

I. BACKGROUND.[3]

A. The Complaint and Answer.

On or about January 22, 2021, the Class Representative filed a Class Action Complaint and Jury Demand against Defendant (the "Complaint") pursuant to the

[3] For the sake of brevity, Class Counsel hereby incorporates by reference the procedural and factual history set forth in the Joint Motion (Doc. 43).

WARN Act. The Complaint alleges a Rule 23 class action asserting that Defendant violated the WARN Act. *See generally* Doc. 1; the Joint Motion, Doc. 43 and Doc. 43-2, Olsen Decl. I, ¶ 2.

Defendant denies all allegations in the Complaint. *See* Defendant's Answer, Doc. 20; the Joint Motion Doc. 43 and Doc. 43-2, Olsen Decl. I, ¶ 3.

Prior to the filing of the Complaint, and to the best of the Parties' knowledge, no federal court had ruled on application of the natural disaster defense to layoffs related to COVID-19. (*See* (Id. at ¶ 5). During the pendency of this matter, federal District Courts have issued conflicting decisions on the issue and, to date, only one federal Court of Appeals (the Fifth Circuit) has ruled on the issue, holding on June 15, 2022, that the COVID-19 pandemic is not a natural disaster under the WARN Act and that the natural-disaster exception incorporates proximate causation.

B. Ongoing Settlement Negotiations, Discovery and Motion Practice.

The Parties engaged in informal negotiations concerning resolution of the Class Representative's claims since in or about February 2021. (*See* Doc. 43-2, Olsen Decl. I, ¶ 6). A thorough discussion of the particulars of discovery, motion practice and the mediation of this matter is contained in the Joint Motion and is incorporated by reference. On March 22, 2022, the Parties attended a virtual mediation with mediator Carlos Burruezo. *Id*. As a result of the negotiations at the mediation and in an attempt to avoid further costly litigation and the uncertainties and risks associated therewith, the Parties agreed to enter into the Settlement

Agreement that has now been preliminarily approved by this Court, with the exception of the agreed upon General Release Payment.

C. The Settlement Agreement.

1. Benefits to Class Members.

The Settlement provides for a monetary payment of $2,300,000.00 (defined as the "Gross Settlement Fund"), plus all applicable employer tax contributions, including, the employer's share of FICA/Medicare tax and any federal and state unemployment tax due on the payments to Class members, to be paid by the Defendant. (*See* Doc. 43-1, Settlement Agreement, ¶¶ 2-3). Subject to Court approval, the Gross Settlement Fund will cover the Class member's "Pre-tax Net Amounts", all as shown on Schedule 1 to the Settlement, as well as Class Counsel's Fees (defined in the Settlement as one-third of the Gross Settlement Fund, net of the one-time General Release Payment), Class Counsel's Expenses (defined in the Settlement as litigation expenses of Class Counsel, including the Class Representative's share of the Mediator's fee; the production and mailing of the Class Notice and the fees and expenses of the Settlement Administrator), and the General Release Payment (defined in the Settlement as the sum of $7,500 to the Class Representative), also all shown on Schedule 1 to the Settlement. (*See* Doc. 43-1, Settlement Agreement, ¶ 2; Schedule 1).

Under the terms of the Settlement, the Gross Settlement Fund, plus the Employer Portions (defined as the employer's share of FICA/Medicare tax and any federal and state unemployment tax due and which shall be calculated by the Settlement Administrator) is to be wired by Defendant to the Qualified Settlement

Fund within five (5) business days of the Court's entry of final approval of the Settlement, and is to be administered by the Settlement Administrator, American Legal Claims Services, LLC. (*See* Doc. 43-1, Settlement Agreement, ¶¶ 2, 4-5).

2. Class Counsel's Fees, Class Counsel's Expenses and the General Release Payment.

Subject to this Court's approval, Class Counsel Fees, Class Counsel's Expenses and the General Release Payment will be paid from the Gross Settlement Fund. (*See* Doc. 43-1, Settlement Agreement, ¶ 2 and Schedule 1). Class Counsel is, by this Motion (and as set out further below), petitioning the Court for an award of attorneys' fees of one-third of the Gross Settlement Fund, net of the one-time General Release Payment, which Class Counsel also seek approval of, plus Class Counsel's Expenses projected to be approximately $92,000. (*Id.*)

3. Notice, Lack of Objections and the Class Members' Reactions to the Settlement.

Pursuant to Federal Rule of Civil Procedure 23(e)(1) and (e)(5), the Settlement Agreement provides for notice to the Class and an opportunity for Class members to object to approval of the Settlement. The proposed form and method of notice of the proposed Settlement satisfy all due process considerations and meet the requirements under Rule 23(e)(1) and was approved by this Court in the Preliminary Approval Order. (*See* Doc. 49, ¶ 5). As noted above, the Settlement Claims Administrator, American Legal Claims, mailed the Court-approved Class Notice to the Class members reflected on Schedule 1 on August 23, 2022. *See* Olsen Decl. II, ¶ 4; Olsen Decl. II, Exhibit A, WARN Noticing Report. Thus far, no Class members have filed an objection and only fifty-seven (approximately 1.5% of

the Class) have returned an opt-out form.[4] *See* Olsen Decl. II, ¶ 4. Also on August 23, 2022, the Settlement Administrator caused the settlement website (www.rosenwarnsettlement.com) to go live, which includes two translated Class Notices, one in Spanish and one in Haitian Creole. *See* Olsen Decl. II, Exhibit A, WARN Noticing Report. The deadline for opt-outs and objections is September 27, 2022. Id. The undersigned has also personally spoken with many Class members who called with questions and were pleased with the Settlement. *See* Olsen Decl. II, ¶ 4.

II. THE COURT SHOULD AWARD THE FEES AND EXPENSES SOUGHT.

A. The Requested Class Counsel Fees and Class Counsel's Expenses 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), in the Eleventh 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". *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991).

Both the Eleventh Circuit and courts in this District have approved fee awards from a common fund like the fee requested here. *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

[4] And so far, four of those opt-outs have since indicated that they submitted the opt-out form in error and rescinded it.

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, (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."); *see also* Section II, B. below (5/12 "Customary fee and awards in similar cases").

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. "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*, 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.

The total value recovered for the Class members is an excellent result at $2,300,000. Further, 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). 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)); *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 where the fee is separately paid by the defendant).

Here, Class Counsel seeks fees of one-third of the Gross Settlement Fund, net of the one-time General Release Payment, for a total of $764,166.67, plus Class Counsel's Expenses. 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. *See Olsen Decl. II*, ¶ *8; Camden*, 946 F.2d at 774; *see also 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); *Guarisma v. ADCAHB Medical Coverages, Inc.*, No. 13-CV-21016, [ECF No. 95] (S.D. Fla. June 24, 2015) (awarding one-third plus costs); *Reyes v. AT&T Mobility Servs., LLC*, No. 10-CV-20837, [ECF No. 196] at 6 (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.

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*, 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)). "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*, 946 F.2d at 775. As set forth below, application of the *Johnson* 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. <u>Time and labor required</u>.

As to the first *Johnson* factor, and as set out in the original Olsen declaration (Doc. 43-2) and supplemented by the attached declaration, Class Counsel, consisting of three law firms: The Gardner Firm, P.C., Lankenau & Miller, LLP and Wenzel Fenton & Cabassa, P.A. collectively expended significant time and effort in

this matter, including conducting research relating to the novel COVID-19 related issues in this matter; drafting and filing the complaint; preparing briefing related to Defendant's Motion to Stay; drafting and serving extensive class-wide written discovery on Defendant covering nine separate facilities, which included interrogatories, requests for admissions and two sets of requests for production; drafting and serving deposition notices; reviewing class wide information produced by Defendant; preparing for and attending mediation, including the drafting of a comprehensive confidential mediation submission; drafting and editing the agreed upon settlement terms at mediation once an agreement in principle was reached; drafting and editing the long form Settlement Agreement and Schedule 1; drafting and editing the supporting approval papers and all exhibits thereto, including the proposed Class Notice; providing instruction to the Settlement Administrator along with the actual Class Notices to be mailed, as well as handling questions from the Settlement Administrator; responding to a myriad of inquiries from the Class members after the Class Notice was sent out; and, of course, drafting this Motion and exhibits hereto. Additionally, there will a further filing in support of final approval providing the results of noticing and preparation for the final fairness hearing, all requiring significant preparation time. *See* Olsen Decl. II, ¶ 9.

If the Court grants final approval of the Settlement, Class Counsel will continue to represent the Class and monitor the administration and completion of the Settlement, working together with the Settlement Administrator toward completion of all duties as set forth in the Settlement. Class Counsel will also

continue to assist Class Members and will continue to respond to their inquiries. Therefore, Class Counsel will have significantly more time in this matter to bring it to full and final resolution once the case is complete. S*ee* Olsen Decl. II, ¶ 10.

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

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 v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 547 (S.D. Fla. 1988). WARN Act class action litigation is highly specialized and complex. This case was no exception, particularly in light of the COVID 19-related layoffs present here for

which there is a paucity of caselaw. Class Counsel has demonstrated the requisite skill and experience to have ably represented the Plaintiff and Settlement Class, and to continue to do so. S*ee* Olsen Decl. II, ¶ 11.

This case is extremely novel and presented difficult questions of both fact and law. S*ee* Olsen Decl. II, ¶ 12. And, as shown in Olsen Decl. I (Doc. 43-2), Class Counsel had the expertise to pursue this case and the expertise to marshal it to a favorable outcome, having collectively served as Class Counsel in more than one hundred (100) WARN Act cases. Few lawyers possess the depth of experience in this area of the law as Class Counsel to pursue and successfully resolve such a matter, against a well-funded Defendant and highly skilled defense counsel. This factor also weighs heavily in favor of the reasonableness of the requested fee. S*ee* Olsen Decl. II, ¶ 13.

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 innovative area of class action litigation, the genuine possibility of Defendant's success in light of the newness of the interplay between COVID-19 related layoffs and an employer's obligations under the WARN Act, the ability to achieve a favorable outcome, and the complexity inherent with any class action, all demonstrate that Class Counsel are highly skilled practitioners. S*ee* Olsen Decl. II, ¶ 14.

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 time and attention required to prosecute this action limited the amount of time that Class Counsel had available to devote to other matters over the period of this litigation, which has lasted close to two years. As shown above, this case involved three separate law firms on Plaintiff's side. While the undersigned did much of the day-to-day work, Stuart Miller and Johnathan Miller of Lankenau & Miller, LLP, as well as Brandon Hill from Wenzel Fenton Cabassa, P.A., also performed work in this case. *See* Olsen Decl. II, ¶ 15. Thus, this factor also weighs in favor of finding the requested fee reasonable.

5/12. Customary fee and awards in similar cases.

The fifth and twelfth *Johnson* factors focus on the customary fee and awards in similar cases. Because these two factors are similar, Class Counsel analyzes them together.

An award of one-third of the common fund as attorneys' fees to class counsel is common in WARN Act class action settlements and, in undersigned's personal

experience, is regularly approved by Courts across the country. *See* Olsen Decl. II, ¶ 16. See e.g., *Guippone v. BH S&B Holdings, LLC*, Case No. 09 Civ. 01029 (CM), 2011 U.S. Dist. LEXIS 126026, at *27-28 (S.D.N.Y. Oct. 28, 2011) ("[I]n more than 30 WARN actions class counsel was awarded a one-third fee." citing *In re Consolidated Freightways Corporation*, Case No. 02-24284-MG (Bankr. C.D. Cal.); *Powell v. Creighton Incorporated*, Case No. 1:01CV779 (M.D.N.C.); *In re CTC Communications Group, Inc.*, Case No. 02-12873 (PJW) (Bankr. D. Del.); *Madley v. Florida Cypress Gardens, Inc.*, Case No. 8:03-CV-00795-T-17TBM (M.D. Fla.); *In re Dollar Land, Inc.*, Case No. 02-14547 (Bankr. E.D. Pa); *Johnson v. GMAC Mortgage Group, Inc.*, Case No. C04-2004-LRR, (N.D. Iowa); *Morris v. Greenwood Mills. Inc.*, Civil Action No. 8:02-221-24, (D. S.C.); *In re Inacom Corp*, Case No. 00-2426 (PJW) (Bankr. D. Del.); *Teligent, Inc.*, Case No.: 01-12974(SMB) (S.D.N.Y.); *Bandel v. L.F. Brands Marketing, Inc.*, Civil Action No. 04 CV 1672 (CSH) (S.D.N.Y.); *Baker v. The National Machinery Company*, Case No. 3:02CV7444 (N.D. Ohio); *Deninno v. Penn American Coal Company, L.P.*, Civil Action No. 03-0320 (D. W.D. Pa.); *In re Pliant Systems, Inc.*, Case No. 01-01264-5 ATS (Bankr. E.D.N.C.); *Adkins v. Pritchard-Brown*, Case No. 5:03CV129-OC 10 GRJ, (M.D. Fla.); *Gibson v. Sonic Foundry, Incorporated*, Case No. CV-03-4062 SVW (CD. Cal.); *In re Thomaston Mills, Inc.*, Case No. 01-52544 (RFH) (Bankr. M.D. Ga); *Ballentine v. Triad International Maintenance Corporation*, Case No. 0 1-1 0357 (E.D. Miss.); *Trout v. Transcom USA*, Case No. 1:03-cv-0537-LJM-WTL, (S.D. Ind.); *Padgett v. Wireless Retail, Inc.*, Case No. CV04 1170 PHX-SR, (D. Ariz.)). In addition to the cases cited by the *Guippone* Court, other courts have

awarded a third of the common fund as attorneys' fees in WARN Act class action settlements. *See Kizer v. Summit Partners, L.P., Case No. 1:11-CV-38 (E.D. Tenn. Jul. 10, 2012); In re Quantegy*, Case No. 05-80042 (Bankr. M.D. Ala. 2005); *Nieves v. Community Choice Health Plan of Westchester, Inc.*, Case No. 7:08-CV-321 (S.D.N.Y. May 8, 2012); *Robbins v. Durham School Services, L.P.*, Case No. 1:09-CV-609 (W.D. Tex. May 31, 2011); *Hackworth v. Telespectrum Worldwide, Inc.*, Case No. 3:04-CV-1271 (S.D. W.Va. Aug. 3, 2006); *Knapp v. Badger Techs, Inc.* 2015 U.S. Dist. LEXIS 77186 (W.D.N.Y. 2015); *Mees v. Skreened, Ltd.*, 2016 U.S. Dist. LEXIS 1242 (S.D. Ohio 2016); *Bennett v. Roark Capital Group, Inc.*, 2011 U.S. Dist. LEXIS 48094 (D. Me. 2011); *Williams v. Microfibres, Inc.*, Bk. No. 16-10154, A.P. No.16-01002 (Bankr. R.I. 2020); *Lewis, et al. v. North American Communications, Inc.*, Bk. No. 19-70349-JAD, AP Case No. 19-07010-JAD (Bankr. W.D. Penn. 2020); *Morris v. Moon Ridge Foods, LLC, et al.*, Case No.18:CV-03219-SRB (W.D. Mo. 2018); *Hightower v. Alfred Angelo Newco, Inc.*, Bk. Case 17-18864-MAM (Bankr. S.D. Fla. 2017); *In re The Hertz Corporation, et al.*, Case No.: 20-11218-MFW (Bankr. Del. 2020); *Foy v. Durham School Services L.P., et al.*, Case No. 2:20-cv-02750-JPM-tmp (W.D. Tenn. 2020); *Forsyth v. Lucky's Market Parent Co., LLC, et al.*, Bk. Case 20-10166 (JTD) (Bankr. Del. 2020).

6. <u>The case was taken on a contingency basis</u>.

The sixth *Johnson* factor concerns the type of fee arrangement (hourly or contingent) entered 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).

The Class Representative, who personally retained undersigned, agreed to a one third contingency fee, plus expenses, to be paid from any gross recovery, if Class Counsel was successful enough to create one. *See* Olsen Decl. II, ¶ 17. In the plaintiff's employment law arena, the typical contingency fee retainer requires clients to consent to a fee of forty percent (or more) of the gross recovery – a percentage higher than that sought by Class Counsel in this case. Importantly, Class Counsel regularly spends hundreds of hours each year investigating WARN Act inquiries which do not result in litigation and for which we are not compensated. Additionally, by their nature, WARN Act cases present a high degree of risk of recovery. This case was no different in that respect. There was the risk that Class Counsel might never be paid for the work performed in this matter. In fact, over the years, undersigned has litigated a number of cases in which defendants or debtors were ultimately unable to pay, so that there was no fee. *See* Olsen Decl. II, ¶ 17.

Here, Class Counsel pursued difficult claims on behalf of the Class Representative and the Class, against a well-funded Defendant. There were no assurances that the Class Representative would survive motion practice, summary judgment, or trial, much less achieve a $2.3 million recovery for the Class. *See* Olsen Decl. II, ¶ 17.

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 a substantial time commitment on the part of Class Counsel. *See* Olsen Decl. II, ¶ 18. Thus, this factor also weighs in favor of the reasonableness of the requested fees.

8. Amount involved and the results obtained.

Class Counsel secured from Defendant a Gross Settlement Fund totaling $2,300,000 on behalf of the Class. In doing so, Class Counsel effectively achieved a 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. *See* Olsen Decl. II, ¶ 19.

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

This case has, at all stages, been handled on both sides by very experienced and skilled lawyers. And, as noted above and in undersigned's prior declaration, having collectively served as Class Counsel in more than one hundred (100) WARN Act cases, few lawyers possess the depth of experience in this area of the law, on a

nationwide basis, as Class Counsel. *See* Doc. 43-2; Olsen Decl. II, ¶ 13. This factor also weighs in favor of awarding the requested fees.

10. Undesirability of the case.

In the above sections, and in undersigned prior declaration, Class Counsel highlighted the complexity and skill required to prosecute this action as well as the risks involved due to the novelty of the claims related to the COVID-19-related layoffs. The time and expense 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. And in fact, no other former co-workers of the Class Representative brought any such claims. Olsen Decl. II, ¶ 20.

Therefore, this factor, too, supports the requested amount of attorneys' fees sought in this Motion.

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

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

In sum, and based on the *Johnson* factors above, the amount of Class Counsel's Fees sought here should be deemed reasonable and approved.

III. THE COSTS SOUGHT SHOULD BE AWARDED.

Pursuant to the Settlement Agreement, Class Counsel's Expenses should be recoverable from the Gross Settlement Fund. "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." *Id.* at *6; *see*

also Dowdell v. City of Apopka, 698 F.2d 1181, 1191-92 (11th Cir. 1983) ("[W]ith the exception of routine office overhead normally absorbed by the practicing attorney, all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case may be taxed as costs under section 1988.") The requested award of Class Counsel's Expenses here consists of case-related costs, the bulk of which consist of costs related to the mediation; costs related to the Class noticing; future expenses related to attendance for out of state counsel at the final fairness hearing and future quoted costs related to the administration of the Settlement, if the Settlement is approved. These expenses are in line with normal expenditures in a case of this type and Class size and are projected to be $91,824.29, based upon the following:

- For The Gardner Firm, PC, the projected expense total is $90,830.44 which includes $2,940.90 for the Plaintiff's actual share of the mediation; $864.11 paid for legal research and pro hac related costs; $82,025.43 in Settlement Administrator's costs, which includes notice translation/noticing and future costs related to the administration/distribution of the Gross Settlement Fund, if the Settlement is approved (s*ee* Olsen Decl. II, Exhibit B, Settlement Administration Quote; future expenses related to processing returned mailings, the final fairness hearing travel/lodging and wind up, if settlement is approved (estimated to be $5,000);
- For Wenzel Fenton Cabassa, P.A., the current expense total of $823.85 includes court/filing fees and service/mailing costs;
- For Lankenau & Miller, LLP, the expense total currently includes $170 pro hac and PACER fees. *See* Olsen Decl. II, ¶ 21; Olsen Decl. II, Exhibit B.

Class Counsel's Expenses sought herein by Class Counsel consist of necessary expenses related to this litigation and settlement of this matter, as shown above. Class Counsel's Expenses are reasonable and should be awarded from the

common fund, as provided in the Settlement Agreement. *See* Olsen Decl. II, ¶ 22; *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. PLAINTIFF'S GENERAL RELEASE PAYMENT SHOULD BE AWARDED.

On April 29, 2022, the Court ordered the parties to provide briefing regarding the applicability of *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020), Doc. 44, which the Parties provided on May 9, 2022. Doc. 45.

In the Preliminary Approval Order, the Court deferred ruling on the General Release Payment pending a decision on the petition for rehearing *en banc* in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244, 1260 (11th Cir. 2020). In accordance with the Preliminary Approval Order, the Plaintiff notified the Court on August 11, 2022 that the Eleventh Circuit denied the petition for en banc review of *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244, 1260 (11th Cir. 2020). *See Johnson v. NPAS Sols.*, LLC, No. 18-12344, 2022 WL 3083717 (11th Cir. Aug. 3, 2022).

Class Counsel still petitions the Court to consider the payment of the Class Representative's General Release Payment in the amount of $7,500. The Plaintiff and Class Counsel negotiated a general release of all of Plaintiff's employment claims with Defendant in good faith and to date, no Class Members have raised any objection to the General Release Payment. As noted in the Parties' joint submission concerning the appropriateness of the General Release Payment, the relatively

small payment to the Plaintiff is expressly and actually, consideration for a general release that *only* the named Plaintiff gave. Honoring her duty to absent class members, the named Plaintiff did not bargain away any other Class member's right to bring any suits or claims *except* under the WARN Act itself, the very thing this suit is about; the only release given by absent class members is a release of WARN Act claims. The named Plaintiff, by contrast, released *every* claim relating to her employment, no matter what law, regulation, or common law theory might be involved. This is, plainly and on its face, not salary. It is not bounty. It is, likewise, not given just because she was the named Plaintiff. But being the named plaintiff, she was in a position to bargain away – for herself alone – a full release. That does nothing to make the class settlement unfair, or suspect, at all. There is no reason to think it unusual, or suspect, that an employer would find a general release from a former employee worth at least $7,500 – especially where that former employee has shown herself to be aware of her rights and unafraid of litigation. Employers regularly make deals with departing employees giving them severance payments much larger than $7500, in exchange for general releases. Similarly, in settling single plaintiff employment lawsuits, it is standard practice for the employer to pay some additional amount to obtain, in addition to dismissal of the lawsuit, a general release. Class Counsel respectfully submits that in the instant case, involving payment for a general release, the Plaintiff's General Release Payment should be permitted to be paid, as agreed by the Parties, from the Gross Settlement Fund, as other Courts from this District have allowed. *See* Doc. 45 at pp. 3-5 of 8; Olsen Decl. II, ¶ 23.

V. CONCLUSION.

For the reasons set forth above, Class Counsel's Fees and Class Counsel's Expenses described in the Settlement Agreement and sought herein are reasonable and should be awarded. No Class member has objected to the relief sought in the Joint Motion and only a small percentage of the Class have asked to be excluded at this point. Class Counsel therefore respectfully moves this Court to grant this Motion and award them Class Counsel's Fees (one-third of the Gross Settlement Fund, net of the one-time General Release Payment) as shown on Schedule 1 to the Settlement in the amount of $764,166.67, plus Class Counsel's Expenses, projected to be $91,824.29. Finally, Class Counsel seeks the award of the General Release Payment to the Plaintiff in the agreed amount of $7,500. A proposed Order is attached as Exhibit 1.

Local Rule 3.01(g) Certification

Pursuant to Local Rule 3.01 (g), Class Counsel hereby certify that Defendant does not oppose the relief sought in this Motion.

Dated this 13th day of September, 2022.

Respectfully submitted,

/s/ Mary E. Olsen

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Attorneys for the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2022, the foregoing was electronically filed with the Clerk of the Court via the CM/ECF system, which will send a notice of electronic filing to all parties of record

/s/ Mary E. Olsen
Mary E. Olsen

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

YOLANDA TURNER ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v. Case No. 6:21-CV-00161-CEM-GJK

ROSEN HOTELS AND RESORTS, INC.,

Defendant.

[PROPOSED] ORDER GRANTING CLASS COUNSEL'S UNOPPOSED MOTION FOR APPROVAL OF CLASS COUNSEL'S FEES, CLASS COUNSEL'S EXPENSES AND THE GENERAL RELEASE PAYMENT

UPON DUE AND CAREFUL CONSIDERATION of the procedural history of this case, together with the written submissions in support of this Motion and the approval of the Settlement Agreement in this matter, it is **ORDERED AND ADJUDGED** that Class Counsel's Unopposed Motion For Approval of Class Counsel's Fees, Class Counsel's Expenses and the General Release Payment is **GRANTED**. Class Counsel is awarded a fee in the amount of $764,166.67 (which is one-third of the Gross Settlement Fund, net of the one-time General Release Payment, as shown on Schedule 1 to the Settlement), plus Class Counsel's Expenses, in the amount of $91,824.29. Finally, the Court awards the General Release Payment to the Plaintiff in the agreed amount of $7,500.

DONE AND ORDERED , this ___ day of _____, 2022.

_____
U.S. DISTRICT COURT JUDGE

cc: All counsel of record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

YOLANDA TURNER ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v. Case No. 6:21-CV-00161-CEM-GJK

ROSEN HOTELS AND RESORTS, INC.,

Defendant.

SECOND DECLARATION OF MARY E. OLSEN

I, Mary E. Olsen, declare under penalty of perjury as follows:

1. This declaration is provided as a supplement to my original declaration ("Olsen Decl. I", Doc. 43-2) and provides further support for the approval of the Parties' Settlement Agreement[1], and in particular, Class Counsel's Fees, Class Counsel's Expenses and the General Release Payment for the Plaintiff, described therein.

2. In light of the results achieved, including the agreed upon Gross Settlement Fund of $2,300,000.00 to be paid by Defendant (without Class members having to file a claim or take any action, and which is not subject to reduction based on opt-outs, nor termination clause based on any opt-out

[1] Capitalized terms not otherwise defined herein have the meanings provided in the Settlement Agreement, which was attached as Exhibit A (Doc. 43-1) to the Parties' memorandum in support of their Joint Motion.

threshold); the risks undertaken by Class Counsel; lack of any objections whatsoever thus far, and the public policy need to provide adequate incentive for attorneys to enforce the Worker Adjustment and Retraining Notification Act of 1988 29 U.S.C. §§ 2101-2109 (the "WARN Act") for aggrieved employees, like Plaintiff and the Class members here, I submit that Class Counsel's request for payment of Class Counsel's Fees in the amount of one-third of the Gross Settlement Fund, net of the one-time General Release Payment, plus Class Counsel's Expenses, is reasonable and should be awarded. I also submit that the General Release Payment for the Plaintiff is appropriate and should be paid, considering the more fulsome release provided by Plaintiff and absence of Class member objections to such payment.

3. On August 2, 2022, this Court issued the Preliminary Approval Order (Doc. 49), preliminarily approving the Settlement Agreement reached between Yolanda Turner ("Plaintiff" or "Class Representative"), on behalf of herself and on behalf of the individuals named on Schedule 1 to the Settlement Agreement, on the one hand, and Rosen Hotels and Resorts, Inc. ("Defendant"), but deferred ruling on the General Release Payment.

4. Following entry of the Preliminary Approval Order, the Settlement Administrator, at Class Counsel's request and instruction, mailed the Court-approved Notice of Settlement to all of the three thousand six hundred thirty-one (3631) Class members in this matter on August 23, 2022 at their last known addresses provided by Defendant. *See Exhibit A*, WARN Noticing Report. Thus

far, no Class members have filed an objection and only fifty-seven (approximately 1.5% of the Class) have returned an opt-out form.[2] Also on August 23, 2022, the Settlement Administrator caused the settlement website (www.rosenwarnsettlement.com) to go live, which includes two translated Class Notices, one in Spanish and one in Haitian Creole. *Id*. The deadline for opt-outs and objections is September 27, 2022. I have personally spoken with many Class members who called with questions and were pleased with the Settlement.

5. I submit that Class Counsel undertook this class action without guarantee of payment and, despite significant hurdles, achieved an excellent result on behalf of Plaintiff and the Class by securing the Gross Settlement Fund.

6. Class Counsel support the settlement reached by the Parties in this case as fair, reasonable, and adequate, and ask that the Court approve it.

7. I submit that this request for approval of Class Counsel's Fees comports with the Eleventh Circuit's decision in *Camden*, holding that "[h]enceforth 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"). *Camden I Condo. Ass'n, Inc. v. Dunkle,* 946 F.2d 768, 774 (11th Cir. 1991). I submit that both the Eleventh Circuit and courts in this District have approved fee awards from a common fund like the fee requested here. I submit that the total value recovered for the Class members is an excellent result at $2,300,000.

[2] And so far, four of those opt-outs have since indicated that they submitted the opt-out form in error and rescinded it.

Further, 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). 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)); *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 where the fee is separately paid by the defendant).

8. Class Counsel seeks fees of one-third of the Gross Settlement Fund, net of the one-time General Release Payment, for a total of $764,166.67, plus Class Counsel's Expenses. I submit that 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. *See Camden*, 946 F.2d at 774; *see also 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); *Guarisma v. ADCAHB Medical Coverages, Inc.*, No. 13-CV-21016, [ECF No. 95] (S.D. Fla. June 24, 2015) (awarding one-third plus costs); *Reyes v. AT&T Mobility*

Servs., LLC, No. 10-CV-20837, [ECF No. 196] at 6 (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.")plaint on July 8, 2020.

9. Class Counsel, consisting of three law firms: The Gardner Firm, P.C., Lankenau & Miller, LLP and Wenzel Fenton & Cabassa, P.A. collectively expended significant time and effort in this matter, including conducting research relating to the novel COVID-19 related issues in this matter; drafting and filing the complaint; preparing briefing related to Defendant's Motion to Stay; drafting and serving extensive class-wide written discovery on Defendant covering nine separate facilities, which included interrogatories, requests for admissions and two sets of requests for production; drafting and serving deposition notices; reviewing class wide information produced by Defendant; preparing for and attending mediation, including the drafting of a comprehensive confidential mediation submission; drafting and editing the agreed upon settlement terms at mediation once an agreement in principle was reached; drafting and editing the long form Settlement Agreement and Schedule 1; drafting and editing the supporting approval papers and all exhibits thereto, including the proposed Class Notice; providing instruction to the Settlement Administrator along with the actual Class Notices to be mailed, as well as handling questions from the Settlement Administrator; responding to a myriad of inquiries from the Class members after the Class Notice was sent out; and, of course, drafting this Motion and exhibits hereto. Additionally, there will a

further filing in support of final approval providing the results of noticing and preparation for the final fairness hearing, all requiring significant preparation time.

10. If the Court grants final approval of the Settlement, Class Counsel will continue to represent the Class and monitor the administration and completion of the Settlement, working together with the Settlement Administrator toward completion of all duties as set forth in the Settlement. Class Counsel will also continue to assist Class Members and will continue to respond to their inquiries. Therefore, Class Counsel will have significantly more time in this matter to bring it to full and final resolution once the case is complete.

11. I submit that 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 v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 547 (S.D. Fla. 1988). I also submit that WARN Act class action litigation is highly specialized and complex. This case was no exception, particularly in light of the COVID 19-related layoffs present here for which there is a paucity of caselaw. I submit that Class Counsel has demonstrated the requisite skill and experience to have ably represented the Plaintiff and Settlement Class, and to continue to do so.

12. I submit that this case is extremely novel and presented difficult questions of both fact and law. I submit this weighs heavily in favor of the reasonableness of the requested fee.

13. As noted in undersigned's prior declaration, having collectively served as Class Counsel in more than one hundred (100) WARN Act cases, I submit that few lawyers possess the depth of experience in this area of the law, on a nationwide basis, as Class Counsel to pursue and successfully resolve such a matter against a well-funded Defendant and highly skilled defense counsel. I submit this weighs heavily in favor of the reasonableness of the requested fee.

14. I submit that 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 light of the newness of the interplay between COVID-19 related layoffs and an employer's obligations under the WARN Act, the ability to achieve a favorable outcome, 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

15. The time and attention required to prosecute this action limited the amount of time that Class Counsel had available to devote to other matters over the period of this litigation, which has lasted close to two years. As shown above, this case involved three separate law firms on Plaintiff's side. While the undersigned did much of the day-to-day work, Stuart Miller and Johnathan Miller

of Lankenau & Miller, LLP, as well as Brandon Hill from Wenzel Fenton Cabassa, P.A., also performed work in this case. I submit this weighs in favor of finding the requested fee reasonable.

16. I submit that an award of one-third of the common fund as attorneys' fees to class counsel is common in WARN Act class action settlements and, in undersigned's personal experience, is regularly approved by Courts across the country.

17. The Class Representative, who personally retained Class Counsel, agreed to a one third contingency fee, plus expenses, to be paid from any gross recovery, if Class Counsel was successful enough to create one. In the plaintiff's employment law arena, the typical contingency fee retainer requires clients to consent to a fee of forty percent (or more) of the gross recovery – a percentage higher than that sought by Class Counsel in this case. Importantly, Class Counsel regularly spends hundreds of hours each year investigating WARN Act inquiries which do not result in litigation and for which we are not compensated. Additionally, by their nature, WARN Act cases present a high degree of risk of recovery. This case was no different in that respect. There was the risk that Class Counsel might never be paid for the work performed in this matter. In fact, over the years, undersigned has litigated a number of cases in which defendants or debtors were ultimately unable to pay, so that there was no fee. Here, Class Counsel pursued difficult claims on behalf of the Class Representative and the Class, against a well-funded Defendant. There were no assurances that the Class

Representative would survive motion practice, summary judgment, or trial, much less achieve a $2.3 million recovery for the Class. I submit this supports the approval of the requested amount of attorneys' fees.

18. As demonstrated herein and in my prior declaration, this case involved a substantial time commitment on the part of Class Counsel. This weighs in favor of the reasonableness of the requested fees.

19. Class Counsel secured from Defendant a Gross Settlement Fund totaling $2,300,000 on behalf of the Class. In doing so, Class Counsel effectively achieved a 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, I submit that, given the excellent results achieved, this weighs heavily in favor of awarding the requested fee.

20. I have highlighted herein, and in m prior declaration, the complexity and skill required to prosecute this action as well as the risks involved due to the novelty of the claims related to the COVID-19-related layoffs. The time and expense 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. And in fact, no other former co-workers of the Class Representative brought any such claims. I submit this supports the requested amount of attorneys' fees sought here.

21. The requested award of Class Counsel's Expenses here consists of case-related costs, the bulk of which consist of costs related to the mediation; costs related to the Class noticing; future expenses related to attendance for out of state counsel at the final fairness hearing and future quoted costs related to the administration of the Settlement, if the Settlement is approved. These expenses are in line with normal expenditures in a case of this type and Class size and are projected to be $91,824.29, based upon the following:

- For The Gardner Firm, PC, the projected expense total is $90,830.44 which includes $2,940.90 for the Plaintiff's actual share of the mediation; $864.11 paid for legal research and pro hac related costs (*See* Exhibit B, The Gardner Firm Cost Report); Settlement Administration Quote; $82,025.43 in Settlement Administrator's costs, which includes notice translation/noticing and future costs related to the administration/distribution of the Gross Settlement Fund, if the Settlement is approved. (*See* Exhibit B, Settlement Administration Quote); future expenses related to processing returned mailings, the final fairness hearing travel/lodging and wind up, if settlement is approved (estimated to be $5,000);

- For Wenzel Fenton Cabassa, P.A., the current expense total of $823.85 includes court/filing fees and service/mailing costs (*See* Exhibit B, Wenzel Fenton Cabassa, P.A. Cost Report);

- For Lankenau & Miller, LLP, the expense total currently includes $170 pro hac and PACER fees. (*See* Exhibit B, Lankenau & Miller, LLP Cost Report).

22. Class Counsel's Expenses sought herein by Class Counsel consist of necessary expenses related to this litigation and settlement of this matter, as shown above. Class Counsel's Expenses are reasonable and should be awarded from the common fund, as provided in the Settlement Agreement.

23. I submit that the Plaintiff and Class Counsel negotiated a general release of all of Plaintiff's employment claims with Defendant in good faith and to date, no Class Members have raised any objection to the General Release Payment. As noted in the Parties' joint submission concerning the appropriateness of the General Release Payment, the relatively small payment to the Plaintiff is expressly and actually, consideration for a general release that *only* the named Plaintiff gave. Honoring her duty to absent class members, the named Plaintiff did not bargain away any other Class member's right to bring any suits or claims *except* under the WARN Act itself, the very thing this suit is about; the only release given by absent class members is a release of WARN Act claims. The named Plaintiff, by contrast, released *every* claim relating to her employment, no matter what law, regulation, or common law theory might be involved. This is, plainly and on its face, not salary. It is not bounty. It is, likewise, not given just because she was the named Plaintiff. But being the named plaintiff, she was in a position to bargain away – for herself alone – a full release. That does nothing to make the class settlement unfair, or suspect, at all. There is no reason to think it unusual, or suspect, that an employer would find a general release from a former employee worth at least $7,500 – especially where that former employee has shown herself to be aware of her rights

and unafraid of litigation. Employers regularly make deals with departing employees giving them severance payments much larger than $7500, in exchange for general releases. Similarly, in settling single plaintiff employment lawsuits, it is standard practice for the employer to pay some additional amount to obtain, in addition to dismissal of the lawsuit, a general release. Class Counsel respectfully submits that in the instant case, involving payment for a general release, the Plaintiff's General Release Payment should be permitted to be paid, as agreed by the Parties, from the Gross Settlement Fund, as other Courts from this District have allowed.

24. I submit that Class Counsel's Fees and Class Counsel's Expenses described in the Settlement Agreement and sought herein are reasonable and should be awarded. No Class member has objected to the relief sought in the Joint Motion and only a small percentage of the Class have asked to be excluded at this point. Class Counsel therefore respectfully requests that the Court award Class Counsel's Fees (one-third of the Gross Settlement Fund, net of the one-time General Release Payment) as shown on Schedule 1 to the Settlement in the amount of $764,166.67, plus Class Counsel's Expenses, projected to be $91,824.29. Class Counsel also seeks the award of the General Release Payment to the Plaintiff in the agreed amount of $7,500.

I declare under penalty of perjury that the foregoing is true and correct to the best of my

knowledge and belief and that this declaration was executed on September 13, 2022 in Mobile, Alabama.

_____/s/ Mary E. Olsen_____
Mary E. Olsen

American Legal Claim Services LLC

TURNER v ROSEN HOTELS WARN
Noticing Report
as of August 23, 2022

This is the current report of all notice/ website status regarding the dates effectuated.

Noticing Phase	Count	Date
Initial Notices Mailed	3,631	8/23/2022
Website Live www.rosenwarnsettlement.com		8/23/2022
Translated Notice (Spanish and Haitian Creole) available on settlement website		8/23/2022
Exclusion and Objection Deadline		9/27/2022

Wenzel Fenton Cabassa PA

INVOICE

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

DATE	INVOICE #
6/11/2021	13225

TO:

Turner, Yolanda - C

DATE	Item	DESCRIPTION OF SERVICES	TIME	RATE	TOTAL
2/1/2021	Filings	Court Filings & Misc Fees	1	402.00	402.00
2/19/2021	Process	Process Service	1	60.00	60.00
6/18/2021	Filings	Court Filings & Misc Fees	1	150.00	150.00
6/18/2021	Filings	Court Filings & Misc Fees	1	150.00	150.00
6/18/2021	Filings	Court Filings & Misc Fees	1	150.00	150.00
6/18/2021	Filings	Court Filings & Misc Fees	1	200.00	200.00
3/16/2022	Postage	Postage.		11.85	11.85

Total	$1,123.85
Payments/Credits	-$300.00
Balance Due	$823.85

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sjm@lankmill.com

September 13, 2022

Re: 6:21-cv-00161-CEM-GJK
Costs for: *Yolanda Turner on behalf of herself and all others similarly situated v. Rosen Hotels and Resorts Inc.*

Costs:

Pro Hac Vice Fee: $150
Pacer Fees: $20
Total Costs: $170

MARY E. OLSEN
M. VANCE McCRARY

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OF COUNSEL:
J. CECIL GARDNER
SAM HELDMAN

Re: *Yolanda Turner, on behalf of herself and all others similarly situated v. Rosen Hotels and Resorts, Inc.*; Case No. 6:21-cv-00161 (M.D. Fla. 2021)

Date	ExpCd	Amount	Narrative
4/7/2021	9	$ 0.60	Pacer Service Center for copies made during the period of 01/01/21 - 03/31/21.
5/5/2021	64	$ 300.00	Payment for Pro Hac Vice fees. (Reimbursed to local counsel Wenzel Fenton Cabassa.)
5/10/2021	56	$ 203.00	Payment issued to Courts USDC-FL-1 for Cert of Admission, Mary Olsen. (American Express)
5/13/2021	14	$ 20.00	Payment issued to Courts of USDCFL -1 for Certificate of Good Standing, Mary Olsen. (American Express)
6/30/2021	9	$ 2.10	Pacer Service Center for copies made during the period of 04/01/21 - 06/30/21.
7/31/2021	144	$ 38.48	Payment to Lexis Nexis for research for invoice # 3093365595.
3/31/2022	9	$ 22.70	Pacer Service Center for copies made during the period of 01/01/22 - 03/31/22.
3/31/2022	144	$ 16.07	Payment to Lexis Nexis for research for invoice # 3093809647.
3/31/2022	144	$ 35.70	Payment to Lexis Nexis for research for invoice # 3093809647.
4/29/2022	61	$ 2,940.90	Rosen Hotels & Resorts; Payment for 1/2 of Mediation bill paid by Defendant to Burruezo, Esq.
4/30/2022	144	$ 47.66	Payment to Lexis Nexis for research for invoice # 3093830653.
5/31/2022	144	$ 21.08	Payment to Lexis Nexis for research for invoice # 3093874535.
5/31/2022	144	$ 155.52	Payment to Lexis Nexis for research for invoice # 3093874535.
6/30/2022	9	$ 0.60	Pacer Service Center for copies made during the period of 04/01/22 - 06/30/22.
TOTAL		**$ 3,804.41**	

American Legal Claim Services LLC

Mary E Olsen, Esq.
The Gardner Firm, P.C.
182 ST Francis ST, STE 103
Mobile, AL 36602

Re: Rosen Hotels WARN

May 4, 2022

Proposal

Item	Units	Unit Price	Extended
Case Setup	1	$2,500.00	$2,500.00
Print and Mail Notices	3,631	$1.00	$3,631.00
Postage	3,631	$0.53	$1,924.43
Obtain EIN for QSF	1	$ 150.00	$150.00
Check Printing	3,631	$20.00	$72,620.00
Translation to Haitian Creole and Spanish (based on the draft submitted by counsel)	1	$1,200.00	$1,200.00
		Total:	$82,025.43

Assumptions

1) The proposal above is based upon what is known as of the time it was prepared. It will be adjusted to actual units of work performed.
2) Administration consists of receiving a combined print ready PDF file, printing, and mailing notices in a #10 envelope with returns going to TGF. After approval and funding, ALCS will receive a file with class member names and addresses, an allocated amount for distribution and tax IDs if applicable for tax reporting; track and report on cleared/uncleared checks; and year-end tax reporting on form W-2s where applicable.
3) All settlement payments are based in FL.
4) Mailings will be via first class mail.
5) Out of pocket expenses (e.g. travel, etc.) are in addition (assumed to be none).
6) Counsel will provide gross payment amounts.
7) Counsel will provide SS#s that can be relied upon for tax reporting purposes (W-2). Or further direction as to how to handle those with missing SS#s.
8) Attached terms and conditions apply to our administration.
9) Changes to these assumptions need to be in writing from the parties.

American Legal Claim Services, LLC

Accepted: [signature]
Name: Jeffrey Pirrung
Date: 5/4/2022
Title: Mg Director

Client: The Gardner Firm - Class Counsel

Accepted: **s/ Mary E. Olsen**
Name: Mary E. Olsen
Date: 5/4/2022
Title: Class Counsel

American Legal Claim Services LLC

TERMS AND CONDITIONS

All services to be provided to The Gardner Firm - Class Counsel ("Client") by American Legal Claim Services, LLC (together with its affiliates, "ALCS") are subject to the following Terms and Conditions:

1. SERVICES. ALCS agrees to provide Client with the services set forth in the Proposal attached hereto (the "Services"). Client acknowledges and agrees that ALCS will often take direction from Client's representatives, employees, agents and/or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that ALCS may rely upon, and Client agrees to be bound by, any requests, advice or information provided by the Client Parties to the same extent as if such requests, advice or information were provided by Client. Client agrees and understands that ALCS shall not provide Client or any other party with any legal advice.

2. PRICES, CHARGES AND PAYMENT. ALCS agrees to charge and Client agrees to pay, subject to the terms herein, ALCS for its fees and expenses as set forth in the Proposal. Client acknowledges that any estimate in the Proposal is based on information provided by Client to ALCS and actual fees and expenses may vary depending on the circumstances and length of the case. Notwithstanding the foregoing, where total expenses are expected to exceed $1,000 in any single month, ALCS may require advance payment from Client due and payable upon demand and prior to the performance of services. ALCS's prices are inclusive of commission and other charges and are generally adjusted periodically to reflect changes in the business and economic environment. ALCS reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceed 10%, ALCS will give thirty (30) days written notice to Client. Client agrees to pay the reasonable out of pocket expenses incurred by ALCS in connection with Services, including, but not limited to, transportation, lodging, meals. ALCS agrees to submit its invoices to Client and Client agrees that the amount invoiced is due and payable upon receipt.

3. FURTHER ASSURANCES. Client agrees that it will use its best efforts to include provisions reasonably acceptable to ALCS in any relevant court order, settlement agreement or similar document that provide for the payment of ALCS's fees and expenses hereunder.

4. RIGHTS OF OWNERSHIP. The parties understand that the software programs and other materials furnished by ALCS to Client and/or developed during the course of the performance of Services are the sole property of ALCS. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by ALCS.

5. CONFIDENTIALITY. Each of ALCS and Client, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the Services; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information. These provisions shall survive termination of Services.

6. BANK ACCOUNTS. At Client's request, ALCS shall be authorized to establish accounts with financial institutions as agent for Client or as otherwise agreed by the parties. All Client accounts established by ALCS shall be deposit accounts of commercial banks with capital exceeding $1 billion. In some cases, ALCS may derive financial benefits from financial institutions resulting from settlement funds and other moneys on deposit or invested with them. These benefits include, for example, discounts provided on certain banking services and service fees. If a class member or the Client requests that ALCS reissue checks or other financial documents prior to the deadline to cash/negotiate as indicated on the check or other financial document, without ALCS having the previous check or other financial document in its possession, the Client, either directly or through the settlement fund, bears all financial risks/costs related to the Holder in Due Course issues resulting from duplicate cashing/depositing of the check or other financial instrument.

7. TERMINATION. The Services may be terminated by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of ALCS that causes serious and material harm to Client, (ii) the failure of Client to pay ALCS invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services where ALCS reasonably believes it will not be paid. Termination of Services shall not relieve Client of its obligations to pay all fees and expenses incurred prior to such termination. In the event that the Services are terminated, regardless of the reason for such termination, ALCS shall reasonably coordinate with Client to maintain an orderly transfer of data, programs, storage media or other materials furnished by Client to ALCS or received by ALCS in connection with the Services. Client agrees to pay for such services in accordance with ALCS's then existing prices for such services.

8. LIMITATIONS OF LIABILITY AND INDEMNIFICATION. Client shall indemnify and hold ALCS, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to ALCS's performance of Services, including in its reliance upon a settlement agreement or Client direction with respect to tax characterization or allocation of a distribution. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third parties against any Indemnified Party. Client shall notify ALCS in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that Client becomes aware of with respect to the Services provided by ALCS.

Except as provided herein, ALCS's liability to Client or any person making a claim through or under Client for any Losses of any kind, even if ALCS has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of ALCS, shall be limited to the total amount billed or billable to Client for the portion of the particular work which gave rise to the alleged Loss. In no event shall ALCS's liability to Client for any Losses, whether direct or indirect, arising out of the Services exceed the total amount billed to Client and actually paid to ALCS for the Services. In no event shall ALCS be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the Services. Client agrees that except as expressly set forth herein, ALCS makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity. The provisions of this Section 8 shall survive termination of Services.

9. FORCE MAJEURE. Whenever performance hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond the performing party's reasonable control, then such performance shall be excused and shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

10. INDEPENDENT CONTRACTORS. ALCS is and shall be an independent contractor of Client and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of the Services or these Terms and Conditions.

11. PAYMENT OF ATTORNEY'S FEES. If, at any time during the course of this engagement, including, but not limited to 1) being named a witness in any matter related to this engagement; 2) receiving and/or responding to a subpoena of itself, or one of its vendors or related parties, for appearance, documents, deposition, or otherwise; or 3) responding to any official request which is related to this engagement and for which ALCS reasonably believes the assistance of outside counsel to be necessary, ALCS may engage its own counsel after giving notice to the Client of ALCS' intent to hire counsel, and Client shall pay the resulting legal expenses directly to ALCS' legal counsel within the time period required by the invoice from ALCS' counsel.

12. NOTICES. All notices and requests hereunder shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth in the Proposal or to such other address as the party to receive the notice or request so designates by written notice to the other.

13. APPLICABLE LAW. These Terms and Conditions will be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any choice of law principles.

14. ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY; BINDING EFFECT. These Terms and Conditions, together with the Proposal delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersede all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof. If any provision herein shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. These Terms and Conditions may be modified only by a written instrument duly executed by the parties. All of the terms, agreements, covenants, representations, warranties and conditions of these Terms and Conditions are binding upon and inure to the benefit of and are enforceable by, the parties and their respective successors and permitted assigns.

American Legal Claim Services LLC — Date: 5/4/2022

s/ Mary E. Olsen — Client — Date: 5/4/2022