

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JESSICA ROUBERT,

Plaintiff,

v.

CASE NO.: 8:21-cv-2852-TPB-TGW

**CAPITAL ONE FINANCIAL
CORPORATION,**

Defendant.

_____ /

**PLAINTIFF’S UNOPPOSED MOTION FOR
ATTORNEYS’ FEES AND COSTS**

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

Brief Summary

On December 15, 2022, the Court granted Plaintiff’s Unopposed Motion for Preliminary Approval of the Class-wide Settlement of the claims asserted against Defendant under 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4. (*See* Doc. 46). Notice was then mailed by the settlement administrator to the 15,927 Class Members nationwide. The reaction to the Settlement by Class a Members has been

¹ All defined terms contained herein shall have the same meaning as set forth in the Class Action Settlement Agreement (“Settlement Agreement”), filed on December 13, 2022. (*See* Doc. 65-2, pp. 1-33).

overwhelmingly positive. To date there are **zero objections** and only three opt-outs received. Considering the large size of the Class, coupled with the fact this is a “claims paid” settlement (meaning all class members will automatically receive a check without having to file claims), and no funds revert to Defendant (instead they will be paid to *cy pres* recipient), the \$285,000 settlement obtained by the undersigned from Defendant is an excellent outcome.

The terms of the Settlement Agreement were carefully modeled after similar COBRA class action settlements approved in the Middle District of Florida, including by Judge Scriven in *Rigney, et al. v. Target Corp.*, M.D. Case No. 8:19-cv-01432-MSS-JSS (March 14, 2021, Docs. 58-59), and *Vazquez v. Marriott International, Inc.*, M.D. Fla. Case No. 8:17-cv-00116-MSS-MAP (Feb. 27, 2020, Doc. 127); Judge Merryday in *Valdivieso v. Cushman & Wakefield, Inc.*, M.D. Fla. Case No. 8:17-cv-00118-SDM-JSS (M.D. Fla. Dec. 7, 2018) (Doc. 92); Judge Moody in *Hicks v. Lockheed Martin Corp, Inc.*, 8:19-cv-00261-JSM-TGW (M.D. Fla. Sept. 5, 2018) (Doc. 34); and Judge Jung in *Carnegie v. FirstFleet Inc.*, M.D. Fla. Case No. 8:18-cv-01070-WFJ-CPT (M.D. Fla. June 21, 2019) (Doc. 63). The same outcome is warranted here.

In sum, Class Counsel undertook this COBRA class action without guarantee of payment and, despite significant hurdles, achieved an excellent result on behalf of Plaintiff and the Class by securing a gross common fund totaling \$285,000. In light of the result achieved, the risks undertaken by Class Counsel, lack of any objections whatsoever, and the public policy need to provide adequate incentive

for attorneys to enforce COBRA's important notice process to participants and beneficiaries in a health plan who experience a "qualifying event," Class Counsel's request for attorneys' fees and costs in the amount of one-third of the Settlement Fund, equivalent to \$95,000, plus an additional \$6,084.35 in litigation costs. Named Plaintiff, Jessica Roubert, also seeks a general release payment of \$5,000 from the Settlement Fund. A proposed Order is attached as Exhibit A.

Importantly, Defendant does not oppose this Motion. In further support of this Motion, Plaintiff respectfully submits the following:

I. BACKGROUND AND OVERVIEW OF MOTION.

A. Allegations Included in Named Plaintiffs' Complaint.

This is a putative class action brought by Plaintiff against Defendant under 29 C.F.R. § 2590.606–4(b)(4) and 29 U.S.C. § 1166(a). The lawsuit generally alleges Defendant provided Plaintiff and other Class Members with a deficient COBRA election notice ("COBRA Notice" or "Notice"). More specifically, Plaintiff asserted that Defendant's COBRA Notice did not adequately inform her how to exercise her rights to elect COBRA coverage. Plaintiff has further alleged that, in violation of 29 C.F.R. § 2590.606–4(b)(4), the Notice failed to: (i) include a date certain on which continuation coverage ends; and, finally, (iii) be written in a manner calculated to be understood by the average plan participant. As a result of the alleged violations in the Complaint, Plaintiff sought statutory penalties, injunctive relief, attorneys' fees and costs on behalf of herself and all others similarly situated. Throughout the litigation, Defendant has denied that any

purported violation occurred and has asserted that its COBRA Notices have complied with any and all applicable laws.

B. Defendant's Defenses.

Had mediation been unsuccessful, Defendant had available to it a myriad of defenses to Plaintiff's allegations, including defenses to class certification, defenses to the merits of the case, defenses to damages, and a possible standing defense. Specifically, Defendant denied, and continues to deny, that it violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4 with regard to the Named Plaintiff and/or any putative class members because the COBRA Notice complied with the notice requirements under ERISA, COBRA, and relevant regulations. Furthermore, Defendant denies that Plaintiff suffered any damages from the alleged inadequate Notice.

As part of the Settlement Agreement, Defendant specifically denies that it engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been alleged against it in the action, denies that the claims asserted by Named Plaintiff are suitable for class treatment other than for settlement purposes, and denies that it has any liability whatsoever. However, Defendant agreed to resolve this action through settlement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented in this case, the inconveniences involved, and the disruption to its business operations.

C. Procedural History of Case.

Plaintiff filed suit against Defendant on December 17, 2021, and an Amended Complaint on April 1, 2022. (Docs. 1, 30). The action is brought on behalf of all current and former participants and beneficiaries in the Plan who, in the four years preceding the filing of the complaint through the present, received statutorily deficient COBRA notices under ERISA § 606, 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4, and who did not elect COBRA coverage. As a result of these violations, Plaintiff seeks statutory penalties, injunctive relief, attorneys' fees, costs and expenses, and other appropriate relief as set forth herein and provided by law.

The Parties engaged in substantive motion practice occurred prior to settlement. Specifically, Plaintiff overcame a potentially dispositive Motion to Dismiss (*see* Docs. 33, 38, 52) and also filed a Motion seeking to have this case certified as a nationwide class action under pursuant to Rule 23. (Docs. 54, 59).

Additionally, both sides served extensive written discovery prior to engaging in settlement discussions. More specifically, on May 6, 2022, Plaintiff served requests for production, interrogatories, and a Fed.R.Civ.P. 30(b)(6) notice on Defendant. A few days prior, on May 3, 2022, Defendant served on Plaintiff requests for production, interrogatories, and requests for admission. Both sides provided written responses to the discovery requests. In fact, both sides collectively produced over 1,300 documents prior to settling this matter.

In terms of depositions, before any settlement was reached Plaintiff's counsel deposed Defendant's corporate representative on July 27, 2022, and Defendant's counsel deposed Plaintiff on July 19, 2022. Defendant also retained an expert witness, who produced a report. After completing extensive discovery efforts during which they became fully versed on the strengths and weakness of this case, the Parties mediated this case.

D. Settlement Negotiations and Mediation.

On October 14, 2022, the Parties participated in an all-day mediation with highly-respected class action mediator, Carlos J. Burruezo. After extensive arm's length negotiations—between experienced counsel—a tentative deal was reached. As a result of the agreement reached at mediation, the Parties agreed to enter into the Agreement, for which they now seek Court approval.

II. THE PROPOSED SETTLEMENT.

A. The Proposed Settlement Class.

The class includes 15,927 individuals who meet the following proposed Settlement Class definition: "All participants in the Capital One Health Plans who were sent a COBRA notice lacking the 'Maximum COBRA Eligibility Date If Elected' during the Class Period as a result of a qualifying event, as determined by Defendant, who did not elect COBRA."² The Class Period for purposes of defining

² The administrator's notice indicated the class actually turned out to be slightly larger because a total of 16,446 notices were mailed out. The slight increase in the total class size did not materially impact the settlement, nor the recovery of the class.

the Settlement Class is from December 7, 2017, through the date of the Court's Preliminary Approval Order.

B. Benefits to the Settlement Class and Named Plaintiff.

The Agreement, if approved, will resolve all claims of Named Plaintiff and all Settlement Class Members in exchange for Defendant's agreement to pay \$285,000 into the Settlement Account. This is a "claims paid" non-reversionary settlement. Every Settlement Class Member who does not timely opt out will receive a check for their respective Settlement Payment, without having to take any action, mailed to their last known address by the Settlement Administrator.

From the Settlement Account will be deducted amounts for the costs of settlement administration, Class Counsel's fees, litigation costs, and a general release payment to the Named Plaintiff, resulting in the "Net Settlement Proceeds," which will be allocated among the approximately 15,927 Settlement Class Members equally on a *pro rata* basis. No funds revert to Defendant. Any funds that are unclaimed (which shall only arise if/when a check is mailed but then not timely cashed) shall revert to a mutually agreeable *cy pres* recipient. The Parties have selected Bay Area Legal Services, a 501(c)(3) non-profit legal aid organization, and will ask the Court to approve it as the *cy pres* recipient.

The Parties negotiated the proposed Settlement on a common fund basis, meaning that the Parties' settlement offers were inclusive of all attorneys' fees and costs, and administrative expenses. The Parties did not negotiate attorneys' fees until after agreeing on all terms related to the size of the common settlement fund

and the class definition. The Named Plaintiff is not seeking compensation for her service to the Settlement Class Members.

C. Administration of Notice of Settlement.

The Parties are utilizing a private, third-party vendor, American Legal Claim Services, LLC, to administer the Settlement in this case, including but not limited to distribution of the Notice of Settlement. The Parties have also agreed that all fees and expenses charged by the Settlement Administrator shall be paid from the Settlement Account.

D. The Court's Order Granting Preliminary Approval of the Settlement.

On December 15, 2022, the Court granted Plaintiff's Unopposed Motion for Preliminary Approval of the Class-wide Settlement of the claims asserted against Defendant under 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4. (*See* Doc. 66). Following entry of that Order, and as further explained by the attached sworn declaration from the Settlement Administrator, Notice was mailed out to the Settlement Class Members.

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

The Settlement Claims Administrator, American Legal Claim Services, LLC ("ALCS"), sent the short form Class Notice approved by the Court to each of the Settlement Class Members on December 15, 2022, via first-class U.S. mail. (*See* Declaration of Noah Fiori from ALCS, ¶ 3) (hereinafter "Fiori Decl."). The Settlement Class Members overwhelmingly accepted the Settlement. It is

estimated that over 99% of the Settlement Class Members received the Class Notice. (Fiori Decl. ¶ 6.) No Class Members have objected to the settlement thus far. (Fiori Decl. ¶ 10.) Additionally, to date only three people asked to be excluded. (Fiori Decl. ¶ 9.)

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

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

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

Camden I is the preeminent case and binding case in this Circuit dealing with the issue of attorneys' fees in common-fund class-action cases like this one.

In that case, the Eleventh Circuit held that “the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this Circuit, attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” 946 F.2d at 774.

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

Although the value recovered for the Class Members is significant, as discussed in *Hamilton v. SunTrust Mortgage, Inc.*, any concerns as to the value of the claims actually paid when considering Class Counsel's request for attorney's fees and expenses are "contrary to the law in the Eleventh Circuit...." 2014 WL 5419507, at *7 (S.D. Fla., Oct. 24, 2014). Rather, attorneys in a class action "are entitled to an attorney's fee based upon the total benefits obtained in or provided by a class settlement, regardless of the amounts eventually collected by the Class." *Id.* (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 676 (1980)). See also *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999); *Saccoccio*, 297 F.R.D. 683, 695 ("The attorneys' fees in a class action can be determined based upon the total fund, not just the actual payout to the class."); *Casey v. Citibank, NA.*, No. 12-cv-00820 (N.D.N.Y.) at (D.E. 223); *David v. Am. Suzuki Motor Corp.*, No. 08-CV-22278, 2010 WL 1628362 (S.D. Fla. Apr. 15, 2010) (treating settlement with ascertainable benefits as a common fund to which a percentage fee may be awarded, even if the fee is separately paid by the defendant).

Here, Plaintiff requests her Counsel be awarded \$95,000 in attorneys' fees, which is equivalent to one-third of the gross Settlement Fund. Such a request is in keeping with the Eleventh Circuit's pronouncements above, as well as the well-recognized precept that percentage-of-the-fund fee awards should be calculated based on the entirety of the fund available for Settlement Class Members. *Camden I*, 946 F.2d at 774; *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 767 (11th Cir. 2017) ("[N]o case has held that a district court must consider only the actual payout

in determining attorneys' fees."); *Saccoccio*, 297 F.R.D. at 695; *Pinto*, 513 F. Supp. 2d at 1339 (S.D. Fla. 2007) (same); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (same).

Such requests are routinely granted in this Circuit. Notably, Judge Merryday granted identical fee requests in two very similar COBRA class action cases, *Valdivieso v. Cushman & Wakefield, Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla. Dec. 7, 2018) (Doc. 92), and more recently in *Morris, et al. v. US Foods, Inc.*, Case No.: 8:20-cv-00105-SDM-CPT (M.D. Fla. Nov. 5, 2021) (Doc. 56).

Likewise, Judge Jung granted a one-third common fund fee request in an equally similar COBRA class action case styled *Carnegie v. FirstFleet, Inc. of Tennessee, Inc.*, Case No.: 8:18-cv-01070-WFJ-CPT (M.D. Fla. June 21, 2019) (Doc. 63). Judge Moody also approved a one-third common fund fee request in a COBRA class action case styled *Hicks v. Lockheed Case Martin Corp., Inc.*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla. Dec. 11, 2019) (Docs. 40, 41). Similarly, Judge Bucklew granted a one-third common fund fee request in another recent COBRA class action case, *Silberstein v. Petsmart, Inc.*, 8:19-cv-02800-SCB-AAS (M.D. Fla. December 4, 2020) (Doc. 38). And Judge Covington granted a one-third common fund fee request in a deficient COBRA class action case in *Kaintz v. The Goodman Group, Inc.*, 8:20-cv-02115-VMC-AAS (M.D. Fla. August 23, 2021) (Doc. 49).

Additionally, Judge Scriven approved granted a one-third common fund fee request in two separate COBRA notice cases, *Vazquez v. Marriott International, Inc.*, Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla. Feb. 27, 202) (Doc. 127), and *Rigney v. Target Corp.*, Case No.: 19-cv-01432-MSS-JS (M.D. Fla. Nov., 20, 2020) (Doc. 58). Judge Honeywell did the same in *Taylor v. Citizens Telecom Services Co., LLC*, Case No.: 8:20-cv-00509-CEH-CPT (M.D. Fla. Feb. 8, 2022) (Doc. 68). This Court should follow each of these decisions and grant this Motion.

Similar awards have been obtained by the undersigned in other class action matters here in the Middle District of Florida, including in *Twardosky v. Waste Management of Florida, Inc., et al.*, Case No.: 8:19-cv-02467-CEH-TGW (June 28, 2021) (Judge Honeywell awarded attorneys' fees of 33 1/3% of common fund in FCRA class action case); *see also Patrick v. Interstate Mgmt. Co., LLC*, 8:15-cv-01252-VMC-AEP (M.D. Fla. April 29, 2016, Doc. 48) (Judge Covington awarded attorneys' fees of 33 1/3% of common fund in FCRA class action case); *Hargrett v. Amazon.com, DEDC, LLC*, Case No.: 8:15-cv-02456-WFJ-AAS (Judge Jung awarded the undersigned 33 1/3% of a common fund in FCRA class action case on November 18, 2018. (M.D. Fla. Nov., 16, 2018, Doc. 187); *see also Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL-TBM (M.D. Fla., October 9, 2015, Doc. 64) (Judge Lazzara awarded attorneys' fees of 33 1/3% of common fund in FCRA class action case).

The same result should follow here. Indeed, the customary fee for counsel representing a plaintiff in an employment matter such as this depends on the

experience and skill level of the involved attorneys. *See In re U.S. Bancorp. Litig.*, 291 F.3d 1035 (8th Cir. 2002) (fee of 36% affirmed); *Waters*, 190 F.3d 1291 (affirming \$13.3 million in attorneys' fees from \$40 million settlement fund—33-1/3% of total recovery); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (awarding attorney fee of 36%); *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280, 285–86 (D. Minn. 1997) (awarding one-third attorney fee); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001).

Case law has clarified the factors to which a district court is to look in determining a reasonable percentage to award class-action counsel. These factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and the length of the professional relationship with the client; (12) awards in similar cases. *Camden I*, 946 F.2d at 772, n.3 (citing factors from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)); *see also Muransky*, 2018 WL 2018 WL 4762434, at *11 (affirming the use of these points). “Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel,

any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action.” *Camden I*, 946 F.2d at 775. As a final note, the Eleventh Circuit “encouraged the lower courts to consider additional factors unique to the particular case.” *Walco Invs., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997).

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

1. Time and labor required.

As to the first *Johnson* factor, Class Counsel expended time conducting class action-research; drafting and filing the Complaint and First Amended Complaint; responding to Defendant’s Motion to Dismiss; attending the case management and scheduling conference; drafting and serving class-wide discovery on Defendant, including requests for production, interrogatories, admissions, and a Fed.R.Civ.P. 30(b)(6) deposition notice, along with third-party discovery to Defendant’s COBRA administrator; preparing for and deposing Defendant’s corporate representative witness; preparing for and defending the deposition of Class Representative; preparing and filing Plaintiff’s Motion for Class Certification; preparing for and attending mediation; drafting, editing, and finalizing the motion seeking preliminary approval of the class Settlement; reviewing and analyzing the proposed Settlement Agreement and supporting attachments, including the

proposed class notification documents; responding to inquiries from the class members after Class Notice was sent out; handling questions from the Settlement Administrator; and, of course, drafting this Motion.

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

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

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

the second and third *Johnson* factors are tied together, Plaintiff analyzes them together.

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

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

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

Applying these factors, Class Counsel have shown themselves to be highly skilled. The complexity of this innovative area of class action litigation, the genuine

possibility of Defendant's success in having the case dismissed on standing grounds, the dearth of case law on COBRA class actions, the ability to achieve a favorable outcome despite Defendant's potentially dispositive motions to dismiss and highly skilled Defense counsel, and the complexity inherent with any class action, all demonstrate that Class Counsel are highly skilled practitioners. This weighs in favor of finding the fee sought of one-third of the common fund to be reasonable.

4. Preclusion of other employment.

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

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

5. Customary fee.

The fee sought by Plaintiff's Counsel is reasonable and customary in this area of law, as evidenced by the fact that, as set forth above, Judge Merryday granted identical fee requests in two very similar COBRA class action cases, *Valdivieso v. Cushman & Wakefield, Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla. Dec. 7, 2018) (Doc. 92), and more recently in *Morris, et al. v. US Foods, Inc.*, Case No.: 8:20-cv-00105-SDM-CPT (M.D. Fla. Nov. 5, 2021) (Doc. 56).

Likewise, Judge Jung granted a one-third common fund fee request in an equally similar COBRA class action case styled *Carnegie v. FirstFleet, Inc. of Tennessee, Inc.*, Case No.: 8:18-cv-01070-WFJ-CPT (M.D. Fla. June 21, 2019) (Doc. 63). Judge Moody also approved a one-third common fund fee request in a COBRA class action case styled *Hicks v. Lockheed Case Martin Corp., Inc.*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla. Dec. 11, 2019) (Docs. 40, 41). Similarly, Judge Bucklew granted a one-third common fund fee request in another recent COBRA class action case, *Silberstein v. Petsmart, Inc.*, 8:19-cv-02800-SCB-AAS (M.D. Fla. December 4, 2020) (Doc. 38). And Judge Covington granted a one-third common fund fee request in a deficient COBRA class action case in *Kaintz v. The Goodman Group, Inc.*, 8:20-cv-02115-VMC-AAS (M.D. Fla. August 23, 2021) (Doc. 49).

Additionally, Judge Scriven approved granted a one-third common fund fee request in two separate COBRA notice cases, including *Vazquez v. Marriott International, Inc.*, Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla. Feb. 27, 202) (Doc. 127), and *Rigney v. Target Corp.*, Case No.: 19-cv-01432-MSS-JS (M.D. Fla.

Nov., 20, 2020) (Doc. 58). Judge Honeywell did the same in *Taylor v. Citizens Telecom Services Co., LLC*, Case No.: 8:20-cv-00509-CEH-CPT (M.D. Fla. Feb. 8, 2022)(Doc. 68). Thus, the fee sought by Plaintiff's Counsel is reasonable and customary in this area of law and, as such, this factor also supports granting the requested fee.

6. The case was taken on contingency.

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

Class Counsel undertook significant financial risk in prosecuting this case because it was taken on a contingency basis with no guarantee of recovery. Plaintiff pursued difficult claims, against a well-funded Defendant. There were no assurances that Plaintiff would survive early motion practice, summary judgment, or trial, much less achieve a six-figure recovery for the class. Plaintiff’s Counsel incurred significant fees in prosecuting this action and has received no compensation thus far. Moreover, there was a very real possibility that Plaintiff’s Counsel would not recover anything for their work should Defendant succeed at

summary judgment, trial or, later still, on appeal. For these reasons, this factor supports the approval of the requested amount of attorneys' fees. *Waters v. Cook's Pest Control, Inc.*, No. 2:07-cv-00394-LSC, 2012 WL 2923542, at *17 (N.D. Ala. July 17, 2012).

7. Time Limitations.

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

8. Amount involved and the results obtained.

Class Counsel recovered a \$285,000 settlement on behalf of the Settlement Class, all of which will be paid out, and none of which will revert to Defendant. In doing so, Class Counsel effectively and quickly achieved a high-dollar Settlement that provides meaningful monetary relief for all Class Members, despite significant litigation risks which could have resulted in the Class achieving a significantly worse recovery, or even no recovery at all. Accordingly, given the excellent results achieved, this factor weighs heavily in favor of awarding the Requested Fee.

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

Plaintiff's Counsel and prior experience is detailed in the Declaration attached to the Motion for Preliminary Approval (*see* Doc. 65-6, 65-7, 65-8), and

attached hereto. This case has, at all stages, been handled on both sides by very experienced lawyers whose reputations for effective handling of complex litigation are known throughout Florida, and the country. This factor also weighs in favor of awarding the Requested Fee.

10. Undesirability of the case.

In the above sections, Plaintiff highlighted the complexity and skill required to prosecute this action. The expense and time involved in prosecuting such litigation on a contingent basis, with no guarantee or high likelihood of recovery would make this case highly undesirable for many attorneys. Additionally, the Settlement is even more impressive when considering the risks of non-recovery in this case. COBRA cases are not “sure things” or “slam dunks.” Unlike other employment law statutes, attorneys’ fees are discretionary. Therefore, this factor, too, supports the requested amount of attorneys’ fees.

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

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

12. Awards in similar cases.

“The reasonableness of a fee may also be considered in light of awards made in similar litigation within and without the court’s circuit.” *Johnson*, 488 F.2d at 719. The monetary amount recovered by Class Counsel in this case is comparable and in line with the very few other COBRA class action settlements that exist. For

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

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

B. Costs.

Pursuant to the Parties' settlement agreement, Plaintiff is entitled to recover her costs. As set forth in the invoice attached to the undersigned's declaration, to date Class Counsel has incurred \$6,486.35 in reimbursable litigation costs for the filing fee, process service fees, court reporter fees, and mediator fees. The undersigned attested to the accuracy and necessity of the costs sought herein in the

attached supporting Declaration. In sum, the costs sought herein by Class Counsel are reasonable and should be awarded from the common fund.

C. General Release Payment.

Pursuant to paragraph 46 of the Settlement Agreement, the Class Representative, Jessica Roubert, also seeks approval of a general release payment of five thousand dollars (\$5,000) in exchange for her release of all possible claims she may have against Defendant including, but not limited to, the termination of her employment. *See, e.g., Twardosky v. Waste Management, Inc., et al.*, Case No.: 8:19-cv-02467-CEH-TGW (M.D. Fla. June 28, 2021)(Doc. 58)(approving \$10,000 general release payment to class representative in class action case); *McNamara v. Brenntag Mid-South, Inc.*, Case 8:21-cv-00618 (M.D. Fla. Feb. 17, 2022)(Doc. 32)(approving \$5,000 general release payment to class representative in class action case).

WHEREFORE, Plaintiff respectfully moves this Court for an Order awarding her counsel attorneys' fees in the amount of one-third of the total Settlement Fund (\$95,000), plus an additional \$6,084.35 in litigation costs. Named Plaintiff Jessica Roubert also seeks a general release payment of \$5,000 from the Settlement Fund. A proposed Order is attached as Exhibit A.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 3.01(g)

Pursuant to Local Rule 3.01(g) Plaintiff's counsel conferred with counsel for Defendant about the issues raised in this Motion. Defendant does not oppose this Motion.

Dated this 1st day of March, 2023.

Respectfully submitted,

/s/ Brandon J. Hill

LUIS A. CABASSA

Florida Bar Number: 053643

Direct No.: 813-379-2565

BRANDON J. HILL

Florida Bar Number: 37061

Direct No.: 813-337-7992

WENZEL FENTON CABASSA, P.A.

1110 North Florida Ave., Suite 300

Tampa, Florida 33602

Main No.: 813-224-0431

Facsimile: 813-229-8712

Email: lcabassa@wfclaw.com

Email: bhill@wfclaw.com

*Class Counsel and Attorneys for Named
Plaintiff*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been forwarded to counsel of record for all parties via the Court's CM/ECF filing system on this 1st day of March, 2023.

/s/ Brandon J. Hill

BRANDON J. HILL

EXHIBIT A

(Proposed Order)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JESSICA ROUBERT,

Plaintiff,

v.

CASE NO.: 8:21-cv-2852-TPB-TGW

**CAPITAL ONE FINANCIAL
CORPORATION,**

Defendant.

_____ /

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

UPON DUE AND CAREFUL CONSIDERATION of the procedural history of this case, together with the Plaintiff's counsel's written submission, it is **ORDERED AND ADJUDGED** that the Plaintiff's Unopposed Motion for Attorneys' Fees and Costs, is **GRANTED**. Plaintiff's counsel is awarded a fee consisting of one-third of the Settlement Fund (\$95,000), plus an additional \$6,084.35 in litigation costs. Named Plaintiff Jessica Roubert is awarded a general release payment of \$5,000 from the Settlement Fund.

DONE and ORDERED this ____ day of April, 2023.

TOM BARBER
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JESSICA ROUBERT,

Plaintiff,

Case No.: 8:21-cv-2852-TPB-TGW

v.

CAPITAL ONE FINANCIAL CORPORATION,

Defendant

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

I, Noah Fiori, declare as follows:

1. I am a competent adult, over the age of eighteen, and this declaration is based on my personal knowledge.
2. I am an Analyst for American Legal Claim Services, LLC ("ALCS"). ALCS was selected the Court to serve as the Settlement Administrator and to otherwise comply with the provisions set forth in the Class Action Settlement Agreement and the Preliminary Approval Order. I was responsible for overseeing the dissemination of the Notice of Settlement (Notice) to class members, exclusion processing, and all other matters required as Settlement Administrator.
3. **Class List Receipt and Processing:** On December 27, 2022, ALCS received the mailing list ("Class List") from counsel for the Defendant containing 16,616 records with the names and street addresses of Class Members. Based on a combination of name and address, a total of 170 duplicates were identified and removed for the purpose of noticing. The final Class List contained 16,446 class members after the duplicates were removed. Throughout the noticing process, ALCS utilized several means of ensuring the most accurate mailing addresses for class members. These methods included National Change of Address through the USPS, skip-tracing, and manual updates from class members.
4. **Initial Class Notice:** On January 13, 2023, ALCS mailed the Notice substantially in the form approved by the Court (attached hereto as Exhibit A), to 16,446 class members.

5. **Returned Mail Handling:** ALCS processed all Notices returned by the USPS. ALCS conducted address searches using a nationally recognized location service to attempt to locate new addresses for these class members. Of the 16,446 Notices mailed, 1,574 were returned by the USPS. ALCS has remailed 1,311 Notices to updated addresses.
6. **Noticing Campaign Summary:** The following is a summary of the noticing, as of the date of this Declaration:
 - Notices initially mailed via USPS: 16,446
 - Notices returned by USPS: 1,574
 - Notices remailed via USPS: 1,311
 - Total number of mailed Notices undeliverable: 163
 - Percentage of Notices deemed delivered: 99.01%
7. **Website:** ALCS created a case website www.RoubertCOBRASettlement.com that provided further information as stated in the Notice. The website contained sections for Important Court Documents, Key Dates, and FAQs. Class members also had the opportunity to update their address online.
8. **Toll-Free Telephone:** ALCS established a toll-free telephone for Class members to contact with questions about the settlement or updating their information.
9. **Exclusions:** The Notice instructed those who wish to opt out of the settlement to write to the Settlement Administrator stating that the class member does not wish to participate. It further states that an opt out request must be postmarked by March 15, 2023. As of the date of this declaration, we have received 3 requests for exclusions (attached hereto as Exhibit B).
10. **Objections:** The Notice informed class members who wish to object to the settlement to file their written objection with the Court by March 15, 2023. I am not aware of any objections being filed with the Court as of the date of this declaration.

I declare under penalty of perjury pursuant to the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge. Executed on February 28, 2023, in Jacksonville, Florida.



Noah Fiori

EXHIBIT “A”- Short Form Class Notice

outside top/front

**COURT ORDERED
NOTICE***Jessica Roubert*

v.

Capital One Financial Corp.

Case No. 8:21-cv-2852-TPB-TGW

(M.D.Fla.)

Class Action Notice*(Continued below)*

Roubert v Capital One Finance Corp.
c/o Settlement Administrator
PO Box 23680
Jacksonville, FL 32241-3680



Postal Service: Do not mark barcode

«noticeid» – «keyline»

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

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

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fold

A settlement has been reached in a proposed class action lawsuit regarding certain COBRA notices provided by Capital One Financial Corporation ("Defendant"). In summary, Plaintiff alleges that Defendant provided her and other putative class members with a COBRA notice that did not adequately inform class members how to exercise their right to elect COBRA coverage (the "COBRA Notice"). Defendant denies that it violated the law and has affirmatively asserted that its COBRA Notice complied with applicable law. Nevertheless, Defendant has agreed to the settlement to avoid the uncertainties and expenses of continuing to litigate the case. The total Settlement Fund is \$285,000 from which Class Members will each receive payment of between \$7.00 and \$10.00 after the costs of settlement administrator and other necessary payments are made. There are an estimated 15,927 potential members of the settlement class ("Settlement Class Members"). **Additional information regarding the settlement can be found on the Settlement Administrator's website at www.RoubertCOBRASettlement.com, including the Long Form Notice of Settlement.**

Am I a Class Member? Records provided by Defendant indicate you are a member of the Settlement Class defined as follows: All participants in the Capital One health plans who were sent the COBRA Notice lacking the "Maximum COBRA Eligibility Date If Elected" between December 7, 2017, and December 15, 2022, and who did not elect COBRA coverage.

What Will the Settlement Mean for Me? If the Court approves the settlement, you will receive a payment by check. The Settlement Fund will be divided equally on a pro rata basis among all Settlement Class Members who do not opt out of the settlement. The gross amount payable to each Settlement Class Member (assuming all potential members participate) will be approximately \$17.90. However, certain deductions will be made from the Settlement Fund, as approved by the Court, for the costs of settlement administration and a general release payment of \$5,000 to the Named Plaintiff. Plaintiff's counsel will ask the Court for attorneys' fees and costs in the amount of \$95,000, plus litigation costs totaling \$6,486.35, which will be paid from the Settlement Fund as approved by the Court. Class Members will each receive payment of between \$7.00 and \$10.00 after the costs of settlement administrator and other necessary payments are made.

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

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

(Continued on reverse side)

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inside top/front

What If I Don't Like the Settlement? You may exclude yourself from participating in the Settlement or object to its terms. To exclude yourself (or "opt out") of the Settlement and keep any rights you may have against Defendant concerning the COBRA Notice at issue in this lawsuit (and Defendant will keep any defenses it has against your claims), you must specifically state in writing that you want to opt out of the Settlement and send your written notice to the Settlement Administrator at the address below postmarked by March 15, 2023. If you do not opt out of the Settlement, you may object to the terms of the proposed Settlement by filing a written objection with the Court addressed to United States District Court, Middle District of, U.S. Federal Building and Courthouse, 801 North Florida Avenue, Tampa, FL 33602, postmarked by March 15, 2023. If you object to the settlement, you must (i) provide the specific grounds for your objection; (ii) state whether your objection pertains to just you individually or to all or some of the proposed Settlement Class; and (iii) return your objection by the deadline above.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing on April 13, 2023 at the United States District Court for the Middle District of Florida, U.S. Federal Building and Courthouse, Sam M. Gibbons U.S. Courthouse, 801 North Florida Avenue, Tampa, Florida 33602 in Courtroom 12A at 2:30 p.m.

How May I Get More Information? For more information, contact the Settlement Administrator at PO Box 23680, Jacksonville, FL 32241-3680, at (866) 626-2725, via e-mail at info@RoubertCOBRASettlement.com, or visit www.RoubertCOBRASettlement.com.

Notice ID: «noticeid»

PIN: «pin»

fold

fold

Visit www.RoubertCOBRASettlement.com or use this section to update your address.

NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

NOTICE ID «noticeid»

612

PLACE
STAMP
HERE

Roubert v Capital One Finance Corp.
c/o Settlement Administrator
PO Box 23680
Jacksonville, FL 32241-3680

inside bottom/back

EXHIBIT “B”-
Minh Tran
Lily Ngo
Andrea Carter
EXCLUSIONS

Visit www.RoubertCOBRASettlement.com or use this section to update your address.

NAME MINH TRAN

ADDRESS [REDACTED]

CITY, STATE, ZIP [REDACTED]

NOTICE ID 22510282 612

612

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RECEIVED

JAN 31 2023

American Legal Claims

612
ROUBERT v CAPITAL ONE



EXCLUSION 900001

Roubert v Capital One Finance Corp.
c/o Settlement Administrator
PO Box 23680
Jacksonville, FL 32241-3680

I want to opt out of the
Settlement.

A settlement has been reached in a proposed class action lawsuit regarding certain COBRA notices provided by Capital One Financial Corporation ("Defendant"). In summary, Plaintiff alleges that Defendant provided her and other putative class members with a COBRA notice that did not adequately inform class members how to exercise their right to elect COBRA coverage (the "COBRA Notice"). Defendant denies that it violated the law and has affirmatively asserted that its COBRA Notice complied with applicable law. Nevertheless, Defendant has agreed to the settlement to avoid the uncertainties and expenses of continuing to litigate the case. The total Settlement Fund is \$285,000 from which Class Members will each receive payment of between \$7.00 and \$10.00 after the costs of settlement administrator and other necessary payments are made. There are an estimated 15,927 potential members of the settlement class ("Settlement Class Members"). **Additional information regarding the settlement can be found on the Settlement Administrator's website at www.RoubertCOBRASettlement.com, including the Long Form Notice of Settlement.**

Am I a Class Member? Records provided by Defendant indicate you are a member of the Settlement Class defined as follows: All participants in the Capital One health plans who were sent the COBRA Notice lacking the "Maximum COBRA Eligibility Date If Elected" between December 7, 2017, and December 15, 2022, and who did not elect COBRA coverage.

What Will the Settlement Mean for Me? If the Court approves the settlement, you will receive a payment by check. The Settlement Fund will be divided equally on a pro rata basis among all Settlement Class Members who do not opt out of the settlement. The gross amount payable to each Settlement Class Member (assuming all potential members participate) will be approximately \$17.90. However, certain deductions will be made from the Settlement Fund, as approved by the Court, for the costs of settlement administration and a general release payment of \$5,000 to the Named Plaintiff. Plaintiff's counsel will ask the Court for attorneys' fees and costs in the amount of \$95,000, plus litigation costs totaling \$6,486.35, which will be paid from the Settlement Fund as approved by the Court. Class Members will each receive payment of between \$7.00 and \$10.00 after the costs of settlement administrator and other necessary payments are made.

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

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

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MINH TRAN
FROM:



RECEIVED

JAN 31 2023

American Legal Claims

32241-368080

CAPITAL DISTRICT 208
28 JAN 2023 PM 1 L



To: Robert v Capital One Finance
c/o: Settlement Administrator
PO Box 23680
Dallas, TX 75224-1820
32241-3680

Hello,

I'd like to opt out of the Settlement of Roubert v Capital One Finance Corp.

Thank you,

Lily Ngo

612

ROUBERT v CAPITAL ONE



EXCLUSION 900002

RECEIVED

FEB 17 2023

American Legal Claims

From: Lily Ngo



NORTH TEXAS TX P&DC
DALLAS TX 750
13 FEB 2023 PM 3 L

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FEB 17 2023



RECEIVED

FEB 17 2023

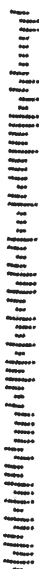
American Legal Claims

To: Settlement Administrator

PO Box 23680

Jacksonville, FL 32241-3680

32241-368080



What If I Don't Like the Settlement? You may exclude yourself from participating in the Settlement or object to its terms. To exclude yourself (or "opt out") of the Settlement and keep any rights you may have against Defendant concerning the COBRA Notice at issue in this lawsuit (and Defendant will keep any defenses it has against your claims), you must specifically state in writing that you want to opt out of the Settlement and send your written notice to the Settlement Administrator at the address below postmarked by March 15, 2023. If you do not opt out of the Settlement, you may object to the terms of the proposed Settlement by filing a written objection with the Court addressed to United States District Court, Middle District of, U.S. Federal Building and Courthouse, 801 North Florida Avenue, Tampa, FL 33602, postmarked by March 15, 2023. If you object to the settlement, you must (i) provide the specific grounds for your objection; (ii) state whether your objection pertains to just you individually or to all or some of the proposed Settlement Class; and (iii) return your objection by the deadline above.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing on April 13, 2023 at the United States District Court for the Middle District of Florida, U.S. Federal Building and Courthouse, Sam M. Gibbons U.S. Courthouse, 801 North Florida Avenue, Tampa, Florida 33602 in Courtroom 12A at 2:30 p.m.

How May I Get More Information? For more information, contact the Settlement Administrator at PO Box 23680, Jacksonville, FL 32241-3680, at (866) 626-2725, via e-mail at info@RoubertCOBRASettlement.com, or visit www.RoubertCOBRASettlement.com.



Notice ID: 22510757

PIN: 398 612 747

Visit www.RoubertCOBRASettlement.com or use this section to update your address.

NAME ANDREA CARIER

ADDRESS [REDACTED]

CITY, STATE, ZIP [REDACTED]

NOTICE ID 22510757 612

PLACE
STAMP
HERE

Hi,
2/12/23
I am OPTING OUT
of the Settlement.

Andrea Carier
ANDREA CARIER

Roubert v Capital One Finance Corp.
c/o Settlement Administrator
PO Box 23680
Jacksonville, FL 32241-3680

RECEIVED

FEB 27 2023

American Legal Claims

**COURT ORDERED
NOTICE***Jessica Roubert*

v.

*Capital One Financial
Corp.*

Case No.

8:21-cv-2852-TPB-TGW

(M.D.Fla.)

Roubert v Capital One Finance Corp.
c/o Settlement Administrator
PO Box 23680
Jacksonville, FL 32241-3680PRSR FIRST CLASS
U.S. POSTAGE
PAID
MAILED FROM
ZIP CODE 32216
PERMIT NO 584

Postmaster: Do Not Mark Barcode



49058-FC-002297

Notice ID: 22510757
PIN: 398 612 747

14 * 3824

CARTER, ANDREA

**Class Action Notice**

A settlement has been reached in a proposed class action lawsuit regarding certain COBRA notices provided by Capital One Financial Corporation ("Defendant"). In summary, Plaintiff alleges that Defendant provided her and other putative class members with a COBRA notice that did not adequately inform class members how to exercise their right to elect COBRA coverage (the "COBRA Notice"). Defendant denies that it violated the law and has affirmatively asserted that its COBRA Notice complied with applicable law. Nevertheless, Defendant has agreed to the settlement to avoid the uncertainties and expenses of continuing to litigate the case. The total Settlement Fund is \$285,000 from which Class Members will each receive payment of between \$7.00 and \$10.00 after the costs of settlement administrator and other necessary payments are made. There are an estimated 15,927 potential members of the settlement class ("Settlement Class Members"). **Additional information regarding the settlement can be found on the Settlement Administrator's website at www.RoubertCOBRASettlement.com, including the Long Form Notice of Settlement.**

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

(Continued on reverse side)

Michael Lender



RECEIVED

FEB 21 2023

American Legal Claims

3224133680 8007



*Robert V Capital One Fin Corp
c/o Settlement Administration
P.O. Box 23680
Jacksonville, FL 32241-3680*



**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JESSICA ROUBERT,

Plaintiff,

v.

CASE NO.: 8:21-cv-2852-TPB-TGW

**CAPITAL ONE FINANCIAL
CORPORATION,**

Defendant.

_____ /

DECLARATION OF BRANDON J. HILL

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

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

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

3. I am a licensed attorney in Florida, Illinois, and the District of Columbia. I have been a member of the Florida Bar since April of 2007, and have practiced almost exclusively labor and employment law since that time. I have an LL.M. from the George Washington University School of Law, a J.D. from Florida State University College of Law, and two Bachelor's degrees from the University of Kansas.

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

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout Florida, and beyond. In the Middle District of Florida alone I have served as co-counsel or lead counsel in nearly 600 federal cases.

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

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

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

counsel in Fair Credit Reporting Act case with 9,800 class members);

- *Harake v. Trace Staffing Solutions, LLC*, Case No.: 8:19-cv-00243-CEH-CPT (M.D. Fla) (served as class counsel in Fair Credit Reporting Act case with 8,700 class members);
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- *Holly-Taylor v. Acadia Healthcare Company, Inc., et al.*, Case No.: 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 25,00 class members);
- *Ali v. Laser Spine Institute, LLC*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel WARN Act case involving 500 class members);
- *Rigney et al v. Target Corporation*, Case No.: 8:19-cv-01432-MSS-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 92,000+ class members)
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- *Twardosky v. Waste Management, Inc. of Florida, et al.*, 8:19-cv-02467-CEH-TGW(M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 29,295 class members);
- *Silberstein v. Petsmart, Inc.*, 8:19-cv-02800-SCB-AAS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 12,000+ class members);
- *Benson v. Enterprise Holdings, Inc. et al.*, Case No.: 6:20-cv-00891-RBD-LRH (M.D. Fla) (appointed as class counsel in WARN Act class action involving 900+ class members);
- *Morris et al v. US Foods, Inc.*, Case No.: 8:20-cv-00105-SDM-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 19,000+ class members);
- *Forsyth v. Lucky's Market GP2, LLC et al*, Case No.: 20-10166 (JTD); Adv. Pro. No. 20-50449 (JTD) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court adversarial proceeding involving hundreds of former employees);

- *Taylor v. Citizens Telecom Services Company, LLC*, Case No.: 8:20-cv-00509-CEH-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 16,137 class members);
- *Holmes et al v. WCA Waste Systems, Inc.*, Case No.: 8:20-cv-00766-SCB-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 1,720 class members);
- *Boyd v. Task Management, Inc.*, Case No.: 8:20-cv-00780-MSS-JSS (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 5,500 class members);
- *In re The Hertz Corporation, et al*, Case No.: 20-11218 (MFW) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court involving 6,000+ class members);
- *Kaintz v. The Goodman Group, Inc.*, 8:20-cv-02115-VMC-AAS (appointed as class counsel in deficient COBRA notice case with 2,889 class members);
- *Gorman v. Whelan Event Staffing Services, Inc., et al.*, Case No.: 8:20-cv-02275-CEH-AEP (appointed as class counsel in Fair Credit Reporting Act case involving 29,000+ class members);
- *Benitez v. FGO Delivers, LLC*, Case No.: 8:21-cv-00221-KKM-TGW (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 9,000+ class members);
- *Lopez v. Ollie's Bargain Outlet, Inc.*, 2020-CA-002511-OC, Ninth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 3,500 class members);
- *McNamara v. Brenntag Mid-South, Inc.*, Case No.: 8:21-cv-00618-MSS-JSS (M.D. Fla.) (appointed as class counsel in deficient COBRA notice case with 800+ class members);
- *Santiago et al v. University of Miami*, 1:20-cv-21784-DPG (appointed as class counsel in ERISA class action involving university retirement plan and approximately 20,000 class members).

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

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

9. At all times Ms. Roubert has actively participated in this case and represented the interests of the class members. She provided critical information utilized to draft the Complaint, Amended Complaint, and to answering Defendant's extensive written discovery requests. She was also deposed. Additionally, she attended mediation via Zoom, participated in settlement discussions, and has otherwise been an exemplary class representative. No conflicts, disabling or otherwise, exist between Ms. Roubert and the class members.

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

11. The decision to mediate this case, and resolve this case, on a class basis was well informed. Prior to settling this case we obtained extensive written discovery from Defendant, including over thousands of pages of documents, third-party discovery from Defendant's COBRA administrator, and deposition testimony.

12. By way of further procedural background, the original complaint in this lawsuit was filed on December 7, 2021. Plaintiff asserted claims on behalf of herself and a putative class (collectively, "Plaintiff") against Defendant under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), alleging that Defendant violated the notice requirements of COBRA. Plaintiff sought statutory

penalties pursuant to 29 U.S.C. §1132(c)(1) and 29 C.F.R. §2575.502c-1 and other damages for themselves and each putative Class member who was sent an alleged defective COBRA. Defendant has, at all relevant times, denied Plaintiff's allegations and affirmatively asserted its compliance with the law.

13. Following the completion of: (i) extensive written discovery and depositions; (ii) briefing on a potentially dispositive motion to dismiss; (iii) briefing on class certification; (iv) and an arms-length mediation before third party mediator, Carlos Burruezo, during which both sides were represented by experience class counsel, the Parties reached a resolution to this action and the Parties now enter into this Class Action Settlement Agreement and Release, which memorializes in full the terms of the Parties' amicable resolution of this case.

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

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

16. In sum, as Plaintiff's counsel I was well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis

upon which to settle them, as a result of similar class action cases I've brought in the past. I fully support the settlement.

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

18. Finally, my law firm incurred \$6,084.35 in costs prosecuting this action. Those costs are documented in the attached invoice. They were all reasonable and necessary to litigate this case to a resolution.

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

Dated this 28th day of February, 2023.

A handwritten signature in black ink, appearing to read "Brandon J. Hill", written in a cursive style.

Brandon J. Hill

Wenzel Fenton Cabassa PA**INVOICE**

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

DATE
10/18/2022

INVOICE #
15279

TO:

Susan Bacs
14251 Islamorada Dr,
Orlando, FL 32837

DATE	Item	DESCRIPTION OF SERVICES	TIME	RATE	TOTAL
1/16/2022	Process	Process Service	1	126.60	126.60
2/2/2022	Filings	Court Filings & Misc Fees	1	402.00	402.00
6/9/2022	Process	Process Service	1	70.00	70.00
6/9/2022	Process	Process Service	1	70.00	70.00
8/15/2022	Court Repo...	Court Reporter Fee	1	1,567.85	1,567.85
8/15/2022	Court Repo...	Court Reporter Fee	1	1,894.45	1,894.45
10/4/2022	Court Repo...	Court Reporter Fee	1	470.00	470.00
10/18/2022	Mediator	Mediator Fees	1	1,470.45	1,470.45
10/18/2022	Postage	Postage.		13.00	13.00

Total \$6,084.35

Payments/Credits \$0.00

Balance Due \$6,084.35

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JESSICA ROUBERT,

Plaintiff,

v.

CASE NO.: 8:21-cv-2852-TPB-TGW

**CAPITAL ONE FINANCIAL
CORPORATION,**

Defendant.

_____ /

DECLARATION OF LUIS A. CABASSA

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

2. Regarding my relevant educational and professional background, I have been engaged in the practice of law for approximately twenty-five (25) years.

The corresponding state and federal bar admissions are:

- Supreme Court of Florida (1995)
- United States Court of Appeals for the Eleventh Circuit (1998)
- United States District Court for the Southern District of Florida (2003)
- United States District Court for the Northern District of Florida (1995)
- United States District Court for the Middle District of Florida (1997)
- United States District Court for the Eastern District of Michigan (2020).

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

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

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

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

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

- *Brown, et al. v. Lowe's Companies, Inc., and LexisNexis Screening Solutions, Inc.*, Case No.: 5:13-CV-00079-RLV-DSC (W.D.N.C) (appointed as co-class counsel in national FCRA class action matter involving 451,000 class members);
- *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL- TBM (M.D. Fla.) (Fair Credit Reporting Act class action settlement involving 20,000 individuals presided over by Judge Lazzara);
- *Kohler, Kimberly v. SWF Operations, LLC and Domino's Pizza, LLC*, Case No. 8:14-cv-2568-T-35TGH (appointed class counsel

in Fair Credit Reporting Act case involving several hundred class members);

- *Hargrett, et al. v. Amazon.com, DEDC, LLC*, 8:15-cv-02456-WFJ-AAS, M.D. Fla. Case No.: 8:15-cv-02456 (appointed as class counsel in FCRA case with 480,000+ class members);
- *Smith, et al. v. QS Daytona, LLC*, Case No.: 6:15-cv-00347-GAP-KRS (M.D. Fla.) (Doc. 45) (appointed as class counsel in FCRA class action involving several hundred class members);
- *Patrick, Nieyshia v. Interstate Management Company, LLC*, Case No. 8:15-cv-1252-T-33AEP (M.D. Fla.) (appointed as class counsel in FCRA class action with approximately 32,000 class members);
- *Molina et al v. Ace Homecare LLC*, 8:16-cv-02214-JDW-TGW (M.D. Fla) (appointed as class counsel in WARN Act case with approximately 500 class members);
- *Moody, et al v. Ascenda, et al.*, Case No. 0:16-cv-60364-WPD (S.D. Fla.) (appointed as class counsel in FCRA class action with approximately 12,000 class members);
- *Mahoney v. TT of Pine Ridge, Inc.*, Case No.: 9:17-cv-80029-DMM (S.D. Fla. Nov. 20, 2017) (served as class counsel in TCPA case with 300,000+ class members).
- *George v. Primary Care Holding Inc.*, Case No. 0:17-cv-60217-BB (S.D. Fla.) (appointed as class counsel in FCRA class action);
- *Vazquez v. Marriott International, Inc.*, Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 20,000 class members);
- *Figueroa v. Baycare Healthcare System, Inc.*, Case No.: 8:17-cv-01780-JSM-AEP (M.D. Fla) (served as class counsel in FCRA case involving approximately 2,009 class members);
- *Valdivieso v. Cushman & Wakefield Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 2,000+ class members);
- *Dukes v. Air Canada*, Case No.: 8:18-cv-02176-TPB-JSS (M.D. Fla) (served as class counsel in FCRA case involving approximately 1,300 class members);
- *Rivera v. Aimbridge Hospitality, LLC*, Case No.: 8:18-cv-02192-EAK-JSS (M.D. Fla) remanded to *Rivera v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in data breach case with 320,000 class members).
- *Blaney v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County,

Florida (served as class counsel in Fair Credit Reporting Act case with 17,00 class members);

- *Cathey v. Heartland Dental, LLC*, 2019-CA-000568, Fourth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 9,800 class members);
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- *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);
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- *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);
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- *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);
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- *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).

8. I have been retained by Plaintiff as counsel in the instant case. I possess the experience required to represent the proposed class. I have confidence that the Class Representative, Jessica Roubert, has been and will be loyal to the class.

9. I support the Parties' settlement as fair, reasonable, and adequate.

10. The decision to settle was well informed, and made only after the Parties had engaged in extensive arm's length settlement negotiations with the assistance of a mediator.

11. The gross and net recovery per-class-member is consistent with the amounts from other COBRA class action cases that have recently settled and been approved by courts.

12. For these reasons, I support this class action settlement.

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

Dated this 28th day of February, 2023.

/s/ Luis A. Cabassa
LUIS A. CABASSA

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JESSICA ROUBERT,

Plaintiff,

v.

CASE NO.: 8:21-cv-2852-TPB-TGW

**CAPITAL ONE FINANCIAL
CORPORATION,**

Defendant.

_____/

DECLARATION OF AMANDA E. HEYSTEK

I, Amanda E. Heystek, declare under penalty of perjury as follows:

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

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

3. I have been a member of the Florida Bar since June of 2000. I have a J.D. from Southern Illinois University School of Law, and two Bachelor's degrees from Southern Illinois University.

4. I've practiced law as an Assistant Public Defender at the Sixth Circuit Public Defenders Office and as a solo practitioner from my own firm specializing in family law in Jacksonville, Florida. I later joined the non-profit Disability Rights Florida, Inc., where I practiced exclusively in the field of civil rights for people with

disabilities for the next decade, focusing on securing injunctive relief for clients on an individual and systemic basis. The systemic work I provided at Disability Rights Florida, Inc., involved multi-plaintiff litigation specifically seeking injunctive relief.

5. In September 2019, I joined the law firm of Wenzel Fenton Cabassa, P.A., and have provided legal support to Brandon J. Hill and Luis A. Cabassa in their class action work.

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

7. I have represented employees in all stages of litigation in federal and state courts throughout Florida. In the federal districts of Florida alone I have served as co-counsel or lead counsel in 100+ federal cases.

8. I possess the requisite experience necessary to serve as class counsel in this case.

9. I have been retained by Plaintiff as counsel in the instant case along with lead counsel, Brandon J. Hill, and attorney Luis A. Cabassa.

10. I am confident that the proposed Class Representative, Jessica Roubert, will adequately represent the putative class members in this case.

11. I support the Parties' settlement as fair, reasonable, and adequate.

12. The decision to settle was well informed, and made only after the Parties had engaged in extensive arm's length settlement negotiations with the assistance of a mediator.

13. The gross and net recovery per-class-member is consistent with the amounts from other COBRA class action cases that have recently settled and been approved by courts.

14. For these reasons, I support this class action settlement.

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

Dated this 28th day of February, 2023.

/s/ Amanda E. Heystek
AMANDA E. HEYSTEK