UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ELVA BENSON, on behalf of herself and on behalf of all others similarly-situated,

Plaintiff,

v. **CASE NO.: 6:20-cv-891-Orl-37LRH**

ENTERPRISE HOLDINGS, INC., and ENTERPRISE LEASING COMPANY OF ORLANDO, LLC,

Defendants.
_____/

PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES AND COSTS

Plaintiff, Elva Benson ("Class Representative"), files this Unopposed Motion, and incorporated Memorandum of Law, seeking approval of attorneys' fees and costs in accordance with the Parties' class action settlement. In further support thereof, Plaintiff respectfully submits the following:

Brief Summary

On January 10, 2022, this Court issued an Order preliminarily approving the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") between Plaintiff, on behalf of the Settlement Class, and Defendants. (Doc. 131). In that Order, the Court found that Settlement terms are "fair, reasonable, and adequate." (*Id*., p. 2, ¶ 2). Following entry of that Order, the Settlement Class Administrator sent a Notice of Settlement via first class mail to all Settlement Class

Members. Thus far zero Class Members have objected to the Settlement. Similarly, only one exclusion/opt-out has been received. Considering the size of the Class, coupled with the fact approximately 216 class members have filed claims so far (over 22% of the total class), and that no funds revert to Defendants, the Settlement is an excellent outcome.

Class Counsel requests attorneys' fees in the amount of $250,000, plus costs totaling $7,185.40, are warranted by the results obtained in this action. The requested fees are also justified by the work and investment required of Plaintiff's counsel, plus the risks undertaken by Class Counsel, lack of any objections whatsoever, and the public policy need to provide adequate incentive for attorneys to enforce the WARN Act's important notice requirements to employees impacted by mass layoffs.

In sum, Class Counsel's request for attorneys' fees and costs is reasonable and should be granted. Defendants do not oppose this Motion. A proposed Order is attached as Exhibit A. In further support of this Motion, Plaintiff respectfully submits the following:

I. BRIEF OVERVIEW.

A. Procedural Overview of the Litigation.

Before the settlement was reached, both sides extensively litigated this case for nearly 1.5 years, including at the Eleventh Circuit Court of Appeals. This action commenced on May 27, 2020, when Plaintiff filed her class action complaint, *Benson, et al., v. Enterprise Holdings, Inc. et al.,* Case No. 6:20-cv-

891, in the United States District Court for the Middle District of Florida, Orlando Division. (Doc. 1 - the "Action"). In the Complaint, Plaintiff alleged that Enterprise Holdings, Inc. ("EHI") and Enterprise Leasing Company of Orlando, LLC ("Enterprise Orlando"), (collectively referred to as "Defendants" or "Enterprise") violated the WARN Act by terminating her and the class members without sufficient notice. Defendants have, at all times, denied Plaintiff's allegations and denied that it violated the WARN Act.

Defendants filed a Motion to Dismiss (*see* Doc. 32) the Complaint on August 3, 2020, disputing that Plaintiff had pled the three named Defendants constituted a "single employer" under the WARN Act. Additionally, Defendants argued that even if Plaintiff had pled the identity of her employer and sufficient facts to conclude that it was subject to the WARN Act and had engaged in a plant closing or mass layoff—Defendants were excused from the WARN Act's notice requirement under both the unforeseeable business circumstance defense and natural disaster exception to the WARN Act's notice requirement.

Plaintiff filed her Amended Complaint (*see* Doc. 35) on August 17, 2020, which mooted the first Motion to Dismiss. (*See* Doc. 36). Plaintiff's First Amended Complaint added as Named Plaintiffs Patrina Moore and Elizabeth Daggs. Both Daggs and Moore were later voluntarily dismissed (*see* Docs. 53 and 62) because it was later determined they worked at Enterprise facilities not covered by the WARN Act.

Defendants moved to dismiss (*see* Doc. 42) the First Amended Complaint on September 14, 2020, raising many of the same arguments and defenses included in its prior Motion to Dismiss—along with some others.

Defendants also filed a Motion to Stay discovery pending resolution of the Motion to Dismiss the First Amended Complaint. (Doc. 45). The Court denied the Motion to Stay Discovery on October 29, 2020. (Doc. 52). The Parties then engaged in extensive discovery efforts—and continued doing so throughout this litigation. Both sides propounded interrogatories and requests for production. Additionally, Plaintiff sought leave to (and the Court permitted her to pursue) jurisdictional discovery from Defendants. (Doc. 75). Both sides also took multiple depositions, including as to both the Parties and relevant witnesses. The Parties' extensive discovery efforts allowed both sides to fully develop the record in this case for both class certification purposes and, ultimately, to help ensure a well-informed settlement was reached.

In the interim, on January 4, 2021, the Court denied Defendants' Motion to Dismiss the First Amended Complaint. (Doc. 61). Defendants filed a Motion (*see* Doc. 69) to Certify for Interlocutory Review the Court's Order denying the Defendants' Motion to Dismiss the First Amended Complaint, which the Court granted by Order dated February 4, 2021. (Doc. 77). The Court certified the following question under § 1292(b): "What causal standard is required to establish that a plant closing or mass layoff is "due to any form of natural disaster" under the WARN Act's natural disaster exception, 29 U.S.C. § 2102(b)(2)(B)."

Defendants filed their 28 U.S.C. § 1292(b) Petition with the Eleventh Circuit on February 12, 2021. The Eleventh Circuit granted the Defendants' petition on June 4, 2021. On July 14, 2021, Defendants filed their Initial Brief with the Eleventh Circuit Court of Appeals. Additionally, the Defendants' brief was supported by several amici groups. Benson filed her Opposition Brief with the Eleventh Circuit on September 10, 2021. Benson also filed responses in opposition to each amicus brief filed in support of Defendants with the Eleventh Circuit.

Meanwhile, in these underlying District Court proceedings, Benson filed her Motion for Class Certification under Rule 23 on January 12, 2021. (Doc. 64). Defendants opposed Plaintiff's Motion for Class Certification (*see* Docs. 81-93), and also filed a Motion to Strike (*see* Doc. 80) the sworn declaration filed by Benson in support of her Motion for Class Certification. The Court denied the Motion to Strike filed by Defendants on March 15, 2021. (Doc. 101).

The Court heard oral argument on Plaintiff's Motion for Class Certification on April 1, 2021. (Doc. 106). On May 11, 2021, the Court granted Plaintiff's Motion for Class Certification and certified a nationwide class of approximately 964 persons who worked at various Enterprise locations around the country. Specifically, the Court certified (*see* Doc. 114, p. 26) the following class:

> All Enterprise employees who worked at or reported to Enterprise facilities in the United States and were terminated without cause on or about April 24, 2020, or within 14 days of April 24, 2020, or in anticipation of, or as the foreseeable consequence of, the mass layoff or plant closing ordered on or about April 24, 2020, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5), who

do not file a timely request to opt-out of the class, and who also did not sign a severance agreement with Enterprise.

On May 25, 2021, Defendants filed their Petition for permission to appeal pursuant to 23(f) with the Eleventh Circuit Court of Appeals the District Court's Order granting Plaintiff's Motion for Class Certification. Plaintiff opposed Enterprise's Rule 23(f) Petition. The Eleventh Circuit denied Defendants' Rule 23(f) Petition on June 23, 2021.

On September 14, 2021, the Parties participated in a Court-Ordered mediation with highly respected mediator, Carlos J. Burruezo. During mediation, and with Mr. Burruezo's assistance, the Parties were able to reach a settlement on a class basis, contingent upon this final agreement and the Parties' class action settlement being approved by the Court. (*See* Docs. 121, 122).

If granted final approval here, the settlement provides for immediate relief to approximately 964 Settlement Class Members. Defendants will make available the gross sum of $175,000.00 into a common fund. That amount will be allocated among the approximately 964 class members equally on a pro rata basis based on the number of valid claim forms filed by class members after the cost of administration costs and litigation costs are deducted. No money from the Settlement Fund shall revert to Enterprise. For example, if the Net Settlement Fund is $150,000.00 and the total class members who file claims remains what it is today (216), the individualized Settlement Payment shall be $694.00.

In sum, based on the extensive record developed in this case, coupled with the experience and judgment of experienced class counsel, Plaintiff respectfully submits that the terms and conditions of this Agreement are fair, reasonable, and adequate. As such, the attorneys' fees and costs sought are both reasonable and warranted.

B. Mediation And Settlement Agreement.

As explained above, on September 14, 2021, the Parties mediated this case with the assistance of mediator, Carlos J. Burruezo. The Parties' efforts culminated in a class-wide resolution that, if approved, will resolve the claims of each of the 964 Class Members. Importantly, the 964 class members who comprise the settlement class are the same class members who make up the Class Certified by this Court's order granting Plaintiff's Motion for Class Certification. The settlement class is defined as follows:

> **Settlement Class:**
> All Enterprise employees who worked at or reported to Enterprise facilities in the United States and were terminated without cause on or about April 24, 2020, or within 14 days of April 24, 2020, or in anticipation of, or as the foreseeable consequence of, the mass layoff or plant closing ordered on or about April 24, 2020, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5), who do not file a timely request to opt-out of the class, and who also did not sign a severance agreement with Enterprise.

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

On January 10, 2022, this Court issued an Order preliminarily approving the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") between Plaintiff, on behalf of the Settlement Class, and Defendants. (Doc. 131).

In that Order, the Court found that Settlement 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, the Court-approved notice was mailed out to the Settlement Class Members.

D. <u>The Class Member's Reactions to the Settlement</u>.

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 January 20, 2022, via first-class mail. (*See* Declaration of Snehal Indra from American Legal Claims Services, LLC, ¶ 5) (hereinafter "Indra Dec.").

The Class Notice provided Settlement Class Members with all required information relating to the Settlement including: (1) a summary of the lawsuit and an overview of the nature of the claims; (2) the definition of the Settlement Class certified by the Court; (3) a clear description of the material terms of the Settlement; (4) an explanation of the claims being released; (5) an explanation of Settlement Class Members' rights; (6) instructions as to how to timely submit a claim form, including the date by which Class Members must do so; (7) instructions as to how to object to the Settlement and a date by which Settlement Class Members must object; (8) the date, time, and location of the final approval hearing; (9) the internet address for the settlement website and the toll-free number from which Settlement Class Members could obtain additional information about the Settlement; and, (10) identification of Class Counsel and

information regarding the compensation that they would seek pursuant to the Settlement Agreement.

The Settlement website provided Settlement Class Members with access to the following documents: (i) the Long Form of Class Notice which explained the proposed Settlement in detail; (ii) Class Action Complaint; (iii) Class Settlement Agreement and Release, with exhibits; (vi) Motion for Preliminary Approval of Class Action Settlement, with exhibits; and (vii) Preliminary Approval Order. The Long Form of Notice included a set of Frequently Asked Questions ("FAQs") and answers about the Settlement.

ALCS also set up a toll-free telephone support line that Settlement Class Members could call to obtain additional information. Thus, notice to the Class Members was sufficient and consistent with the Court's Order granting Preliminary Approval. The Settlement Class Members overwhelmingly accepted the Settlement. Thus far none have objected to the settlement, and only a single class member asked to be excluded. (*See* Indra Dec., ¶¶ 11 and 12). Not only that, over 22% of Settlement Class Members timely returned claim forms. (*See* Indra Dec., ¶¶ 10).

E. <u>Class Counsel Spent Considerable Time Pursuing Class Claims</u>.

Class Counsel dedicated considerable time in prosecuting and settling this case. Class Counsel's raw lodestar fee is actually more than the $250,000.00 Class Counsel agreed to accept and for which Class Counsel now seeks approval. Specifically, as indicated by the attached time records, Class Counsel has incurred

fees totaling $304,655.00. Combined with incurred expenses of $7,185.40, Class Counsel's total investment in the case to date is $311,840.40. These calculations are supported by the attached declarations (*See* Hill Decl., Cabassa Decl.) detailing the work performed, along with the time records attached to the declarations. A statement of Class Counsel's experience and expertise is also provided.

Importantly, the lodestar calculation only represents work performed up to the filing of this Motion. If the Court grants final approval of the Settlement, Class Counsel will continue to represent the Class, including monitoring the settlement to ensure that class members receive their settlement checks and/or replacement checks as necessary, and will continue to respond to inquiries from class members, if they arise. As a result, Class Counsel will have significantly more time in this matter to bring it to full and final resolution.

II. MEMORANDUM OF LAW.

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

In evaluating the reasonableness of attorneys' fees in similar cases, the Court is guided by the twelve-factor analysis set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974). The twelve factors in determining court-awarded attorneys' fees 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 condo. Ass'n v. Dunkle, 946 F.2d 769, 772 (11th Cir. 2009) (citing *Johnson,* 488 F.2d at 717-719). Here, based on the key factors relevant to this Litigation, the Requested Fee is consistent with the *Johnson* factors. In addition to these factors, other pertinent factors can include 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 required by counsel, and the economics involved in prosecuting a class action. 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 particular case, demonstrate that an award of fees totaling one-third of Settlement Fund is appropriate.

1. <u>Time and labor required</u>.

As to the first *Johnson* factor, the time and labor required in this case from Plaintiffs' counsel has been significant. For nearly 1.5 years both sides extensively litigated this case, including at the Eleventh Circuit Court of Appeals.

Some specific examples of other work performed in this case includes, but is not limited to, the following: drafting and filing the complaint and amended complaint; responding to Defendants' Motion to Dismiss; responding to Defendants' Motion to Stay Discovery; extensive written discovery-related efforts, including both propounding and responding to multiple rounds of discovery;

analyzing voluminous discovery provided by Enterprise; asking the Court for jurisdictional discovery; conducting multiple depositions of Enterprise witnesses as well as defending multiple depositions of Ms. Benson; extensively researching Rule 23-related issues in preparation for the drafting of and filing Plaintiff's motion for class certification; oral argument on Plaintiff's Motion for Class Certification; responding to Defendants' 28 U.S.C. § 1292(b) Petition at the District Court level and at the Eleventh Circuit; responding to Defendants' Rule 23(f) at the Eleventh Circuit; extensive appellate work at the Eleventh Circuit Court of Appeals after Defendants' 28 U.S.C. § 1292(b) Petition was granted, including full-merit briefing on the issue of the natural disaster exception; responding to various motions for leave to file amicus brief in support of Defendants with the Eleventh Circuit; preparing and attending mediation, including briefing our side's mediation statement and analyzing Defendants' mediation statement; drafting, editing, and finalizing the motion seeking preliminary approval of the class Settlement; drafting 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. (*See* Hill Decl., ¶ 10).

Additionally, the motion for final approval still must be drafted and heard, requiring significant preparation time. In the event that 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. <u>This case presented novel and difficult questions requiring a high level of skill to perform the legal services properly</u>.

The second *Johnson* factor recognizes that attorneys should be appropriately compensated for accepting novel and difficult cases. *Johnson*, 488 F.2d at 718. The third *Johnson* factor is "[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, WARN Act cases are somewhat uncommon. After all, it's not every day employers engage in mass layoffs, or plant closings, which meet the threshold numbers needed to support WARN Act claims. Additionally, this case is extremely unique. It was one of the first WARN Act cases brought following a mass layoff engaged in by an employer as a consequence of the economic downturn caused by the COVID-19 pandemic. As a result, some legal commentators called it one of the top Coronavirus-related employment suits to watch in 2020.[1] Others claimed it would "serve as a guidepost for other federal judges grappling with the same questions."[2]

As a result, this case is fairly novel and presented difficult questions of both fact and law. A small subset of the Bar are presently seasoned to handle this type of case, evidenced by the relatively few number of WARN class action cases filed (or pending) of which the undersigned is aware dealing with similar issues. Class Counsel had the expertise to bring this case and the expertise to marshal it to a

[1] Braden Campbell, Employment Suits to Watch 6 Months into the Pandemic, Law360 (Sept. 4, 2020).
[2] Anne Cullen, Enterprise WARN Act Ruling Spells Trouble for Big Employers, Law360 (Jan. 11, 2021).

favorable outcome. Few lawyers have the skill and wherewithal to see this case through, against sophisticated and well-funded Defendants and top-notch Defense Counsel, to the conclusion the Plaintiff will present for Final Approval. 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 Defendants' success in having the case dismissed or disposed of at summary judgement, the dearth of case law on WARN class actions rooted in COVID-19-related mass layoffs, 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 are highly skilled practitioners. This weighs in favor of awarding the fees sought.

4. Preclusion of other employment.

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

Here the hours required to prosecute this action limited the amount of time and resources that Class Counsel was available to devote to other matters over the period of this litigation. A significant amount of Counsel's time was devoted to this case during the time leading up to mediation. Additional work performed is outlined in the attached declarations of the undersigned. While the undersigned

did much of the day-to-day work, Mr. Cabassa also performed work in this case. Thus, this factor also militates in favor of finding the Requested Fee reasonable.

5. Customary fee.

The rates charged by Class Counsel are well within the customary fees charged for comparable service. In assessing the reasonableness of hourly rates, courts consider "the prevailing market rate in the relevant legal community for similar services by lawyers of comparable skills, experience, and reputation." *Martin v. University of South Alabama,* 911 F.2d 604, 610 (11th Cir. 1990). Courts look to the forum in which the District is located to determine the hourly rates that should apply. *Id.* ("Common sense dictates that the 'going rate' in the community is in actuality the most critical factor in determining a reasonable fee.")

Class Counsel's lodestar fee request is based on an hourly rate of $550 per hour for Brandon J. Hill (practicing law for nearly 15 years), and $675 for Luis A. Cabassa (practicing law for nearly 27 years and Board Certified in Employment Law by Florida Bar), all of which are reasonable and in line with rates in this District. In fact, these precise rates for Mr. Cabassa and Mr. Hill were just approved in another class action settlement, *McNamara v. Brenntag*, Case No.: 8:21-cv-00618-MSS-JSS (M.D. Fla. February 17, 2022, *see* fee petition at Doc. 26, p. 17, and Order granting fee petition at Doc. 32). *See also Wiles v. Astrue*, 2011 U.S. Dist. LEXIS 24894, 4 (M.D. Fla. 2011) (approving rates of $700 per hour in a contingency fee case); *Lockwood v. Certegy Check Serv., Inc.*, Case No. 8:07-cv-1434-T-23TGW (M.D. Fla. 2008) (approving rates of up to $750 per hour in a class

action); *Owens v. Carrier Corp.,* Case No. 08-CV-02331, Dkt. No. 265244 (W.D. Tenn. 2010) (approving rates in a class action of up to $695 for partners); *see also Montanez v. Gerber Childrenswear, LLC,* Case No. CV 09-07420-DSF, Dkt. Nos. 269 and 283 (C.D. Cal. 2013); *Kizer v. Summit Partners, LP*, Case No. 1:11-cv-00038, Dkt. No. 33 (E.D. Tenn. 2011). Accordingly, the rate proposed by Class Counsel is reasonable.

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 in a relatively unchartered area as to WARN Act claims, and taken on a contingency basis with no guarantee of recovery. There were no assurances that the putative class would ever be certified, or that Plaintiff could have or would have overcome Defendant's many defenses.

Indeed, Class Counsel incurred significant fees in prosecuting this action and has received no compensation thus far, while also advancing significant

litigation costs. There was a very real possibility that Class Counsel would not recover anything for the Class and lose the costs already incurred. For these reasons, this sixth *Johnson* factor supports the approval of the requested amount of attorneys' fees. *Waters v. Cook's Pest Control, Inc.*, 2012 U.S. Dist. LEXIS 99129, 47 (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. Here, as detailed above, Class Counsel dedicated significant time into this action. Thus, this factor supports Class Counsel's motion.

8. Amount involved and the results obtained.

Class Counsel recovered a $175,000.00 settlement on behalf of the Settlement Class, all of which will be paid out and none of which will revert to Defendants.

Class Counsel effectively and quickly achieved a significant 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. The risk of Plaintiff and the putative class members being unable to overcome a summary judgment motion or establish liability at trial posed serious obstacles to recovery. Additionally, the pending appeal at the Eleventh Circuit also posed some risk to Plaintiff and the Class.

Considering the complexities of this case and the vigorous defense of opposing counsel, this is an excellent recovery when there was a very real chance the Settlement Class Members could have recovered nothing. This factor supports the attorneys' fee sought.

Indeed, Class Counsel's efforts to secure this favorable settlement supports full payment of the attorneys' fees agreed to in the settlement agreement. 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 set forth their qualifications and prior experience in the attached declarations. Additionally, this Court previously approved the undersigned to serve as both "Class Counsel" in its Order granting Plaintiff's Motion for Class Certification (*see* Doc. 114, pp. 18-19), and as "Settlement Class Counsel in its Order granting Plaintiff's Unopposed Motion for Preliminary Approval of the Parties' Class Action settlement (Doc. 131, p. 3), which further supports a finding that the undersigned are highly reputable and skilled attorneys.

Indeed, there is no question 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 Florida, and beyond. This factor also weighs in favor of awarding the Requested Fee.

10. Undesirability of the case.

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

Additionally, the Settlement is even more impressive when considering the substantial risks of non-recovery in this case. WARN Act class action cases are not "sure things" or "slam dunks," particularly when coupled with defenses available to Defendants in this case, including the natural disaster exception and the unforeseeable business circumstance defense. 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 class action cases including, for example, in *Molina v. Ace Homecare LLC,* No. 8:16-CV-2214-T-30TGW, 2019 WL 3225662, at *1 (M.D. Fla. June 28, 2019), *report and recommendation adopted*, No. 8:16-CV-2214-T-

27TGW, 2019 WL 3219931 (M.D. Fla. July 17, 2019)(approving class action settlement in which WARN Act class members receive $800 gross/$500 net payments); *see also Philips v. Munchery Inc.,* No. 19-CV-00469-JSC, 2021 WL 326924, at *2 (N.D. Cal. Feb. 1, 2021) (approving class action settlement in which WARN Act class members receive $831 net payments).

Additionally, the United States Bankruptcy Court for the District Court of Delaware approved a WARN Act class action settlement for an amount per class member similar to that here in a recent case styled, *In re The Hertz Corporation, et al.*, Del. Bkt. Ct. Case No.: 20-11218-MFW (Doc. 5862). Similar to this case, the Hertz WARN Act litigation also revolved around a mass layoff engaged in by a rental car company around the time COVID-19 began. Also, just like in this case, in Hertz the two core defenses included the natural disaster exception and the unforeseeable business circumstance defense to the WARN Act's notice provision

Class Counsel's hourly lodestar fee request amount is consistent with other awards for similar work. As set forth above, Mr. Cabassa and Mr. Hill were just approved in another class action settlement, *McNamara v. Brenntag*, Case No.: 8:21-cv-00618-MSS-JSS (M.D. Fla. February 17, 2022, *see* fee petition at Doc. 26, p. 17, and Order granting fee petition at Doc. 32). *See also Wiles v. Astrue*, 2011 U.S. Dist. LEXIS 24894, 4 (M.D. Fla. 2011) (approving rates of $700 per hour in a contingency fee case); *Lockwood v. Certegy Check Serv., Inc.*, Case No. 8:07-cv-1434-T-23TGW (M.D. Fla. 2008) (approving rates of up to $750 per hour in a class action); *Owens v. Carrier Corp.,* Case No. 08-CV-02331, Dkt. No. 265244 (W.D.

Tenn. 2010) (approving rates in a class action of up to $695 for senior partners); *see also Montanez v. Gerber Childrenswear, LLC,* Case No. CV 09-07420-DSF, Dkt. Nos. 269 and 283 (C.D. Cal. 2013); *Kizer v. Summit Partners, LP*, Case No. 1:11-cv-00038, Dkt. No. 33 (E.D. Tenn. 2011). Accordingly, the rate proposed by Class Counsel is reasonable.

The fact that the individual amounts to be distributed to Class members may not be a great sum in relation to Plaintiff's fee request does not make that request unreasonable, particularly when the claims at issue have low statutory damages, like the claims at issue in this litigation. *See, e.g., Gradisher v. Check Enforcement Unit*, 2003 WL 187416 (W.D. Mich. Jan. 22, 2003) (court awarded fees of $69,872 where plaintiff recovered $1,000 statutory fee award); *Armstrong v. Rose Law Firm, P.A.*, 2002 WL 31050583 (D. Minn. Sept. 5, 2002) (full lodestar of $43,000 awarded where consumer received $1,000 statutory damage award); *Norton v. Wilshire Credit Corp.*, 36 F. Supp. 2d 216 (D.N.J. 1999) (court awarded $57,000 in fees for $5,800 award to plaintiff).

Simply put, the fee award cannot be diminished to maintain some ratio between the fee and the damages. *Washington v. Philadelphia County Court of Common Pleas*, 89 F.3d 1031, 1041-42 (3d Cir. 1996); *Sheffer v. Experian Information Solutions, Inc.*, 290 F.Supp.2d at 550-51 ("proportionality analysis between the amount of damages awarded and the amount of counsel fees requested . . . is an impermissible basis upon which to reduce a fee award"); *Bonett v. Education Debt Services, Inc.*, 2003 WL 2 1658267, *8 (May 9, 2003); *Oslan v.*

Law Offices of Mitchell N. Kay, 232 F.Supp.2d 436, 444 (E.D. Pa. 2002). Therefore, this Court should find the Requested Fee reasonable.

B. Costs.

To date, Class Counsel has incurred $7,185.40 in reimbursable costs, including the filing fee, process service fees, deposition transcripts, copies, and postage, all of which are recoverable under the Parties' agreement (*see* Doc. 130-1, Section 63(a)) of Settlement agreement), Rule 54(d), 28 U.S.C. § 1920, and the WARN Act itself, *see* 29 U.S. Code § 2104(a)(6). A complete and detailed cost invoice is attached to the undersigned's supporting declaration. All of the costs incurred were necessary to prosecute the claims in this case.

III. CONCLUSION.

For the reasons set forth above, the Attorneys' Fees and Costs sought herein are reasonable and should be awarded. Defendants, and to date no Class Member, have objected to the relief sought in this Motion.

WHEREFORE, Plaintiff respectfully moves this Court to grant this Motion and award her attorneys' fees in the amount of $250,000.00, and costs in an additional amount of $7,185.40. A proposed Order is attached as Exhibit A.

LOCAL RULE 3.01(g) COMPLIANCE

Pursuant to Local Rule 3.01(g), Counsel for Plaintiff has conferred with counsel for the Defendants, and Defendants do not object to the relief sought.

Dated this 4th day of March, 2022.

Respectfully submitted,

/s/ *Brandon J. Hill*
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2022, caused a true and correct copy of the foregoing to be filed using the Clerk of Court's CM/ECF system, which then caused a notice of electronic filing on all Counsel of Record.

/s/ *Brandon J. Hill*
BRANDON J. HILL