

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

**EDWARD GORMAN, *on behalf of
himself and on behalf of all others
similarly situated,***

Plaintiff,

v.

CASE NO.: 8:20-cv-02275-CEH-AEP

**WHELAN EVENT STAFFING
SERVICES, INC.,**

Defendant.

_____ /

**PLAINTIFF’S UNOPPOSED MOTION FOR ATTORNEYS’
FEES AND COSTS, AND AN INCENTIVE AWARD**

Class Representative, Edward Gorman (“Plaintiff”) by and his undersigned counsel, files this Unopposed Motion for an Award of Attorney’s Fees and Costs in conjunction with the Parties’ Class Action Settlement. In further support thereof, Plaintiff states as follows:

Brief Summary

On October 17, 2022, the Court granted Plaintiff’s Unopposed Motion for Preliminary Approval of the Class-wide Settlement of the claims asserted against Defendant under the Fair Credit Reporting Act (“FCRA”). (*See* Doc. 77). After preliminary approval was granted, notice was mailed to class members in accordance with the Court’s Preliminary Approval Order. The reaction has

been overwhelmingly positive. In fact, zero objections have been made and zero exclusions received. Over 1,445 class members have filed claims thus far. Thus, the reaction from class members has been overwhelmingly positive

In sum, Class Counsel undertook this FCRA class action without guarantee of payment and, despite significant hurdles, achieved an excellent result on behalf of Plaintiff and the Class by securing a common fund totaling \$750,000 from which class members could make claims. 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 FCRA's important disclosure process to consumers and job applicants, Class Counsel's request for attorneys' fees in the amount of one-third of the Settlement Fund totaling \$250,000, plus litigation costs totaling \$4,589.05, are reasonable and should be awarded. A proposed Order is attached as Exhibit A.

I. BACKGROUND AND OVERVIEW OF LITIGATION.

A. The Claims and Case Background.

On or about July 1, 2020, Named Plaintiff filed this putative class action lawsuit (the "FCRA Litigation") asserting claims against Defendant Whelan Event Staffing Services, Inc. ("WESS") under the Fair Credit Reporting Act on behalf of himself and on behalf of a proposed class of similarly situated individuals. In the Complaint, Named Plaintiff alleges, among other things,

that WESS willfully violated the Fair Credit Reporting Act (“FCRA”) under 15 U.S.C. § 1681b(b)(2). WESS has denied any liability and continues to do so.

By way of background, in June 2019, Named Plaintiff sought employment to work for WESS at Tropicana Field. (Doc. 18, ¶ 27). On June 20, 2019, Named Plaintiff completed WESS’s pre-hiring paperwork, including documents regarding WESS’s intent to obtain a consumer report on Named Plaintiff. (Doc. 18, ¶ 28). As part of its hiring processes, WESS uses background checks for employment purposes, and thus is subject to certain requirements of the FCRA. (Doc. 18, ¶ 4).

Based upon, among other things, WESS’s pre-hiring paperwork, which Named Plaintiff construed to be violative of the FCRA, Named Plaintiff filed his original Complaint in July 2020, and then an Amended Complaint on October 22, 2020 (Doc. 18), which includes five separate counts. As is relevant for purposes of this Motion, in Count I of the Amended Complaint, Named Plaintiff brought a nationwide class claim against WESS under 15 U.S.C. § 1681b(b)(2) for its alleged willful failure to provide to applicants a standalone disclosure of its intent to obtain consumer reports for employment purposes, and alleged failure to obtain written authorization to obtain such reports. (Doc. 18, ¶ 10). The class for this claim is referred to as the “Disclosure Class” in the Amended Complaint and is defined as: “All consumers in the United States who applied

for a position or promotion at [WESS] for the period five years before the filing of this lawsuit.” (Doc. 18, ¶ 147).¹

In terms of a procedural overview, this action was originally filed in state court on July 1, 2020. WESS removed the action to this Court on September 28, 2020. (Doc. 2). WESS filed its Motion to Dismiss on November 19, 2020. (Doc. 24). Both parties exchanged extensive written discovery, including answers to interrogatories and responses to requests for production. Depositions were tentatively set to occur sometime after mediation had the action not settled at the May 28, 2021, mediation.

The parties mediated this action twice, first on May 5, 2021, then again on May 28, 2021. With the assistance of one of the nation’s most-highly regarded FCRA class action mediators, David N. Anthony, the parties reached a class-wide settlement for which they now seek Court approval. The parties attempted to track two similar FCRA class-action settlements this Honorable Court recently approved, including in *Harake v. Trace Staffing, Inc.* (8:19-cv-

¹ Count II of the Amended Complaint asserts a claim against WESS under 15 U.S.C. § 1681b(b)(3) because WESS allegedly failed to provide Named Plaintiff with a copy of the background report or a summary of rights under the FCRA before taking an adverse employment action. (Doc. 18, ¶ 11). It was later determined that, unlike Name Plaintiff’s b(b)(2) claim, Named Plaintiff’s b(b)(3) claim was not well-suited for class treatment due to facts unique to Named Plaintiff’s particular situation. The Parties want the Court to know that they settled Mr. Gorman’s individual claim for violation of 15 U.S.C. 1681b(b)(3) on a confidential basis not made part of the class settlement. The remaining counts of the Amended Complaint, Counts III, IV, and V, are brought only against Defendant Datamaxx, not WESS. Each of these claims has since been resolved.

00243-CEH-CPT) (Doc. 55) (Judge Honeywell Order granting final approval of claims-made settlement in similar FCRA case), and *Twardosky v. Waste Management, Inc. of Florida, et al* 8:19-cv-02467-CEH-TGW (Doc. 57) (Judge Honeywell order granting final approval of claims-made settlement in similar FCRA case).

In sum, the parties submit that, for the same reasons the *Harake* and *Twardosky* settlements were approved, so too should this settlement be granted final approval.

B. Mediation And Settlement Agreement.

As explained above, the parties mediated this action twice, first on May 5, 2021, then again on May 28, 2021. At the second mediation, which went well into the evening of a holiday-weekend, the parties reached a tentative class-wide settlement that, if approved, will consist of approximately 29,202 members. The parties thereafter executed an Amended Joint Stipulation of Class Settlement Agreement attached to this Motion as Exhibit B (the “Agreement”). The settlement class is defined as follows:

Background Check Class: All individuals in the United States who applied for any position with Whelan Event Staffing Services, Inc. and were presented with a background check disclosure form during the period July 1, 2018, through the date of preliminary approval by the Court.

The Amended Agreement, subject to final Court approval, provides for settlement under the following key terms:

- WESS agrees to establish a gross Settlement Fund in the amount of \$750,000.00;
- Every Settlement Class Member that timely submits a claim will receive a gross payment of approximately \$25.68, resulting in a net payment of approximately \$15.12;²
- Payment from the Settlement Fund of the cost of notice and administration;
- Payment from the Settlement Fund of Class Counsel's attorney's fees in an amount of one-third of the common fund (\$250,000), plus reasonable litigation costs totaling \$4,589.05, which WESS does not oppose.

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

On November 1, 2021, the Court entered its original Order granting preliminary approval of the Parties' class action settlement. (*See* Doc. 63). After the Court entered its Order, Defendant began compiling the necessary information to provide to the settlement administrator so notice could be mailed to class members, including names and addresses. During that process, Defendant's counsel learned that the class size consists of 12,600 additional individuals. So, whereas before the class included 16,600 total class members, the new class size is comprised of 29,202 class members. As a result, the Parties agree that, based on the new class size, the total common fund should be

² \$750,000 - \$250,000.00 in attorneys fees' and costs - \$49,999 administrative costs - \$4,589.05 in litigation costs = \$445,411.95 / 29,202 class members = \$15.25 net payment to class members who file claims.

increased to \$750,000.00, as set forth below. Thus, the Parties executed an Amended Class Action Settlement (*see* Doc. 68-2), and then asked the Court to grant preliminary approval of their Amended Class Action settlement as to the larger settlement class and larger common fund. (*See* Doc. 68).

On October 17, 2022, this Court issued an order preliminarily approving the Amended Class Action Settlement Agreement between Plaintiff, on behalf of the Settlement Class, and Defendant. (Doc. 77.) In that Order, the Court determined that the Amended Settlement's terms are "fair, reasonable, and adequate." (*Id.*, p. 2, ¶ 2). 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.

D. Notice And Administration.

The Parties utilized a private, Court-approved third-party vendor, American Legal Claim Services, LLC ("ALC") to notify the Settlement Class of the settlement and to provide settlement administration services. The Parties agreed that the expense of providing notice to the Settlement Class and administering the settlement would be paid from the Settlement Fund.

On November 18, 2022, the Settlement Administrator mailed the Court approved Class Notice and Claim Form by first class-regular U.S. Mail to all class members. (Declaration of American Legal Claims employee, Mark Unkefer, ¶ 4). The Settlement Administrator made extensive efforts to ensure

notice reached the maximum number of class members possible, including multiple re-mailings after address searches. (Declaration of Mark Unkefer, ¶ 5).

The Notices informed Settlement Class members of: (1) the material terms of the Settlement Agreement; (2) their right to object and how to do so; (3) their right to exclude themselves by opting out and how to do so; (4) that they will be bound by the Settlement Agreement if they do not opt out; (5) the date, time and location of the final fairness hearing scheduled by the Court; and (6) that the Court retains the right to reschedule the final fairness hearing without further notice.

The Class Notices also directed recipients to the settlement website which contained additional information about the Settlement and provided a toll-free number that provided additional information. These extensive efforts to provide notice to the Settlement Class are “the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).

E. Class Action Fairness Act Notice.

The Settlement Administrator caused notice of the proposed settlement to be served upon the appropriate federal and state officials, as required by the Class Action Fairness Act of 2005 (“CAFA”).

F. Class Members Overwhelmingly Support the Settlement.

Members of the Settlement Class support the Settlement. The deadline for exclusions and objections is January 6, 2023. The claims deadline is February 1, 2023. Thus far, there are zero requests for exclusion and zero objections. (Declaration of Mark Unkefer, ¶¶ 7-8). In fact, 1,445 Class Members submitted Claims forms. (Declaration of Mark Unkefer, ¶ 9). This claims rate, combined with the complete absence of any objections or requests for exclusion, reflects an overwhelmingly positive reaction to the Settlement.

G. Attorneys' Fees and Expenses, and Service Award.

Pursuant to the Settlement Agreement, Class Counsel is authorized to file this petition with the Court seeking \$250,000, or approximately one-third (33.3%) of the Settlement Fund as attorneys' fees, plus \$4,589.05 in litigation costs. Defendant does not oppose the amount of fees and costs sought by Class Counsel up to these identified amounts. Plaintiff's below Memorandum of Law provides further support for these requested amounts.

MEMORANDUM OF LAW

I. Legal Standard.

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 as to attorneys' fees sought in class action cases, like this. *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.”); *Camden I*, 946 F.2d at 774 (same); *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 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*, 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*, 2018 WL 2018 WL 4762434, at *11 ("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.'").

Here, Plaintiff requests his Counsel be awarded \$250,000 in attorneys' fees, equivalent to one-third of the \$750,000 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*, 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).

Similar awards have approved in other FCRA class action matters, including by this Court in *Harake v. Trace Staffing Harake v. Trace Staffing, Inc.* (8:19-cv-00243-CEH-CPT) (Doc. 55) (Judge Honeywell awarded the undersigned 33 1/3% of a common fund in nearly identical FCRA case, plus

litigation costs); *see also Twardosky v. Waste Management of Florida, et al.*, 8:19-cv-02467-CEH-TGW (M.D. Fla., June 28, 2021, Doc. 58)(Judge Honeywell awarded the undersigned 33 1/3% of a common fund in nearly identical FCRA case, plus litigation costs); *see also 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)); *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL-TBM (M.D. Fla., October 9, 2015, Doc. 64) (Judge Lazarra awarded attorneys' fees of 33 1/3% of common fund in FCRA class action case); *Patrick v. Interstate Mgmt. Co., LLC*, 8:15-cv-01252-VMC-AEP (M.D. Fla. April 29, 2016, Doc. 48) (Judge Covington awarding attorneys' fees of 33 1/3% of common fund in FCRA class action case); *see also Moody, et al. v. Ascenda USA, Inc., et al.*, 0:16-cv-60364-WPD (S.D. Fla., March 12, 2018, Docs. 113, 114) (same). The same result should follow here. Indeed, the customary fee for counsel representing a plaintiff in an employment matter such as this depends on the experience and skill level of the involved attorneys.

B. Application of the Johnson Factors.

Furthermore, 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, commonly referred to as the *Johnson* factors, are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3)

the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and the length of the professional relationship with the client; (12) awards in similar cases. *Camden*, 946 F.2d at 772, n.3 (citing factors from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)); *see also Muransky*, 2018 WL 2018 WL 4762434, at *11 (affirming the use of these points).

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. The Time and Labor Required in Prosecuting This Case was Significant.

As described in detail above and in the attached declaration of the undersigned, the significant amount of time and labor required to bring this matter to settlement is consistent with the Requested Fee. Class Counsel expended considerable time drafting and filing the Complaint as well as the

Amended Complaint; researched for and wrote an extensive brief to overcome Defendant's Motion to Dismiss; propounded extensive written discovery on Defendant; served a third-party subpoena on Defendant's consumer reporting agency; reviewed and analyzed class-related information submitted by Defendant; reviewed the documents Defendant produced in discovery; prepared for and attended two full-day mediations; edited and finalized the complex settlement agreement and accompanying exhibits, class notices, etc.; prepared the 25-page motion seeking final approval of the class settlement; and, of course, researched for and drafted this Motion.

Class Counsel performed this work entirely on a contingency fee basis and has not been compensated for his time. 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 Service 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 714. This third factor ties directly to the second *Johnson* factor and requires the judge to "closely observe the

attorney's work product, his preparation, and general ability before the court.” *Johnson*, 488 F.2d 714. Because the second and third Johnson factors are tied together, below they are analyzed simultaneously.

Courts in this Circuit recognize that class actions involving various legal theories are, by their nature, very difficult. *See Yates v. Mobile County Pers. Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) (extremely complicated litigation requires thorough and detailed research of almost every question involved); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547 (S.D. Fla. 1988) (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 Advoc. Program v. Nachman*, 992 F. Supp. 1328, 1334 (M.D. Ala. 1997).

Unlike other common employment law-related claims, *e.g.*, suits brought under the Fair Labor Standards Act, there are relatively few cases dealing with FCRA issues. There are relatively few FCRA class actions pending in this District of which Class Counsel is aware, or that have ever been filed. In fact, there are multiple articles published in legal publications discussing the “new”

FCRA class action lawsuit trend.³ Although the cases are no longer “new,” there are still very few law firms in the Middle District of Florida, other than the undersigned’s firm, that pursue these cases. As a result, Class Counsel submits that FCRA class actions are relatively novel and present difficult questions of both fact and law, particularly here in the Middle District of Florida. Accordingly, FCRA class cases, including this one, raise novel issues that only a small subset of the bar are presently seasoned to handle. Class Counsel here had the expertise to bring this case and the expertise to marshal it to a favorable outcome. 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. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1300 (11th Cir. 1988). In *Norman*, the Eleventh Circuit listed several elements that district courts may consider in determining an attorney’s skill. *Id.*

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

³ <http://www.employerlawreport.com/2014/11/articles/workplace-privacy/the-fcra-is-the-new-flsa>; see also <http://www.law360.com/articles/567301/prepare-for-the-wave-of-fcra-class-actions>.

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 must 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 opposition. *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 new area of class action litigation, the dearth of case law on FCRA class actions, the ability to achieve a favorable outcome despite highly skilled Defense counsel, and the complexity inherent with any class action, all demonstrate that Class Counsel is a highly skilled employment law practitioner. This weighs in favor of finding the fee 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. Thus, this factor also militates in favor of finding the Requested Fee reasonable.

5. Customary Fee.

The customary fee and awards in similar cases supports approval. *See, e.g., Harake v. Trace Staffing Harake v. Trace Staffing, Inc.* (8:19-cv-00243-CEH-CPT) (Doc. 55) (Judge Honeywell awarded the undersigned 33 1/3% of a common fund in nearly identical FCRA case, plus litigation costs); *see also Twardosky v. Waste Management of Florida, et al.*, 8:19-cv-02467-CEH-TGW (M.D. Fla., June 28, 2021, Doc. 58)(Judge Honeywell awarded the undersigned 33 1/3% of a common fund in nearly identical FCRA case, plus litigation costs); *see also 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));

Speer v. Whole Foods Market Group, Inc., 8:14-cv-03035-RAL-TBM (M.D. Fla., October 9, 2015, Doc. 64) (Judge Lazarra awarded attorneys' fees of 33 1/3% of common fund in FCRA class action case); *Patrick v. Interstate Mgmt. Co., LLC*, 8:15-cv-01252-VMC-AEP (M.D. Fla. April 29, 2016, Doc. 48) (Judge Covington awarding attorneys' fees of 33 1/3% of common fund in FCRA class action case); *see also Moody, et al. v. Ascenda USA, Inc., et al.*, 0:16-cv-60364-WPD (S.D. Fla., March 12, 2018, Docs. 113, 114) (same). Accordingly, this factor also favors the proposed fee and expense award.

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*, 118 F.R.D. at 548; *see also Hall v. Bd. of Sch. 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 plaintiffs' counsel was retained under a contingency fee agreement). As recognized in *Behrens*, without a contingent fee, "very few lawyers could take on the representation of a class client given the investment of substantial time, effort and money, especially in light of the risks of recovering nothing." *Behrens*, 118 F.R.D. at 548.

Class Counsel undertook significant financial risk in prosecuting this case because it was taken on a contingency basis with no guarantee of recovery. There were no assurances that the class would be certified, or that Plaintiff could have or would have overcome Defendant's defenses. Class Counsel incurred significant fees for about 2.5 years while prosecuting this action and has, thus far, received no compensation. There was a very real possibility that Class Counsel would not recover anything for the Class. They spent more time on this case than he will be compensated for. For these reasons, this factor supports the approval of the requested amount of attorneys' fees.

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. Time limitations, at least in the senses of priority work when new counsel is called in to prosecute the appeal or handle other matters at a late stage in the proceedings, were not an issue in this case. Thus, this factor is neutral.

8. Amount Involved and the Results Obtained.

Class Counsel recovered a gross amount of \$750,000 for the benefit of all Class Members, although it will not all be claimed. Class members who file

claims will receive net payments of \$15.12, a good result considering the factors set forth herein.

By way of example, the FCRA Litigation would have been complicated, protracted, and expensive. The risk of Plaintiff and the putative class members being unable to establish liability, get a class certified over Defendant's objection, or failing to overcome Defendant's motion to dismiss or inevitable summary judgment, all posed serious hurdles Plaintiff not yet overcome when the settlement was reached. Considering the complexities of this case and the vigorous defense of opposing counsel, the settlement achieved is an excellent recovery when there was a very real chance the class would not recovery anything. This factor supports the attorneys' fee sought.

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 Counsels request for attorney's fees and expenses are "contrary to the law in the Eleventh Circuit" 2014 WL 5419507, at *7 (S.D. Fla., Oct. 24, 2014). Rather, attorneys in a class action "are entitled to an attorney's fee based upon the total benefits obtained in or provided by a class settlement, regardless of the amounts eventually collected by the Class." *Id.* (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 676 (1980); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999)); *Saccoccio*, 297 F.R.D. 683, 695 ("The attorneys' fees in a class

action can be determined based upon the total fund, not just the actual payout to the class.”); *Casey v. Citibank, NA.*, No. 12-cv-00820 (N.D.N.Y.) at (D.E. 223); *David v. Am. Suzuki Motor Corp.*, No. 08-CV-22278, 2010 WL 1628362 (S.D. Fla. Apr. 15, 2010) (treating settlement with ascertainable benefits as a common fund to which a percentage fee may be awarded, even if the fee is separately paid by the defendant).

Class Counsels’ efforts to secure this favorable settlement for the Class supports full payment of the attorneys’ fees agreed to by Class Counsel and Defendant. Accordingly, given the excellent results achieved, this factor weighs heavily in favor of the reasonableness of the Requested Fee.

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

Class Counsel has set forth their qualifications and prior experience in the previously filed declarations. This case has, at all stages, been handled on both sides by experienced lawyers whose reputations for effective handling of complex litigation are known throughout this District. This factor also weighs in favor of awarding the Requested Fee.

10. Undesirability of the Case.

In the above section Plaintiff highlighted the complexity and skill required to prosecute an FCRA class 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. Therefore, this factor, too, supports the requested amount of attorneys' fees sought here.

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

Class Counsel were not representing long-term clients 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 fee award sought here is in line with similar FCRA cases. *Harake v. Trace Staffing Harake v. Trace Staffing, Inc.* (8:19-cv-00243-CEH-CPT) (Doc. 55) (Judge Honeywell awarded the undersigned 33 1/3% of a common fund in nearly identical FCRA case, plus litigation costs); *see also Twardosky v. Waste Management of Florida, et al.*, 8:19-cv-02467-CEH-TGW (M.D. Fla., June 28, 2021, Doc. 58)(Judge Honeywell awarded the undersigned 33 1/3% of a common fund in nearly identical FCRA case, plus litigation costs); *see also 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)); *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL-TBM (M.D. Fla., October 9, 2015, Doc. 64) (Judge Lazarra awarded attorneys' fees of 33

1/3% of common fund in FCRA class action case); *Patrick v. Interstate Mgmt. Co., LLC*, 8:15-cv-01252-VMC-AEP (M.D. Fla. April 29, 2016, Doc. 48) (Judge Covington awarding attorneys' fees of 33 1/3% of common fund in FCRA class action case). Thus, the monetary amount recovered by Class Counsel in this case is comparable and in line with other FCRA class action settlements. As a result, this twelfth *Johnson* factor cuts sharply in favor of granting this Motion.

13. Costs.

Pursuant to the agreement, Plaintiff seeks to recover his litigation costs totaling \$4,589.05, which are supported by the attached sworn declaration.

CONCLUSION

Class Counsel achieved excellent results for all members of the Class. Class Counsel and Defendant negotiated a fair attorneys' fee at arm's length. Defendant does not oppose the fees or costs sought.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the Court grant Class Counsel's request for attorneys' fees in the amount of one-third of the Settlement Fund (\$250,000.00), and costs totaling \$4,589.05. A proposed Order is attached as Exhibit A.

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for Plaintiff and the Class conferred with counsel for Defendant prior to filing this Motion. Defendant does not oppose this Motion.

Dated this 23rd day of December, 2022.

Respectfully submitted,

/s/ Brandon J. Hill

BRANDON J. HILL

Florida Bar No. 37061

LUIS A. CABASSA

Florida Bar Number: 053643

WENZEL FENTON CABASSA, P.A.

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Craig C. Marchiando

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**CONSUMER LITIGATION ASSOCIATES,
P.C.**

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Newport News, VA 23601

Tel. (757) 930-3660

Fax (757) 930-3662

Email: craig@clalegal.com

***Attorneys for Plaintiff and the
Class***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this December 23, 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 counsel of record.

/s/ Brandon J. Hill

BRANDON J. HILL

EXHIBIT A

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

**EDWARD GORMAN, *on behalf of
himself and on behalf of all others
similarly situated,***

Plaintiff,

v.

CASE NO.: 8:20-cv-02275-CEH-AEP

**WHELAN EVENT STAFFING
SERVICES, INC.,**

Defendant.

_____ /

**[PROPOSED] ORDER GRANTING PLAINTIFF'S 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 total common fund, equivalent to \$250,000.00, and litigation costs totaling \$4,589.05.

IT IS SO ORDERED this _____ day of December, 2022.

Charlene Edwards Honeywell
United States District Judge

Copies to:
Counsel of Record

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

**EDWARD GORMAN, *on behalf of
himself and on behalf of all others
similarly situated,***

Plaintiff,

v.

CASE NO.: 8:20-cv-02275-CEH-AEP

**WHELAN EVENT STAFFING
SERVICES, INC.,**

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 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 Middle and Southern District 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 600+ federal cases.

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

5. More specifically, I have been appointed as class counsel in multiple class actions, including cases involving a few hundred class members up to nearly half a million class members. Below is a list of class action cases I have been appointed as class counsel by the Court:

- *Brown, et al. v. Lowe's Companies, Inc., and LexisNexis Screening Solutions, Inc.*, Case No.: 5:13-CV-00079-RLV-DSC (W.D.N.C) (appointed as co-class counsel in national FCRA class action matter involving 451,000 class members);
- *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL-TBM (M.D. Fla.) (Fair Credit Reporting Act class

- action settlement involving 20,000 individuals presided over by Judge Lazzara);
- *Kohler, Kimberly v. SWF Operations, LLC and Domino's Pizza, LLC*, Case No. 8:14-cv-2568-T-35TGH (appointed class counsel in Fair Credit Reporting Act case involving several hundred class members);
 - *Hargrett, et al. v. Amazon.com, DEDC, LLC*, 8:15-cv-02456-WFJ-AAS, M.D. Fla. Case No.: 8:15-cv-02456 (appointed as class counsel in FCRA case with 480,000+ class members);
 - *Smith, et al. v. QS Daytona, LLC*, Case No.: 6:15-cv-00347-GAP-KRS (M.D. Fla.) (Doc. 45) (appointed as class counsel in FCRA class action involving several hundred class members);
 - *Patrick, Nieyshia v. Interstate Management Company, LLC*, Case No. 8:15-cv-1252-T-33AEP (M.D. Fla.) (appointed as class counsel in FCRA class action with approximately 32,000 class members);
 - *Molina et al v. Ace Homecare LLC*, 8:16-cv-02214-JDW-TGW (M.D. Fla.) (appointed as class counsel in WARN Act case with approximately 500 class members);
 - *Moody, et al v. Ascenda, et al.*, Case No. 0:16-cv-60364-WPD (S.D. Fla.) (appointed as class counsel in FCRA class action with approximately 12,000 class members);
 - *Mahoney v. TT of Pine Ridge, Inc.*, Case No.: 9:17-cv-80029-DMM (S.D. Fla. Nov. 20, 2017) (served as class counsel in TCPA case with 300,000+ class members).
 - *George v. Primary Care Holding Inc.*, Case No. 0:17-cv-60217-BB (S.D. Fla.) (appointed as class counsel in FCRA class action);
 - *Vazquez v. Marriott International, Inc.*, Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla.) (appointed as class counsel in deficient COBRA notice case with 20,000 class members);
 - *Figueroa v. Baycare Healthcare System, Inc.*, Case No.: 8:17-cv-01780-JSM-AEP (M.D. Fla.) (served as class counsel in FCRA case involving approximately 2,009 class members);
 - *Valdivieso v. Cushman & Wakefield Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla.) (appointed as class counsel in deficient COBRA notice case with 2,000+ class members);

- *Dukes v. Air Canada*, Case No.: 8:18-cv-02176-TPB-JSS (M.D. Fla) (served as class counsel in FCRA case involving approximately 1,300 class members);
- *Rivera v. Aimbridge Hospitality, LLC*, Case No.: 8:18-cv-02192-EAK-JSS (M.D. Fla) remanded to *Rivera v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in data breach case with 320,000 class members).
- *Blaney v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 17,00 class members);
- *Cathey v. Heartland Dental, LLC*, 2019-CA-000568, Fourth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 9,800 class members);
- *Harake v. Trace Staffing Solutions, LLC*, Case No.: 8:19-cv-00243-CEH-CPT (M.D. Fla) (served as class counsel in Fair Credit Reporting Act case with 8,700 class members);
- *Hicks v. Lockheed Martin Corporation*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 54,000+ class members);
- *Holly-Taylor v. Acadia Healthcare Company, Inc., et al.*, Case No.: 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 25,00 class members);
- *Ali v. Laser Spine Institute, LLC*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel WARN Act case involving 500 class members);
- *Rigney et al v. Target Corporation*, Case No.: 8:19-cv-01432-MSS-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 92,000+ class members)
- *Luker v. Cognizant Technologies Solutions U.S. Corporation*, Case No.: 8:19-cv-01448-WFJ-JSS (M.D. Fla) (served as class counsel in wage case with 308 class members);
- *Lyttle v. Trulieve, Inc., et al.*, Case No.: 8:19-cv-02313-CEH-TGW (M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 1,300 class members);

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

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

7. Named Plaintiff Edward Gorman has taken an extremely active role in this litigation. Since the inception of this case he communicated with his attorneys throughout the litigation, reviewed documents, attended mediation (twice), and otherwise did everything necessary to keep the case on track and protect the Class's interests.

8. The case was litigated thoroughly and the decision to settle was well-informed.

9. I personally drafted and filed the Complaint as well as the Amended Complaint; heavily researched for and wrote an extensive opposition to Defendant's Motion to Dismiss; propounded extensive written discovery on Defendant; served a third-party subpoena on Defendant's consumer reporting agency; reviewed and analyzed class-related information submitted by Defendant; reviewed the documents Defendant produced in discovery;

prepared for and attended two full-day mediations; edited and finalized the complex settlement agreement and accompanying exhibits, class notices, etc.; prepared the motions seeking both preliminary and final approval of the class settlement; and, of course, researched for and drafted this Motion.

10. This case was finally settled only when class certification was fully briefed, and near the class certification motion deadline, with the help of a highly-skilled mediator, David Anthony. In fact, we mediated this case twice before it was settled.

11. Notably, on November 1, 2021, the Court entered its original Order granting preliminary approval of the Parties' class action settlement. (*See* Doc. 63). After the Court entered its Order, Defendant began compiling the necessary information to provide to the settlement administrator so notice could be mailed to class members, including names and addresses.

12. During that process, Defendant's counsel learned that the class size consists of 12,600 additional individuals. So, whereas before the class included 16,600 total class members, the new class size is comprised of 29,202 class members.

13. As a result, the Parties agree that, based on the new class size, the total common fund should be increased to \$750,000.00, as set forth below. Thus, the Parties executed an Amended Class Action Settlement (*see* Doc. 68-2), and then asked the Court to grant preliminary approval of their Amended

Class Action settlement as to the larger settlement class and larger common fund. (*See* Doc. 68).

14. Notice then went out to class members. Thus, far there have been zero objections and zero requests for exclusion.

15. My firm took this case on a contingency fee basis, and the firm agreed to advance all costs. To date, my firm has expended \$4,589.05 in out-of-pocket expenses which have not been reimbursed, as demonstrated by the attached invoice which sets out cost's incurred.

16. These costs were reasonable and necessary for the prosecution of this case.

17. I support the proposed settlement in this case as it is fair, reasonable, and adequate.

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

Dated this 21st day of December, 2022.



BRANDON J. HILL

Wenzel Fenton Cabassa PA

INVOICE

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

DATE	INVOICE #
5/5/2021	13082

TO:

Edward Gorman
1787 Bearberry Cir APT 102
Lutz, FL 33559

DATE	Item	DESCRIPTION OF SERVICES	TIME	RATE	TOTAL
7/21/2020	Process	Process Service	1	60.00	60.00
8/8/2020	Filings	Court Filings & Misc Fees	1	424.35	424.35
12/4/2020	Process	Process Service	1	66.30	66.30
5/5/2021	Postage	Postage		57.40	57.40
5/14/2021		Copies of Court Docs		106.00	106.00
6/28/2021	Mediator	Mediator Fees	1	7,750.00	7,750.00

Total	\$8,464.05
Payments/Credits	-\$3,875.00
Balance Due	\$4,589.05

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

EDWARD GORMAN, *on behalf of
himself and on behalf of all others
similarly situated*

Plaintiff,

v.

WHELAN EVENT STAFFING
SERVICES, INC.,

Defendant.

CASE NO.: 8:20-cv-02275-CEH-AEP

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

I, Mark Unkefer, 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 a Case Manager for American Legal Claim Services, LLC (“ALCS”).
3. **Class List Processing:** On or about November 8, 2022, ALCS processed the mailing list (“Class List”) containing names and street addresses, where available. ALCS reviewed and processed the data and identified a total of 29,202 rows in the class data. After analysis, the final Noticing List contained 28,857 class members as 345 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 November 18, 2022, ALCS mailed the Notice of Class Action Lawsuit with the Claim Form (attached hereto as Exhibit A).
5. **Returned Mail Handling:** ALCS processed all Class Notices returned by USPS. A minority of the mail included an updated address provided by USPS (“FOE”). For these, the class member addresses were updated, and the Class Notice were re-mailed to the updated address provided. The remainder of the mail returned by the USPS did not contain an updated address (“UAA”). For these, ALCS conducted address searches using a nationally recognized location service to attempt to locate new addresses for these class members. Of the 28,857 Initial Notices mailed, 5494 were returned by USPS as of the date of this declaration. ALCS has re-mailed 4887 Notices to updated addresses.

6. **Noticing Campaign Summary:** The following is a summary of the noticing, as of the date of this Declaration:
 - Total Class Members: 28,857
 - Initial Notice of Class Action Settlement mailed via USPS: 28,857
 - Notice of Class Action Settlement returned by USPS: 5494
 - Notice of Class Action Settlement remailed via USPS: 4887
 - Notice of Class Action Settlement deemed undeliverable: 607
 - Percentage of Notice of Class Action Settlement deemed delivered: **97.90%**

7. **Exclusions:** Class members were who wished to opt out of the proposed settlement were instructed to mail a written request for exclusion to the Settlement Administrator by January 6, 2023. The deadline to receive a request for exclusion was January 6, 2023. ALCS has not receive any requests for exclusion from the proposed settlement as of the date of this declaration.

8. **Objections:** Class members were who wished to object to the proposed settlement were instructed to mail a written objection to the Settlement Administrator by January 6, 2023. The deadline to receive Objections was January 6, 2023. ALCS has not receive any objections to the proposed settlement as of the date of this declaration.

9. **Claims:** The Notice instructed that those who wish to receive a settlement payment must submit their claim online or by mailing the claim form to the Settlement Administrator, so that it is received by February 1, 2023. The claim form was included with the Notice. As of the date of this declaration ALCS has received 1445 claims. This constitutes a 5% claims rate with more than a month remaining to file claims.
 - Total claims received: 1445

10. **Website:** ALCS created a case website www.gormanfcrasettlement.com that provided further information as stated in the Notice. The website contained sections for important Court documents, key dates and answers to frequently asked questions. The Court documents posted were Amended Complaint, Defendant Answer to Amended Complaint, Settlement Agreement, Motion for Preliminary Approval, Preliminary Approval Order, and Class Notice. Class members also had an opportunity to update their address and/or submit their claim online.

11. **Toll-Free Telephone:** ALCS established a toll-free telephone line 800-372-5657 for Class member to contact with questions about the settlement or update their address. As of the date of this declaration, we received 102 phone calls on the case dedicated line.

12. **Administration Costs:** Administration costs to date have been \$42,902.00. Remaining costs are estimated to be \$7,097.00. Total costs are estimated to be \$49,999.00.

Noticing Services

Setup, Print/Mail, Website, Call Center	\$ 21,961.00
Administration	\$ 5,612.00
Postage	\$ 15,329.00

Disbursement Services (estimated) \$ 7,097.00

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 December 22, 2022, in Jacksonville, Florida.



Mark Unkefer

Exhibit A

double postcard (6 x 4.25 inch) template

outside top/front

**COURT-ORDERED
NOTICE**

Edward Gorman

v.

Whelan Event Staffing Services, Inc.

Class Action Notice

A settlement has been reached in a class action lawsuit against Whelan Event Staffing Services, Inc. ("Defendant") for alleged violations of the Fair Credit Reporting Act ("FCRA"). Named Plaintiff Edward Gorman ("Named Plaintiff") alleges that Defendant's Background Check disclosure form allegedly contained extraneous information that violated the FCRA. Defendant has agreed to establish a gross Settlement Fund in the amount of \$750,000.00 from which class members' claims along with the costs of administration and attorneys' fees and costs will be paid. From the remaining funds, every class member who timely submits a Claim Form will receive a net payment of approximately \$15.00. Left over and unclaimed funds will return to Defendant.

www.gormanfrassettlement.com

(Notice Continued Inside)

Gorman Class Action
c/o Settlement Administrator
PO Box 23369
Jacksonville, FL 32241-3369

Postmaster: Do Not Mark Barcode



Notice ID: <<noticeid>> PIN: <<pin>>

PRST-STD
U.S. POSTAGE
PAID
JACKSONVILLE, FL
PERMIT NO. XXX

«fname» «lname»
«addrline1» «addrline2»
«addrline3»
«addrcity» «addrstate» «addrzip»
«country»

**Gorman v Whelan Event Staffing Services, Inc.
Class Action Settlement Claim Form**

If you wish to receive payment, you **MUST** either submit your claim online at www.gormanfrassettlement.com by FEBRUARY 1, 2023 or mail/email this completed postcard POSTMARKED NO LATER THAN FEBRUARY 1, 2023. (Do not submit both an online claim and claim by mail.) email: info@gormanfrassettlement.com.

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Yes, I want to receive the Settlement Payment set forth in the Settlement Agreement. I understand that the gross Settlement Fund is \$750,000 and that the Class Counsel's fees and litigation expenses, and the settlement administration expenses will be paid from the gross Settlement Fund. I also understand that the Settlement Payment will be calculated by dividing the Net Settlement Fund by the number of people in the Class. It is estimated that the payment to each Class Member will be an amount of approximately \$15.00. I represent that if asked I would assert that I was injured by the conduct alleged to be unlawful in the captioned case sufficient to give me standing in this case. My signature below certifies under penalty of perjury that the foregoing is true and correct.

Signature: _____ Date: _____

Administrator Use Only – Do Not Write Below This Line

474

NID: «noticeid»
PIN: «pin»



outside bottom/back

inside front

Am I a Class Member? Company records indicate you are a class member. The class of which you are a member is defined as follows: All individuals in the United States who applied for any position with Whelan Event Staffing Services, Inc. and were presented with a background check disclosure form during the period July 1, 2018 through the date of preliminary approval by the Court (October 17, 2022).

What Can I Get and How Do I Get it? If you timely return the attached Claim Form to the Settlement Administrator, and the Court grants final approval of the settlement, you will be sent a Settlement Check of approximately \$15.00.

THE ATTACHED CLAIM FORM MUST BE MAILED TO THE CLASS SETTLEMENT ADMINISTRATOR AND POSTMARKED BY NO LATER THAN FEBRUARY 1, 2023.

Who Represents Me? The Court appointed lawyers Luis A. Cabassa and Brandon J. Hill from Wenzel Fenton Cabassa, P.A., and Craig C. Marchiando of Consumer Litigation Associates, P.C. as Class Counsel. They will seek to be paid legal fees and costs out of the gross Settlement Fund of up to one-third (\$250,000.00) of the gross Settlement Fund, plus reasonable litigation costs. You may also hire and pay for a lawyer at your expense.

What if I Don't Like the Settlement? You can exclude yourself or object. To exclude yourself and keep any rights you may have to sue Defendant over the legal issues in this lawsuit, write the settlement administrator by January 6, 2023. If you do not exclude yourself, you may object to the settlement. To do so, you must file a written objection with the Court by January 6, 2023.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval hearing at 11:00 a.m. on February 10, 2023, before Judge Charlene Edwards Honeywell, United States District Court for the Middle District of Florida, Tampa Division, 801 N. Florida Avenue, Tampa, Florida 33602, Courtroom 13A.

How Do I Get More Information? For more information, contact the settlement administrator at (800) 372-5657 or via e-mail at info@gormanfcrsettlement.com, or visit the following settlement website www.gormanfcrsettlement.com.

Your Personal Notice ID: «noticeid»
Your Confidential PIN: «pin»



PLACE
STAMP
HERE

fold

fold

474 - «noticeid»
«fname» «lname»

**GORMAN CLASS ACTION
PO BOX 23369
JACKSONVILLE FL 32241-3369**



inside bottom