

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PHILIPPE CALDERON *et al.*,

Plaintiffs,

v.

SIXT RENT A CAR, LLC,

Defendant.

Case No. 0:19-cv-62408-AHS

CLASS ACTION

**PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES, COSTS,
AND INCENTIVE AWARDS WITH INCORPORATED MEMORANDUM OF LAW**

Plaintiffs and Class Representatives Philippe Calderon, Ancizar Marin, and Kelli Borel Riedmiller, individually and on behalf of all others similarly situated (“Plaintiffs”), by and through undersigned counsel, move the Court for an order approving Class Counsel’s Attorney Fees, Costs, and Plaintiffs’ Incentive Awards as set forth in the Settlement Agreement, and file this Memorandum of Law in Support thereof,¹ stating as follows:

I. Introduction

Following novel and highly contested class action litigation, Plaintiffs seek Final Approval of Class Counsel’s attorneys’ fees and costs and Plaintiffs’ incentive awards. As more specifically detailed in earlier filings [ECF 259, 259-1, 259-2], following significant litigation, including two appeals, and multiple mediations, including most recently with Mediator, Lance Harke, a Settlement Agreement was reached with regard to the Class Period, during which Sixt collected approximately \$4.1 Million in disputed Damage Charges from Settlement Class Members, with approximately \$6.6 Million of assessed Damage Charges considered by Sixt to still be outstanding.

¹ Capitalized words and phrases in this memorandum are intended to coincide with the defined terms set forth in Section the Class Action Settlement Agreement at [ECF No. 259-1].

Under the Settlement Agreement [ECF No. 259-1], Settlement Class Members who file valid claims will be eligible to receive refunds of 70% of the disputed Damage Charges² paid to Sixt, with Sixt also agreeing to additional contractual relief to stop collecting on the disputed Damage Charges and to request that any negative credit reporting for the associated Damage Claim accounts be removed from Settlement Class Members' credit reports. Sixt also agreed to pay a lump sum to cover the costs of the Notice, Settlement Administration Costs, Class Counsel's attorneys' fees and litigation expenses, which amounts are over and above the relief provided to the Class. In exchange, Sixt will receive a Release from the Settlement Class for claims concerning the Damage Claims. Consequently, for the reasons addressed below, Class Counsel's request for attorneys' fees and costs is reasonable and should be approved. Likewise, and pursuant to applicable law, Plaintiffs' incentive awards are reasonable and supported, in this case.

II. Reasonable Terms and Timing Relating to Attorneys' Fees

Whether the attorneys' fees are reasonable on their own terms is a Fed. R. Civ. P. 23(h) analysis. By contrast, under Rule 23(e)(2)(C)(iii), the question is not the fee amount in a vacuum, but rather whether attorneys' fees impact the other settlement terms. Here, attorneys' fees do not impact the other terms of the Settlement because they were separately and independently negotiated by the Parties apart from the class settlement provisions, in an arm's-length negotiation overseen by Lance Harke, acting as mediator, and Sixt agreed to separately make the Attorneys' Fees and Costs Payment in addition to the relief provided to the Class. *See* [ECF No. 159, 159-2]; *see also James D. Hinson Elec. Contracting Co., Inc. v. BellSouth Telecomm. Inc.*, No. 3:07-CV-598-TJC-MCR, 2012 WL 12952592, at *2 (M.D. Fla. July 30, 2012) (stating that because

² Since the disputed Damage Charges is approximately \$4.1 Million, the potential monetary value of the Monetary Relief at 70% of amounts collected is approximately \$2.87 Million.

agreement on amount of attorneys' fees "was not reached until after a settlement had been reached in principle on its other terms and that the agreement was not the product of collusion or fraud[.]" it was entitled to "substantial weight").

Further, any objections to the settlement must be filed by May 27, 2025, which provides absent class members with more than 40 days to review this motion before having to file any objection. Accordingly, this application complies with the timing component of Rule 23(h). *See e.g., In re Mercury Interactive Corp. Securities Litig.*, 618 F.3d 988, 993–94 (9th Cir. 2010) (interpreting "[t]he plain text of" Rule 23(h) to "require [] that any class member be allowed an opportunity to object to the fee 'motion' itself, not merely to the preliminary notice that such a motion will be filed.") (quoting Fed. R. Civ. P. 23(h)(2)).

III. Independent Role of the Court

Under Fed. R. Civ. P. 23(h), the court may award reasonable attorneys' fees and costs as authorized by law or by the parties' agreement. *See* F.R.C.P 23(h). While the parties' agreement is indisputably a basis upon which the Court may award attorneys' fees and costs under Rule 23(h), the Court "is not bound by the agreement of the parties as to the amount of attorneys' fees." *See Piambino v. Bailey*, 610 F.2d 1306, 1328 (5th Cir. 1980). Rather, the Court has an independent responsibility to "assess the reasonableness of attorneys' fees proposed under a settlement of a class action . . ." *Id.*

IV. The Requested Fee Is Reasonable Under the Percentage Method.

A. The Applicability of the Common Benefit Doctrine.

Sixt has agreed to pay Class Counsel approximately \$1.4 Million³ in attorneys' fees and

³ This number is "approximate" because Class Counsel's Attorneys' Fees and Expenses, the Service Awards, and the Settlement Administration Costs are to be paid from the Combined Award

reimbursement of litigation costs and expenses incurred in the prosecution of this case. Class Counsel's collective attorneys' fee request, evaluated under a constructive common fund analysis applying Eleventh Circuit precedent, constitutes, at most, 14.8% of the total benefits made available to the Settlement Class⁴ and is reasonable. As introduced above, the Settlement Agreement includes a common fund for the reimbursement of Damage Charges and extra contractual relief for Damage Charges still outstanding. Together, these benefits, along with Sixt's agreement to separately pay Class Counsel for their attorneys' fees and costs, justify Class Counsel's Fees and Expenses Award request from the Combined Award.

Counsel whose work results in a substantial benefit to a class are entitled to a fee under the common benefit doctrine. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1202 (N.D. Ill. 1989). It also ensures those who benefit are not "unjustly enriched." *Van Gemert*, 444 U.S. at 478. Indeed, due to the alignment of interests and the sake of efficiency, the percentage method should generally be used when, like here, the settlement's value can be reliably calculated.

The Eleventh Circuit's controlling authority is *Camden I*, which holds attorneys' fees in

of \$1,601,000.00. Class Counsel received estimates of \$201,000.00 for the Notice costs and Settlement Administration. If these prove too low, class counsel is required to pay the difference.

⁴ As noted herein, the settlement includes about \$1,400,000.00 for attorneys' fees and about \$9.47 Million of relief to Class Members, comprised of \$2.87 Million in recoverable Damage Charges funds and ceased collections on about \$6.6 Million of outstanding Damage Charges, with any associated negative credit reporting to be removed from Class Members' credit report(s). Accordingly, as noted *infra*, when using the formula "(percentage) x (payment to class + expected payment to counsel) = actual payment to counsel" as stated by the Eleventh Circuit, only 12.9% of the total benefits made available to the Settlement Class are being requested as Class Counsel's collective attorneys' fee.

common fund cases must be calculated using the percentage rather than the lodestar approach.⁵ 946 F.2d at 774-75. The Eleventh Circuit has clarified that “[t]he common-fund doctrine applies to class settlements that result in a common fund even when class counsel could have pursued attorney’s fees under a fee-shifting statute.” *Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175 (11th Cir. 2019) (affirming trial court’s attorneys’ fee award of 33% of the common fund without reference to class counsels’ lodestar). “Where class action settlements are concerned, courts will often classify the fee arrangement as a ‘constructive common fund’ that is governed by common-fund principles even when the agreement states that fees will be paid separately.” *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, 931 F.3d 1065, 1080 (11th Cir. 2019). This methodology may apply when the class counsel’s attorney’s fees are capped by agreement, as here. *Id.*; see also *In re Johnson & Jonson Aerosol Sunscreen Mktg. Sales Pract. and Prod. Liab. Litig.*, No. 0:21-md-3015-SINGHAL/Valle, 2023 WL 2284684 (S.D. Fla. May 4, 2023) (approving defendant’s separate payment of attorneys’ fees and costs under a constructive common fund).

The Supreme Court, the Eleventh Circuit, and trial courts within this District have all noted that “[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than

⁵ A lodestar cross-check is not required in this Circuit. See, e.g., *In re Equifax*, 999 F.3d at 1280 n.26 (11th Cir. 2021). But “courts . . . sometimes apply a rough lodestar ‘cross-check’ to assess the reasonableness of the percentage-based fee. *In re Ethicon*, 2022 WL 17687425, at *6. Any cross-check should not “impose” the lodestar approach “through the back door.” See, e.g., *SEC v. Davison*, No. 8:20-cv-325-MSS-MRM, 2023 WL 2931641, at *3 (M.D. Fla. Mar. 8, 2023) (citations omitted). Here, Class Counsel’s lodestar greatly exceeds the requested attorneys’ fees, demonstrating any multiplier would be a negative lodestar multiplier and that the requested fee is reasonable. See *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007) (citation omitted) (noting lodestar multipliers “‘in large and complicated class actions’ range from 2.26 to 4.5, while ‘three appears to be the average.’”). See also *Desue v. 20/20 Eye Care Network, Inc.*, 2023 WL 4420348 (S.D. Fla. July 8, 2023) (approving attorneys’ fee request where class counsel presented a negative lodestar multiplier).

himself or his client is entitled to a reasonable attorney's fee from the fund as whole." *In re Sunbeam Sec. Litig.*, 176 F.Supp.2d 1323, 1333 (S.D.Fla.2001) (citing *Boeing Co.*, 444 U.S. 472); *see also Camden I*, 946 F.2d at 771 ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval.").

The Court has discretion in determining the appropriate fee percentage. "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." *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (quoting *Camden I*, 946 F.2d at 774). Nonetheless, "[t]he majority of common fund fee awards fall between 20 percent to 30 percent of the fund" – though "an upper limit of 50 percent of the fund may be stated as a general rule." *Id.* (quoting *Camden I*, 946 F.2d at 774-75); *see also Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999), *cert. denied*, 530 U.S. 1289 (2000) (approving fee award where district court determined benchmark should be 30% and then adjusted the fee award higher in view of the circumstances of the case). The fee request falls within this accepted range.

Since this Settlement requires Sixt to separately pay Class Counsel's attorneys' fees and costs, it does not provide a finite fund from which attorneys' fees will be deducted. Rather, **\$2,870,000.00** will be made available for distribution of paid Damage Claims and Sixt will cease collections on about **\$6,600,000.00** of outstanding Damage Claims, while also removing from Class Member's credit reports any negative reporting associated with such charges. The total value of this class relief alone is up to **\$9,470,000.00**. Notably, the additional attorneys' fees the defendant agrees to pay to class counsel, here about **\$1,400,000.00**, should be included in the calculation of a constructive common fund. *See In re Home Depot*, 931 F.3d at 1092 n.26 ("The

formula would read like this: (percentage) x (payment to class + expected payment to counsel) = actual payment to counsel.”). *See also, e.g., Amin v. Mercedes-Benz USA, LLC*, No. 1:17-cv-01701-AT, 2020 WL 5510730, at *4 (N.D. Ga. Sep. 11, 2020) (“To determine the fee percentage from a constructive fund, courts add the requested fee and expenses to the denominator.”) (citing *In re Arby’s Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-mi-55555-WMR, 2019 WL 2720818, at *2 (N.D. Ga. June 6, 2019)); *In re Equifax Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *37 (N.D. Ga. Mar. 17, 2020) (“It has long been the practice in this Court to use the gross amount of a common fund in calculating a percentage-based fee award without deducting the costs of notice or administration because notice and administration costs inure to the benefit of the class.”) *aff’d in part, rev’d in part* 999 F. 3d 1247, 1284 (11th Cir. 2021) (affirming “rulings in their entirety, except as to the narrow issue of incentive awards”). Thus, the total Settlement constructive common fund benefits equal about **\$10,870,00.00**, making the requested Attorneys’ Fees Payment **12.9%** of those total benefits or as noted *supra*, when viewed most conservatively, **14.8%** of the total relief to Settlement Class Members.

A percentage of the common benefit of less than 15% is half of other attorney fee awards. *See, e.g., Carter v. Forjas Taurus, S.A.*, 701 Fed.Appx. 759, 767 (11th Cir. 2017)(affirming award of 27.7% of \$30 million cash fund); *Waters*, 190 F.3d at 1295-96 (affirming fee award of 33 1/3% of settlement value); *Wolff v. Cash 4 Titles*, No. 03-cv-22778, 2012 WL 5290155, at *5 (S.D. Fla. Sept. 26, 2012) (approving 33% award, and noting “[t]he requested fee is entirely consistent with fee awards in comparable cases nationwide, within the Eleventh Circuit, and within the Southern and Middle Districts of Florida.”); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006) (approving 31 1/3% fee award); *Black v. Winn-Dixie Stores, Inc.*, No. 09-cv-502, 2011 WL 13257526, at *5 (M.D. Fla. June 17, 2011) (approving 30% fee award payable

from common fund). Moreover, pertinent to Class Members restoration of creditworthiness, indefinite benefits have been given significant value in other settlements. *Carter*, 701 Fed.Appx. at 767 (citing an enhanced extended warranty program without a termination date as having a total value in excess of \$200 million).

Additionally, Eleventh Circuit precedent clearly states the calculation should include *all* the potential relief made available to the class, not just the amount Settlement Class Members choose to claim and what Sixt actually pays. *See Waters*, 190 F.3d at 1297 (for purposes of calculating attorneys' fees, approving valuation based on total value of relief available, as "[t]he fact that there were a reduced number of claimants had no effect at all on the amount each class member received"). Indeed, "[t]he Supreme Court has approved the practice of basing attorneys' fees off the total possible amount recoverable by members of the class, not the total amount actually recovered, as the 'right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.'" *Arkin v. Pressman*, 38 F.4th 1001, 1006 n.4 (11th Cir. 2022) (citing *Van Gemert*, 444 U.S. at 480); *see also South v. Progressive Select Ins. Co.*, No. 19-cv-21760-WPD/Becerra, CASE NO.: 19-cv-21761-WPD/Becerra, 2023 WL 2733548 (S.D. Fla. Mar. 21, 2023), *report and recom. adopted on* April 3, 2023 at Dkt. 258; *Poertner v. Gillette Co.*, 618 F. App'x 624, 628 n.2 (11th Cir. 2015) ("While no published opinion of ours extends *Camden I's* percentage-of-recovery rule to claims-made settlements, no principled reason counsels against doing so . . ."). *See also, e.g., Montoya v. PNC Bank, NA*, No. 14-204740-CIV, 2016 WL 1529902, at *16 (S.D. Fla. Apr. 13, 2016); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007); *Stahl v. MasTec, Inc.*, No. 8:05-CV-1265-T-27TGW, 2008 WL 2267469, at *1 (M.D. Fla. May 20, 2008). Thus, the Attorneys' Fees and Costs Payment should be judged on the

entire common fund as noted herein.

Applying the above-described Eleventh Circuit standards, Class Counsel seek a reasonable amount of the constructive common fund. Account for the true common fund, claim-made fund, attorneys' fees and costs, and estimated Settlement Administration Costs, the distinct benefits to the Settlement Class, the requested Attorneys' Fees and Costs Payment is at most, 14.8%, or 12.9% of the constructive common fund, a wholly reasonable amount, as supported *infra*.

B. The Johnson Factors Support the Requested Fee.

The requested fee meets the *Camden I* guidelines and, at most, approximately 14.8% of the class benefits, is certainly consistent with the lower threshold of 20% approved by the Eleventh Circuit, and a fortiori the benchmark of 25%. Therefore, it is justified under the case law and the facts of this case. *See, e.g., Waters*, 190 F.3d at 1295 (approving fee of 33.3%); *In re Checking Account Overdraft Litig.*, 2014 WL 11370115, at *13 (S.D. Fla. 2014) (awarding fees of 30%); *Pinto*, 513 F. Supp. 2d at 1342 (same). In selecting the percentage in a particular case, a district court should apply the factors from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974), as well as any other pertinent factors. *See Camden I*, 946 F.2d at 772. A consideration of the *Johnson* factors, as shown below, supports the reasonableness of the requested fee.

1. Time and Labor Required.

Although the lodestar of class counsel is not relevant to attorney fees awarded in a common fund settlement, *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362–63 (S.D. Fla. 2011), there was indeed considerable time and effort and substantial labor expended by Class Counsel in this Litigation, which was filed September 26, 2019 [ECF No. 1].

Initially, on November 14, 2019, Sixt filed a Motion to Dismiss and Motion to Compel Arbitration of the Complaint, [ECF Nos. 11-12]. The Court denied both Motions on February 12,

2020, [ECF No. 30], but Sixt appealed the arbitration order to the Eleventh Circuit Court of Appeals. [ECF No. 44]. After briefing and Oral Argument, the Eleventh Circuit panel agreed with the District Court's findings and remanded the case to the Southern District of Florida, on February 9, 2022. [ECF No. 140]

Sixt filed an answer to the Second Amended Complaint on March 16, 2022. [ECF No. 158]. The Parties engaged in substantial fact and class certification discovery between early 2020 and the summer of 2022, including the taking of nearly 20 depositions. [ECF Nos. 18, 69, 70, 98, 99, 130-133, 139, 145, 146, 174, 189-194, 200, 201, 205, 216]. Plaintiffs retained experts and filed and served expert declarations. *See* [ECF No. 182-1].⁶ During the hard-fought formal discovery period, the Named Plaintiffs filed a Motion to Compel inspection of Defendant's Database, on May 3, 2022, which Sixt opposed on May 10, 2022, [ECF Nos. 182, 185], but which the Court granted, on June 24, 2022. *See* [ECF No. 202]. On July 8, 2022, Sixt filed Objections to that Order, but the objections were overruled, on September 9, 2022. [ECF Nos. 215, 224].

On July 18, 2022, Sixt filed a Motion for Summary Judgment which the Named Plaintiffs opposed on August 15, 2022. [ECF Nos. 206, 220]. Before Sixt could file a mandamus petition seeking review of the order granting the Motion to Compel inspection of Defendant's Database, and before Plaintiffs could file a Motion for Class Certification, on September 20, 2022, the Court granted Sixt's Motion for Summary Judgment, entering final judgment, on October 3, 2022. [ECF Nos. 233, 234]. Thus, even though the Parties had resumed settlement negotiations and notified the Court of their intent to proceed to a second mediation session, [ECF Nos. 229-231] before the Parties could hold that second mediation session, on October 22, 2022, Plaintiffs were forced to

⁶ In addition to the May 3, 2022, Affidavit of its retained database expert, Frank Cohen, at ECF No. 182-1, on May 13, 2022, in compliance with expert report disclosures, Plaintiffs served upon Sixt the Declaration of its expert, Stuart Raskin, regarding, *inter alia*, the proper calculation of diminished value in the automobile market.

file a Notice of Appeal to the Eleventh Circuit. [ECF No. 235]. On August 15, 2024, the Eleventh Circuit affirmed in part and reversed in part the summary judgment decision and, on September 13, 2024, remanded the case to the Southern District of Florida. *See* [ECF No. 249].

Clearly, Class Counsel worked efficiently to investigate the claims; prepare the operative pleading; complete two separate appeals; participate in extensive formal discovery, including written discovery, numerous depositions, and motion practice, including retainment of experts and filing of expert declarations; complete summary judgment papers; prepare themselves for settlement discussions; thoroughly assess the options of settlement or litigation; mediate multiple times, including most recently with mediator, Lance Harke; and settle the claims. *See* [ECF No's 259, 259-1]. Class Counsel negotiated and prepared an exhaustive Settlement Agreement and incorporated exhibits, including robust Notice provisions to ensure fair and direct Notice to Settlement Class members, with a simple Claim process. *Id.* After preparing the Motion for Preliminary Approval, Class Counsel has extensively worked with Sixt and the Settlement Administrator to implement the Notice Program and the Claim process.

Class Counsel prepared this Motion. *Id.* Class Counsel's collective lodestar exceeds \$2,200,000.00 for all of these efforts, and they will continue to spend significant time and effort (estimated at 50 hours) in connection with obtaining Final Approval and overseeing the Settlement Administrator's efforts to administer the Settlement and distribute the Settlement Benefits. *See* [ECF 259-2] (noting that Class Counsel **each** have total lodestars of over \$1,100,000.00 without the calculation of any multiplier, far exceeding the negotiated amount of about \$1,400,000.00 in attorneys' fees, which Sixt has agreed to pay Class Counsel as a separate amount that is in addition to the amount made available, subject to Court approval).⁷

⁷ For ease of reference, Class Counsel's Joint Declaration In Support Of Plaintiffs' Unopposed Motion For Preliminary Approval Of Class Action Settlement, previously filed at ECF No. 295-2 is reattached, here, as **Exhibit "1"**.

This case was certainly not a class action that was settled prematurely and without adequate discovery of the true facts. As a result, the time and labor required to litigate this matter was extensive and surely supports the negotiated attorney fees. Indeed, Class Counsel were able to efficiently identify the pertinent issues in this Litigation because of their collective experience in litigating the claims and their class actions and complex litigation experience more generally. *See* [ECF No. 259-2 (firm resumes)]. Class Counsel’s grasp of the issues and expertise provide an additional basis supporting the fee, as described below.

2. The Novelty and Difficulty of the Questions.

“It is common knowledge that class action suits have a well-deserved reputation as being most complex.” *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). “Attorneys should be appropriately compensated for accepting complex and difficult cases.” *Chis v. Peerless Indem. Ins. Co.*, 2016 WL 9185305, at *7 (M.D. Ga. Nov. 17, 2016) (citing *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-3066-JEC, 2012 WL 12540344, at *3 (N.D. Ga. Oct. 26, 2012)). “‘Undesirability’ and the risks and difficulty of the litigation should be evaluated from the standpoint of class counsel when they commenced the suit—not retroactively, with the benefit of hindsight.” *Id.* (citations omitted). This Litigation presented difficult legal and factual issues, centering on whether the way Sixt imposed charges for alleged damage to rental vehicles conformed to the contract terms under the Rental Agreement – *i.e.*, the Face Page and the Terms and Conditions Rental Jacket – for each rental. If Plaintiffs were unsuccessful on those issues, no relief would be afforded to them or the putative class. Further, if Sixt was successful on the appeal of the order granting it summary judgment, Plaintiffs could not prevail, at all.

Notwithstanding these challenges, Class Counsel and Sixt worked to identify the population of Class Members in Sixt’s records, despite the contentious motion practice related to

Sixt's database. Further, although not quantified, the additional contractual relief afforded to all Class Members whose credit reports were negatively affected by outstanding Damage Claims serves as a significant form of recovery. That Class Counsel were able to secure a Settlement Agreement on such favorable terms, notwithstanding the foregoing challenges, is a factor strongly supporting the requested fee.

3. *The Skill Requisite to Perform the Legal Services Properly, and the Experience, Reputation, and Ability of the Attorneys.*

The next factors courts consider is the skill required and the skill, experience, and expertise of the attorneys, which are overlapping factors. *See Gevaerts v. TD Bank*, No. 11:14-cv-20744-RLR, 2015 WL 6751061, at *12 (S.D. Fla. Nov. 5, 2015) (“In the private marketplace, counsel of exceptional skill commands a significant premium. So too should it here.”). Class Counsel's overcoming challenges and obtaining relief demonstrates their skill, experience, and reputation.

This Court witnessed the quality of Class Counsel's legal work, including through two appeals and the Litigation, which faced significant litigation obstacles. *See generally* [ECF No. 259]. Class Counsel's work required the acquisition and analysis of detailed facts and law, including multiple requests to obtain additional and refined discovery and data from Sixt. *Id.* In any given case, the skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this Action required counsel trained in class action law and procedure. *Id.* Class Counsel possess these attributes, and their participation added value to the Settlement Classes' representation. *Id.* The record demonstrates the complex and novel challenges which Class Counsel met at every juncture. *Id.* Assessing Class Counsel's quality, the Court should also consider opposing counsel. *See Walco Invs. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (“[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved

similar results”). Here, Sixt is represented by very capable counsel and worthy adversaries.

4. *Preclusion of Other Employment.*

But for this Action, Class Counsel would have spent time on other cases. As stated, Class Counsel’s collective lodestar in this matter, without a multiplier, exceeds \$2,200,000.00. *See* [ECF No. 29-2 and Exhibit “1” hereto at ¶ 22]. Class actions are notably the most complex, requiring tremendous time. *Cotton*, 559 F.2d at 1331. Taking on a case like this means that each firm necessarily had to forego other projects of similar size and/or commitment. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1365 (S.D. Fla. 2011) (“It is uncontroverted that the time spent on the Action was time that could not be spent on other matters. This factor too supports the requested fee.”). Consequently, this factor further supports the requested fee.

5. *The Customary Fee.*

Complex consumer class litigation customarily is handled on a contingent basis because consumers are unwilling and unable to pay substantial hourly rates, and the potential low individual recovery usually does not justify the economic investment. The usual fee range for common fund cases is 20% to 30%, with 50% as the upper limit. *Camden I*, 946 F.2d at 774-75. The amount requested here, at most, approximately 14.8%, is at the bottom of this customary range. Thus, Class Counsel’s requested award is below the benchmark and far less than what could have been justified based on substantial precedent in this Circuit for other class actions.

6. *Whether the Fee is Fixed or Contingent*

This Litigation was prosecuted on a contingent basis. If Class Counsel had not achieved a recovery, they would have received nothing and would have suffered significant out-of-pocket losses due to the costs they advanced. This risk justifies their requested fee.

Certainly, fairly compensating attorneys in class actions is important because absent class

actions, most individual claimants would lack the resources to litigate, as individual recoveries are often too small to justify the burden and expense of litigation. *In re Telectronics Pacing Systems, Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001) (“Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling ... claimants to pool their claims and resources” to “achieve a result they could not obtain alone.”). As previously noted:

A contingency fee arrangement often justifies an increase in the award of attorneys’ fees. This rule helps assure that the contingency fee arrangement endures. If this “bonus” methodology did not exist, 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 v. Wometco Enter., Inc., 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d* 899 F.2d 21 (11th Cir. 1990) (citations omitted); § 15 Newberg and Rubenstein on Class Actions § 15:87 (6th ed.) (“A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.”) (citation omitted). Cases like this should be encouraged by fairly compensating Class Counsel’s contingency arrangement.

7. The Amount Involved and the Results Obtained

The most important factor in determining the appropriate fee award in a common fund case is generally considered to be the results obtained for the class. *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1204-05 (S.D. Fla. 2006). The benefits of the settlement are fully addressed in the Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Approval of Notice Plan. [ECF No. 259]. As also noted herein, Class Counsel secured excellent results for the Settlement Class Members, despite the challenges the Litigation presented.

Other courts have held this factor favors the requested fee even where the settlement

involved a lesser percentage of total potential damages. *See, e.g., Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1255-56 (S.D. Fla. 2016) (settlement for 20% of total potential damages weighed in favor of requested fees of 33 1/3% of settlement value). The relief available to the Settlement Class (excluding attorneys' fees, costs, and Settlement Administration Costs), is about \$9,470,000.00. Eligible Settlement Class Members can receive 70% of the out-of-pocket amount paid to Sixt for Damage Charges, with a cease of collection on about \$6,600,000.00 of outstanding Damage Charges and letters sent to correct any credit reports of Class Members with negative credit information related to Damage Charges. [ECF No.'s 259, 263, 264]. And, due to the prefilled Claim Forms, Settlement Class Members will easily receive Settlement benefits. *Id.*

8. Experience, Reputation, and Ability of the Attorneys

The class was represented by two law firms: Varnell & Warwick, PA and Gordon & Partners, P.A. Each carry an excellent reputation, and this Court has observed the abilities of these firms on display throughout this litigation. In addition to **Exhibit "1"** hereto, the detailed experience and firm resumes of Varnell & Warwick, PA and Gordon & Partners, P.A. are attached hereto as **Composite Exhibit "2"** and in [ECF No. 259 at 259-3 and 259-4].

9. Johnson Factor No. 10: "Undesirability" of the Case

Determining the "undesirability" of a case is not an easy task. However, the risk factors associated with litigating this type of action make this case undesirable for most lawyers. First, the costs, the potential for an extraordinary amount of work, and the uncertainty of the outcome are all unattractive features of a case of this nature. The experts necessary to address Sixt's robust database capabilities is an expensive component. The stakes are even higher when the opposition is a well-funded defendant with a parent company in Germany. Well-funded Defendants are often willing and able to run up the costs of litigation in order to avoid a class judgment. These

circumstances make a case of this nature undesirable to most firms.

Second, class actions involving novel theories are often appealed at the class certification stage and, again, after trial. Here, Plaintiffs withstood two appeals *before* class certification was even addressed. The risk of multiple appeals requires the litigation team to have appellate law experience and causes additional expense and delay. Most lawyers are unwilling to wait to get paid and to carry the costs of such litigation over such a long period of time.

Third, the size of the class also makes this matter undesirable to most firms. With approximately 30,000 class members, Class Counsel would have been required to pay for notice to the class had the case been certified but not settled. Obviously, whether a case can or will be certified or settled is unknowable at the outset of the litigation. As indicated by the Settlement Administration Costs, the publication notice program that Class Counsel would have had to pay for would likely have cost close to \$200,000.00 given the geographic disbursement of the class. This amount would not be recoverable if Plaintiffs were not ultimately successful on the merits or if certification was later reversed. This additional cost makes this type of case too risky for most law firms, and therefore undesirable

10. Awards in Similar Cases

Awards in similar cases more than justify the requested fees, which are, as a percentage, significantly lower than fees in similar cases. *See, e.g., Waters*, 190 F.3d at 1295 (11th Cir. 1999) (33 1/3%); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d. 1330, 1358 (S.D. Fla. 2011) (30%); *Columbus Drywall*, 2012 WL 12540344, at *2 (awarding fee of 33.3% and listing cases awarding fees based on similar or higher percentages); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at **5-6 (S.D. Fla. Sept. 26, 2012) (noting that fees in the Eleventh Circuit are “roughly one-third” of the benefit to the class and listing cases awarding fees of 30% or higher).

11. Other Factors⁸

Currently, there is no opposition to the Settlement terms or attorneys' fees requested. The economics involved in prosecuting a class action further supports the requested fee. *Camden I*, 946 F. 2d at 775. Class Counsel remains completely uncompensated for the time invested in the Litigation, in addition to the substantial costs they advanced. If not awarded fees, "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[.]" *In re Checking Account Overdraft Litig.*, 2014 WL 11370115, at *17 (S.D. Fla. Jan. 3, 2014). Not awarding attorneys' fees would discourage competent lawyers from acting as private attorneys general, thus weakening the deterrent impact of our laws. *See, e.g., Columbus Drywall*, 2012 WL 12540344, at *1, 7.

For all the foregoing reasons, the Court should award the requested \$1,400,000.00, ordering that Sixt pay it separately, as the Settlement Agreement provides.

V. The Court Should Reimburse Class Counsel for Their Costs.

The Combined Award of \$1,601,000.00 incorporates litigation costs reasonably and necessarily incurred to successfully prosecute this Litigation. Class Counsel's lodestar exceeds that amount before considering Class Counsel's costs for filing fees, process server fees, expert fees, deposition costs, and mediator's fees. "[C]ourts normally grant expense requests in common fund cases as a matter of course." *Gonzalez v. TCR Sports Broadcasting Holding, LLP*, No. 1:18-CV-20048-DPG, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019) (citations omitted). The Court

⁸ "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 775). The remaining *Johnson* factors— time limitations imposed and nature of relationship with the client— overlap with the previously discussed factors.

should, thus, approve Class Counsel's request for costs to be included in the Combined Award.

VI. Plaintiffs' Incentive Awards Are Proper

Traditionally, class representatives are compensated for the time and effort in bringing the litigation on behalf of others through what is termed an "incentive award." Many courts have addressed incentive awards to class representatives as a means to encourage litigants to bring class litigation, which will further the public policy underlying the statutory scheme.

Incentive awards are common in class action litigation where, as here, a common benefit has been created for the class. Incentive awards compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218-19 (S.D. Fla. 2006)(citing *In re Southern Ohio Corr. Facility*, 175 F.R.D. 270, 272-76 (S.D. Ohio 1997)). Incentive awards serve an important function, particularly where the named plaintiffs participated actively in the litigation. *Id.* (citing *Denney v. Jenkins & Gilchrist*, 230 F.R.D. 317, 2005 WL 388562, at *31 (S.D.N.Y. Feb.18, 2005)).

While the Eleventh Circuit has not expressly set forth guidelines for courts to use in determining incentive awards, there is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action. *Allapattah Servs.*, 454 F. Supp. 2d at 1218-19. In fact, "[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18-19 (E.D. Pa. June 2, 2004) (awarding \$25,000 for each of the five class representatives); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 449 (S.D. Tex. 1999) (granting awards of between \$1,000 and \$10,000); *In re Residential Doors*

Antitrust Litig., 1998 WL 151804, at *11 (E.D.Pa. Apr.2, 1998) (awarding an incentive award of \$10,000 to each of the four Class representatives); *In re Plastic Tableware Antitrust Litig.*, 1995 WL 723175, at *2 (E.D.Pa. Dec.4, 1995) (granting award of \$3,000); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 357 (N.D.Ga.1993) (granting award of \$2,000 to plaintiffs that produced documents and awarding \$5,000 to plaintiffs that were also deposed).

In *Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998), the Seventh Circuit provided a list of some pertinent considerations when evaluating an incentive award:

Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit. . . . In deciding whether such an award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.

Cook, 142 F.3d at 1015 (citation omitted).

Incentive awards are frequently approved in class actions where, as here, the Plaintiffs were involved in discovery and litigation activities. Extensive involvement encompasses producing documents, responding to discovery requests, sitting for depositions, attending or testifying at court hearings, participating in settlement negotiations, and consulting with class counsel on litigation strategy. *See, e.g., Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d. 766, 787 (N.D. Ohio 2010) (approving incentive awards of \$5,000 to plaintiffs who substantially contributed to litigation and testified at the fairness hearing); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 258–59 (D.N.J. 2005) (approving \$10,000 incentive awards to plaintiffs who worked closely with counsel and were crucial to settlement, \$3,000 incentive award to plaintiff who produced documents, appeared for deposition, and attended the fairness hearing, and \$1,000 incentive award to plaintiff who only played a minor role in settlement negotiations); *In re Domestic Air Transp.*

Antitrust Litig., 148 F.R.D. 297, 357–58 (N.D. Ga. 1993) (approving incentive awards of \$5,000 to plaintiffs who appeared for deposition and \$2,500 to plaintiffs who produced documents in discovery).

Here, Class Counsel reserved the right to seek a reasonable Service Award for the Named Plaintiffs, not to exceed \$10,000.00 each. *See* [ECF No.'s 259, 263, 264]. Although the Eleventh Circuit precluded Service Awards for cases advancing federal claims alone in *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1260 (11th Cir. 2020), courts within this District have recognized that such awards are still available when state law claims are advanced. *Junior v. Infinity Ins. Co.*, Case No. 6:18-cv-1598-WWB-EJK (M.D. Fla. 2023) (“*Johnson I* examined federal common law, based on a federal cause of action, to arrive at its decision. There is nothing in *Johnson I* to suggest that it is applicable to cases arising under state law.”); *Venerus v. Avis Budget Car Rental, LLC*, 674 F. Supp. 3d 1107, 1110 (M.D. Fla. 2023).

The incentive award is well within the appropriate range given the cases cited above. The named Plaintiffs put in substantial time representing the class in this matter, including preparing extensive discovery responses, depositions, participating in negotiations, and regular meetings and phone conferences with Class Counsel. The Plaintiffs accepted these burdens in order to seek justice for others harmed by Damage Claims. They have played a vital role in forcing an impressive Settlement Agreement. Accordingly, the full incentive award set forth in the Settlement Agreement to the three Class Representatives should be approved by this Court.

VII. Conclusion

Plaintiffs respectfully request the Court grant the relief as set forth herein.

CERTIFICATE OF COUNSEL

Pursuant to Local Rule 7.1(a)(3), Counsel for Plaintiffs certify that they have conferred

with counsel for Defendant regarding this motion and have been advised that Defendant does not oppose the relief requested in this motion or extending the filing of this motion until April 16, 2025, due to inadvertent confusion from ECF No.'s 263 and 264.

Respectfully submitted this 16th day of April 2025.

GORDON & PARTNERS, P.A.

/s/ Geoff S. Stahl

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will sent a notice of electronic filing to all counsel of record.

/s/ Geoff S. Stahl

GEOFF S. STAHL, ESQ.

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PHILIPPE CALDERON *et al.*,

Plaintiffs,

v.

SIXT RENT A CAR, LLC,

Defendant.

Case No. 0:19-cv-62408-AHS

CLASS ACTION

**JOINT DECLARATION IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

We, Brian W. Warwick and Geoffrey S. Stahl, declare:

1. We are counsel of record for Plaintiffs, Philippe Calderon, Ancizar Marin, and Kelli Borel Riedmiller, and the proposed Settlement Class¹ in the above-captioned matter. We submit this Joint Declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Approval of Proposed Notice Plan. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. Attached as *Exhibit A* is the firm resume of Varnell & Warwick, P.A.

3. Attached as *Exhibit B* is the firm resume of Gordon & Partners, P.A.

4. This Litigation is predicated on Plaintiffs' claims, which allege that the manner in which Sixt imposed charges for alleged damage to rental vehicles did not conform to the contract terms under the Rental Agreement—i.e., the Face Page and the Terms and Conditions Rental

¹The capitalized terms used herein shall have the same meanings as those defined in the Parties' Settlement Agreement.

Jacket (“Rental Jacket”) for each of their rentals. Specifically, Plaintiffs challenged certain charges in such Damage Claims for, *inter alia*, (1) Diminished Value; (2) Estimated Repair Costs; (3) Loss of Use; and (4) Administrative Fees (“Damage Charges”). Essentially, the Damage Charges were challenged on two grounds. First, Plaintiffs asserted that Sixt could not charge any fee for damage that was not actually repaired. Second, Plaintiffs asserted that the calculation methodology Sixt used to assess Damage Charges must conform to the method set forth in the rental contract.

5. Plaintiffs filed their first Complaint on September 26, 2019, a First Amended Class Action Complaint on August 28, 2020, and the operative Second Amended Class Action Complaint on March 2, 2022 (hereinafter, the “Complaint”).

6. On January 27, 2021, the parties conducted a full day mediation session, attended by Plaintiffs Calderon and Marin with mediator Rodney Max via Zoom due to the Covid pandemic.

7. Before and after the mediation, the Parties engaged in extensive discovery. Pursuant to Fed. R. Evid. 408 (“Rule 408 discovery”), Sixt produced over thirty sets of document production, encompassing tens of thousands of pages. Among the items produced were, invoices, billing statements, collection letters, manuals on internal systems and operating procedures, and, of great significance, spreadsheets detailing charges Sixt assessed to renters for repairs during the class period.

8. Unfortunately, the mediation was unsuccessful.

9. However, discovery continued. The Parties conducted multiple depositions, including those of the named Plaintiffs, numerous fact witnesses, and corporate depositions of Sixt’s designees, and there was expert involvement.

10. For further discovery, Plaintiffs determined that inspection of Sixt’s database, which Sixt relied on for its claimed damages, was required. Because Sixt refused to comply with

Plaintiffs' database discovery requests, on May 3, 2022, Plaintiffs filed a Motion to Compel inspection of Defendant's Database. After briefing was completed, the Court issued an Order on June 24, 2022, granting Plaintiffs' Motion to Compel the inspection of Sixt's database.

11. On July 8, 2022, Sixt filed its objections to the Court's Order compelling inspection of Sixt's Database.

12. On July 18, 2022, Sixt filed its Motion for Summary Judgment; Plaintiffs responded in opposition, on August 15, 2022

13. On September 9, 2022, Sixt's objections to the Court's Order compelling inspection of Sixt's Database were overruled.

14. Around this time, the Parties resumed settlement negotiations, ultimately, agreeing to voluntarily attend a second mediation session with a private mediator. To allow time for the second mediation to occur and final settlement negotiations to be made, the parties sought leave to amend the operative Scheduling Order.

15. However, before Sixt could file a mandamus petition seeking review of the order granting the Motion to Compel inspection of Defendant's Database, before Plaintiffs could file a Motion for Class Certification, and before the Parties could hold the second mediation session, on September 20, 2022, the Court granted Sixt's Motion for Summary Judgment. Plaintiffs filed a Notice of Appeal to the Eleventh Circuit Court of Appeals, on October 22, 2022.

16. On November 2, 2022, Sixt served and advised that it intended to file a Verified Motion for Attorneys' Fees and Non-taxable Costs, seeking to have the Named Plaintiffs pay all of Sixt's attorneys' fees and costs under the prevailing party language of the Florida Deceptive and Unfair Trade Practices Act, although, on November 18, 2022, the deadline was stayed by the Court pending the resolution of the appeal.

17. On August 15, 2024, after briefing and Oral argument was completed, the Eleventh Circuit affirmed in part and reversed in part the summary judgment decision and remanded the case to the Southern District of Florida, on September 13, 2024.

18. On September 25, 2024, the Parties attended a Case Management Conference wherein the Parties announced a desire to voluntarily attend another mediation to, among other things, attempt to avoid Sixt filing a mandamus petition seeking review of the order granting the Motion to Compel inspection of Sixt's Database as well as avoid motion practice regarding Plaintiffs' desire to separately amend the complaint to, among other things, incorporate the Eleventh Circuit's prior rulings and law of the case from the two appeals from the Litigation.

19. On November 19, 2024, the Parties attended a full day mediation session before mediator, Lance Harke and an agreement in principle was reached.

20. Thereafter, the Parties worked diligently to prepare a comprehensive Settlement Agreement, which is attached as Exhibit 1 to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Approval of Proposed Notice Plan.

21. Pursuant to the Settlement, Sixt has agreed to create a claims-made monetary settlement fund in the amount of \$2,870,000.00² and to cease any further collection efforts by itself or third parties on its behalf for balances alleged to be owed to Sixt by Settlement Class Members for the Damage Charges; based on the sum of all outstanding balances owed for Damage Charges, this additional Contractual Relief is valued at approximately \$6,600,000.00. In addition, Sixt has agreed that for any Settlement Class Member who submits a valid Claim indicating that their credit report shows an unpaid balance due on a Damage Claim owed to Sixt yet unpaid, Sixt will send a

² The sum of all Qualifying Payments made by or on behalf of the Settlement Class Members to Sixt or its collection agents for the disputed Damage Charges is approximately \$4,100,000.00. Thus, the potential monetary value of the Monetary Relief at 70% of amounts collected is approximately \$2,870,000.00.

letter to the credit reporting agencies requesting they completely and totally remove all adverse credit reports from the Settlement Class Member's credit report(s) for the Damage Claim account.

22. Throughout this case, Class Counsel has spent a considerable amount of time and effort pursuing the claims raised by the Plaintiffs, resulting in Varnell & Warwick and Gordon & Partners, P.A. both having total lodestars of over \$1,100,000.00 each (or over \$2,200,000.00 collectively) *without* the calculation of any multiplier. This amount far exceeds the negotiated amount of about \$1,400,000.00 in attorneys' fees, which Sixt has agreed to pay Class Counsel (subject to Court approval) as a separate amount that is in addition to the amount made available to the Class Members through the settlement fund.

23. Sixt has agreed to pay about \$201,000.00 for Notice and Settlement Administration Costs, which amount is also separate and apart from the Settlement Class Member Payments. If administration costs exceed \$201,000.00, any additional costs will be covered by Class Counsel. Class Counsel also expended about \$100,000.00 in Litigation costs.

24. The discussion of attorneys' fees and costs did not take place until after all material terms of the Settlement had been agreed to by the Parties.

25. The Settlement was reached in the absence of collusion, and is the product of good-faith, informed, and arm's-length negotiations over many weeks (even years) by and between experienced attorneys who are familiar with class action litigation and with the legal and factual issues at the center of this Litigation, with the assistance and oversight of experienced mediators, after previously (albeit unsuccessfully) negotiating with the assistance of an experienced mediator and ongoing dialogue.

26. Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Class Counsel believe that

the claims asserted are meritorious and that Plaintiffs would prevail if this matter proceeded to trial. Sixt denies liability, believes it acted in good faith and in compliance with the law, and that it would prevail in opposing class certification, and has shown a willingness to continue vigorous litigation by opposing Plaintiffs' class certification motions and filing a mandamus petition seeking review of the order granting the Motion to Compel inspection of Defendant's Database.

27. With continued litigation, the putative class will undoubtedly have a long wait for their recovery, if they have one at all. Thus, in Class Counsels' experience and informed judgment, the Settlement represents an excellent recovery and the benefits of the Settlement outweigh the risks and uncertainties of continued litigation, including, the risks, time, and expenses associated with completing a trial and any further appellate review.

28. Class Counsel are particularly experienced in the litigation, certification, trial, and settlement of class action cases. This experience proved beneficial to Plaintiffs and the Settlement Classes during negotiations of the Settlement. Class Counsel conducted significant discovery prior to the first mediation and further discovery before the most recent (second) mediation, which enabled them to gain a complete understanding of the evidence related to the central issues in the Litigation, including damages and liability, and prepare for well-informed settlement negotiations.

29. Class Counsel are confident in the strength of Plaintiffs' case. However, Class Counsel are also pragmatic of the risks and challenges. Class Counsel are aware that there are uncertainties in a trial, particularly given the case theory and expert issues. Class Counsel are also aware of the risks inherent from any appeal and subsequent proceedings of a successful trial verdict. Further, it is unclear whether Plaintiffs would be able to certify a class for purposes of trial. Under the circumstances, and considering the Settlement offers Settlement Class Members payment of approximately 70% of the value of the claims, Class Counsel determined the

Settlement outweighs the risks of continued litigation. This is especially true since the Settlement offers additional contractual relief of approximately \$6,600,000.00 in the form of ceased collection efforts by Sixt or third parties on its behalf for balances alleged to be owed to Sixt by Settlement Class Members for the Damage Charges as well as an option for Settlement Class Members to submit valid Claims indicating that their credit report shows an unpaid balance due on a Damage Claim owed to Sixt yet unpaid, with Sixt to send a letter to the credit reporting agencies requesting they completely and totally remove all adverse credit reports from the Settlement Class Member's credit report(s) for the Damage Claim account.

30. Plaintiffs being able to, through the Settlement, have Sixt agree to pay approximately 70% of the likely damages that the Settlement Class would recover at trial makes the cash benefits beyond reasonable when considering the complexity and uncertainty of certain issues in the litigation. Likewise, the additional contractual relief noted above is significant.

31. This is an excellent result for the Settlement Class and far more than a mere fraction that has been approved in other cases in this district and in the Eleventh Circuit. There can be no doubt this Settlement is a fair and reasonable recovery because it is the best possible recovery that could reasonably be expected at trial, without the risk of Sixt's vigorous defense, the uncertainty of class certification, and the challenging and unpredictable path the Settlement Class would face absent a settlement. Moreover, the Settlement avoids the prospect of a third appeal in this case, pursuant to Sixt's anticipated filing of a mandamus petition seeking review of the order granting the Motion to Compel inspection of Defendant's Database.

32. The traditional means for handling claims like those at issue here would tax the court system; require a massive expenditure of public and private resources; and, given the relatively small value of the claims compared to the cost of individual lawsuits by class members,

would be impracticable. Thus, the Settlement is the best vehicle for Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

33. As fully discussed above, the Settlement here was reached after extensive, contested litigation and after discovery was extensively pursued. After two appeals (one on dispositive issues), Class Counsel went into the second mediation with Lance Harke, Esq. armed with full knowledge of the damages at issue after consulting with a data expert and knowing the arguments for and against class certification. As a result, Class Counsel was well-positioned to evaluate the strengths of Plaintiffs' claims, Sixt's defenses, and prospects for success.

34. The numerosity requirement is satisfied because the Settlement Class has thousands of members, and joinder of all is impracticable.

35. Commonality is readily satisfied. Plaintiffs have asserted multiple questions of law and fact – centering on Sixt's Damage Charges – that are common to the Settlement Class, that are alleged to have injured all Settlement Class members in the same or similar way, and that would generate common answers. For example, each class member was sent a Damage Claim by Sixt that included one or more of the Damage Charges. Thus, common questions include whether each of the Damage Charges violated the Sixt contract. Because each of the putative class members' breach-of-contract claim depends on the same common legal question under the same contract, there will be no issue proving Settlement Class members suffered from the same injury.

36. Plaintiffs are typical of the entire Settlement Class. Plaintiffs all rented cars from Sixt and, in turn, were charged for damages to the vehicles that occurred during the specified rental period; thus, all claims involve issues concerning the propriety of the Damage Charges.

37. Plaintiffs and Class Counsel also satisfy the adequacy of representation requirement. Plaintiffs' interests are coextensive with, not antagonistic to, the interests of the

Settlement Class because Plaintiffs and the absent Settlement Class members have the same interest in the relief afforded by the Settlement, and the absent Settlement Class members have no diverging interests. Plaintiffs are pursuing the same legal theories as the rest of the Settlement Class members relating to the same course of Sixt's conduct. Plaintiffs seek remedies equally applicable and beneficial to himself and all other members of the Settlement Class. He has actively participated in the litigation.

38. Further, Plaintiffs and the Settlement Class are represented by qualified and competent Class Counsel. *See* Firm Resumes, attached hereto as Exhibits A-B. Each firm is a leader in the class action field, and each attorney has extensive experience prosecuting complex class actions which has helped them to vigorously litigate on behalf of the Settlement Class, thus far. *Id.*

39. Class Counsel collectively have decades of experience in class action litigation and have successfully handled national, regional, and statewide class actions in both state and federal courts. They have collectively been appointed as class counsel in dozens of cases, which have recovered hundreds of millions for consumers. The experience, resources, and knowledge Class Counsel brought to this Litigation is extensive and formidable, allowing them to be intimately familiar with the strengths and weaknesses of the claims and defenses.

40. Using that litigation experience and their intimate knowledge of the facts of the case and the legal issues facing the Settlement Class members, Class Counsel were capable of making, and did make, well-informed judgments about the value of the claims; the time, costs and expense of protracted litigation, discovery, motion practice, and appeals; and the value of the Settlement reached. The Settlement is fair and reasonable.

41. Class Counsel negotiated while fully informed of the merits of Settlement Class

members' claims and negotiated the proposed Settlement while zealously advancing the position of Plaintiffs and Settlement Class members and being fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of Plaintiffs and the Settlement Class.

42. Class Counsel have devoted substantial time and resources to vigorous pursuit of the Litigation from inception through today, and they will continue to do so through the conclusion of Settlement administration.

43. Predominance is readily satisfied because liability questions common to all Settlement Class members substantially outweigh any possible issues that are individual to some Settlement Class members.

44. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would create, and there are no other actions of which Plaintiffs are aware regarding this matter. Also, it is undisputed that each class member's claim is small, making it economically infeasible to pursue the claims individually.

45. Finally, the Notice Program detailed in the Settlement Agreement will inform Settlement Class members of the Settlement's substantive terms. It will advise them of their options for remaining part of the Settlement Class or for opting out of the Settlement; for submitting Claim Forms; for objecting to the Settlement and/or Class Counsel's Application for Attorneys' Fees and Costs; and how to obtain additional information about the Settlement. The Notice Program is designed to directly reach a very high percentage of Settlement Class members, with consideration that Settlement Class members' contact information is readily available to Sixt.

The Notice program will satisfy Rule 23 and constitutional due process requirements.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.

Executed in Fort Lauderdale, Florida, this 23rd day of December 2024.

/s/ Brian W. Warwick

BRIAN W. WARWICK

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.

Executed in Palm Beach Gardens, Florida, this 23rd day of December 2024.

/s/ Geoffrey S. Stahl

GEOFFREY S. STAHL

Exhibit 2

VARNELL & WARWICK, P.A. FIRM RESUME

Varnell & Warwick, P.A. (“V&W”) is a boutique law firm focused on high-impact public interest litigation dedicated to the protection of consumers due to corporate wrongdoing, consumer manipulation and abuse of power by providing top tier litigation services to both consumers and small businesses. V&W operates as a nationwide firm specializing in class actions, including consumer, commercial and employment litigation. The members of the firm have extensive trial and appellate experience, having appeared before a wide variety of courts across the country and the Supreme Court of the United States. The firm’s wealth of experience guarantees a strong partner for every class they represent. In addition, the firm is dedicated to providing a level of sophistication in complex matters usually only found in the largest firms. V&W has been appointed lead or co-lead class counsel in consumer class actions for the past twenty-five years in both state and federal courts across the nation.

Janet R. Varnell, a founding member of the firm, is admitted to practice before numerous Federal District Courts and appellate courts throughout the United States, including all the Federal Districts in Florida, Fourth, Fifth, Seventh, Tenth and Eleventh Circuit Court of Appeals, and the United States Supreme Court. Ms. Varnell received her bachelor’s degree in Computational Neurobiology from Eckerd College with High Honors. Ms. Varnell’s law degree is from Florida State University College of Law, also with honors.

Ms. Varnell has been practicing for over 30 years, devoting her entire legal career to consumer, employee and public interest litigation. She is an active leader in national public interest organizations and is currently acting as President of Public Justice, one of the nation’s preeminent non-profit public interest law firms located in Washington D.C. Janet also serves on the Partners Council of the National Consumer Law Center in Washington, D.C., which is the nation’s leading

consumer advocacy and education organization. Ms. Varnell is a former Co-Chair of the National Association of Consumer Advocates, which is the nation's leading membership organization dedicated to representing consumers. Ms. Varnell also served as Chairperson of the Florida Bar's Consumer Protection Law Committee, and served as Chairperson of the Florida Bar's Grievance Committee for her Circuit and is an active arbitrator for the Florida Bar's Attorney Fee Dispute Resolution Program.

Ms. Varnell has delivered numerous presentations on consumer protection law and class action litigation strategies for consumer groups, public interest organizations, state bar associations and other charitable groups. She is an adjunct Professor at Stetson University School of Law teaching "Consumer Class Actions."

Ms. Varnell is widely recognized for her expertise in complex consumer litigation. In 2009, she was awarded "Consumer Advocate of the Year" by the National Association of Consumer Advocates. In 2019, she was awarded Consumer Protection Lawyer of the Year by the Florida Bar.

Brian W. Warwick, a founding member of the firm, is also admitted to practice before numerous Federal and State Courts throughout the United States, including all Florida Districts, Central and Northern Illinois, the Fourth, Seventh, Ninth and Eleventh Circuit Courts of Appeal, and the United States Supreme Court. Mr. Warwick received a B.A. in Finance from the College of St. Francis in Joliet, Illinois, his J.D. from Cumberland School of Law in Birmingham Alabama and an MBA from Samford University in Birmingham.

Mr. Warwick has been licensed to practice law in Florida for over 20 years devoting his entire legal career to consumer, employee, and public interest litigation. Mr. Warwick is a regular guest speaker on class action matters for the National Consumer Law Center ("NCLC"), the National Association of Consumer Advocates (NACA).

Mr. Warwick has written the following publications related to class action litigation: Class Action Settlement Collusion: Let's Not Sue Class Counsel Quite Yet, American Journal of Trial Advocacy, Vol. 22:3 (Spring 1999); Claim Jumpers Beware: Alabama Takes Another Look at Class Action Certification, American Journal of Trial Advocacy, Vol. 22:1 (Summer 1998).

Along with his partner, Janet Varnell, Mr. Warwick received the "2018 Trial Lawyer of the Year Award" from the Public Justice Foundation in Washington D.C. for work against the payday loan industry in the matter of *Inetianbor v. CashCall*, in the Southern District of Florida.

Pamela G. Levinson, an attorney with the firm, is admitted to the Tenth and Eleventh Circuit Courts of Appeals, the U.S. Court of Appeals, all federal district Courts in Florida, the Northern District of North Carolina, the Northern District of Oklahoma, the U.S. Court of Federal Claims, and the United Keetoowah Band of Cherokee Indians and Sauk Suiattle Tribal Courts. Ms. Levinson received her undergraduate degree from Macalester College and her J.D. *summa cum laude* from the University of Miami, graduating first in her class. Ms. Levinson has over 20 years of experience in a wide variety of areas, including her work with Qui Tam litigation and its immense benefit to society.

Ms. Levinson began her legal career as law clerk to the Honorable Adalberto Jordan, U.S. District Court for the Southern District of Florida, now serving on the 11th Circuit Court of Appeals. After her federal clerkship, Ms. Levinson joined a large firm in Miami where she litigated contract, real property, construction, class action, antitrust, employment, forfeiture and insurance matters. Ms. Levinson later joined a "Big Law" firm in Washington, D.C., litigating complex commercial, securities, patent, national security, and civil and criminal investigative matters on behalf of pharmaceutical, financial, education, technology and government contracts clients.

Ms. Levinson's publications include, *Will the Circle Be Unbroken? The Miami Circle Discovery and its Significance for Urban Evolution and Protection of Indigenous Culture*, 13 St. Thomas L. Rev. 283-340 (2000); *Federal Contracting Disputes: Do All Roads Lead To Rome? Part I*, 95-AUG Fla. B.J. 65 (July/Aug. 2021); and *Federal Contracting Disputes: Do All Roads Lead To Rome? Part II*, 95-OCT Fla. B.J. 27 (Sept.–Oct. 2021).

Jeffrey L. Newsome is an attorney with the firm and is a member of the Florida Bar. Mr. Newsome is admitted to the Middle and Southern Federal District Courts in Florida and has appeared pro hac vice in New York, Georgia, and California. Mr. Newsome received his bachelors or political science and history from Florida State University. Mr. Newsome received his J.D. *cum laude* from the University of Florida. Mr. Newsome served as defense counsel for the primary defendant in one of the largest class actions in Florida history - *In re: Champlain Towers Collapse Litigation*. Mr. Newsome has acted as Lead Counsel in several consumer class actions.

Christopher J. Brochu is a VA-accredited attorney with the firm and is a member of The Florida Bar and all Florida District Courts. Mr. Brochu has been admitted to the Eastern District of California, District Court of Delaware, Northern District of Georgia, Southern District of New York, Middle District of North Carolina, Eastern District of Pennsylvania, Middle District of Tennessee, Western District of Texas, Eastern District of Virginia. Mr. Brochu received a B.A. in Communication from the Coastal Carolina University in Conway, South Carolina, and received his Juris Doctor from Florida Coastal School of Law in Jacksonville.

Prior to joining Varnell & Warwick, Mr. Brochu owned and operated a solo firm where roughly ninety percent of his clients were active duty servicemembers and veterans. Mr. Brochu continues to represent military families and consumers across the country. Mr. Brochu has served as Class Counsel in several consumer class actions.

V&W has been appointed to act as Class Counsel in the following cases:

- *Allen v. AT&T*, In the United States District Court, Eastern District of Oklahoma, CIV-00-023-S;
- *Anstead et al v. Sacred Heart Health System Inc et al*, In the United States District Court, Northern District of Florida, 3:22-cv-02553;
- *Baez v. LTD Financial Services, L.P.*, In the United States District Court, Middle District of Florida, 6:15-cv-1043;
- *Bayhulle, et al. v. Jiffy Lube International*, In the District Court for Cherokee County, Oklahoma, CJ-2002-352;
- *Bennett v. Coggin Cars, LLC*, In the Circuit Court of Duval County, Florida, 2004-CA-002883;
- *Briles v. Tiburon Financial, LLC, et al.*, In the United States District Court, District of Nebraska, 8:15-cv-00241
- *Brotz v. Simm Associates, Inc.*, In the United States District Court, Middle District of Florida, 6:17-cv-1603-Orl-40EJK
- *Brown v. Johnson Distributors, et al.*, In the General Court of Justice Superior Court Division, State of North Carolina, County of Mecklenburg, 16-CVS-3445;
- *Brown v. Lohman Property Management Co., LLC, et al.*, In the Circuit Court of Duval County, Florida, 16-2018-CA-008274;
- *Bryant v. World Imports U.S.A., Inc., d/b/a World Imports*, In the Circuit Court of Duval County, Florida, 2015-CA-005185;
- *Burrow, et al. v. Forjas-Taurus SA and Braztech International, L.C.*, In the United States District Court, Southern District of Florida, 1:16-cv-21606-EGT;
- *Byrd v. Lohman Property Management Co., LLC, et al.*, In the Circuit Court of Duval County, Florida, 16-2018-CA-06668;
- *Covey v. American Safety Council, Inc. d/b/a Florida Online Traffic School*, In the Circuit Court of Orange County, Florida, 10-CA-009781;
- *Ebreo v Vystar Credit Union*, In the Circuit Court of Duval County, Florida, 2014-CA-000365;

- *Ferrari v. Autobahn, Inc., et al.*, In the United States District Court for the Northern District of California, 4:17-CV-00018-YGR;
- *Friedman v. Guthy-Renker*, In the United States District Court, Central District of California, 2:14-cv-06009;
- *Gagnon v. Kia Autosport of Pensacola, Inc., et al.*, In the Circuit Court of Escambia County, Florida, 2014-CA-000084;
- *Grant v. Ocwen Loan Servicing, LLC*, In the United States District Court, Middle District of Florida, 3:15-cv-01376-MMH-PDB;
- *Gjolaj v. Global Concepts Limited, Inc.*, United States District Court, Southern District of Florida, 1:12-cv-23064;
- *Law Offices of Henry E. Gare, P.A. v Healthport Technologies, LLC*, In the Circuit Court of Duval County, Florida, 2011-CA-010202;
- *Hardy v. N.S.S. Acquisition Corp.*, In the Circuit Court of Palm Beach County Florida, CL-99- 8628 AO;
- *Harvey v. Hospital Lien Strategies*, In the United States District Court, Middle District of Florida, 3:10-cv-00640-TJC-JRK;
- *Holt v. HHH Motors, Inc.*, In the Circuit Court of Duval County, Florida, 2012-CA-010179;
- *Inetianbor v. CashCall and John Paul Reddam*, United States District Court, Southern District of Florida, 13-60066 – CIV – COHN – Seltzer;
- *Ioime, et al., v. Blanchard, Merriam, Adel & Kirkland, P.A.*, In the United States District, Middle District of Florida, 5:15-cv-13-Oc-30PRL;
- *Jackson v. Home Depot, USA, Inc., et al.*, In the Superior Court of the State of North Carolina for Mecklenburg County, 16-CVS-10961;
- *Jackson v. Worthington Ford of Alaska, Inc.*, In the Superior Court for the State of Alaska, Third Judicial District at Anchorage, 3AN-13-08258;
- *Kearney, et al., v. Direct Buy Associates, et al.*, In the Superior Court of the State of California for the County of Los Angeles, Central Civil West, BC539094;
- *Kilby, et al., v. Camaron at Woodcrest, LLC, et al.*, In the Circuit Court of Leon County Florida, 2013-CA-001300;

- *Koster, et al. v. Fidelity Assurance Associates, LLC, et al.*, In the Circuit Court of Lake County Florida, 2010-CA-003482;
- *Lankhorst v. Independent Savings Plan Company d/b/a ISPC*, In the United States District Court, Middle District of Florida, 3:11-cv-390-MMH-JRK;
- *McClure v. Avenue Motors, LTD*, In the Circuit Court of Duval County, Florida, 07-CA-009207;
- *Napoleon v. Worthington Imports of Alaska, Inc. d/b/a Mercedes Benz of Anchorage*, In the Superior Court for the State of Alaska, Third Judicial District at Anchorage, 3AN-14-09617 CI;
- *Newlin v. Florida Commerce Credit Union*, In the United States District Court, Northern District of Florida, 4:11-cv-00080-RH-WCS;
- *Neese, et al. v. Lithia Chrysler Jeep of Anchorage, Inc., et al.*, In the Superior Court in Anchorage Alaska, 3AN-06-4815;
- *Palasack v. Asbury Auto Group*, In the Circuit Court of Pulaski County, Arkansas, CV02-12712;
- *Page v. Panhandle Automotive, Inc.*, In the Circuit Court of Bay County, Florida, 11-CA-1611;
- *Parish v. California Style, Inc., et al.*, In the District Court of Sequoyah County, Oklahoma, CJ- 00-342;
- *Petersen v. American General Life Ins. Co.*, United States District Court, Middle District of Florida, Case No. 3:14-cv-100-J-39JBT;
- *Peterson v. Progressive Corporation*, In the Court of Common Pleas, Cuyahoga County, Ohio, CV-03-510154;
- *Pool, et al. v. Rexall Sundown*, In the District Court of Sequoyah County, Oklahoma, CJ-2002-1253;
- *Plummer v. United Auto Group, Inc., et al.*, In the Circuit Court of Pulaski County, Arkansas, CV02-11804;
- *Prindle v. Carrington Mortgage Services, LLC*, In the United States District Court, Middle District of Florida, 3:13-cv-01349;
- *Reynolds v. Jim Moran & Associates*, In the Circuit Court of Wakulla County Florida, 04-CA- 259;

- *Riley v Home Retention Services, Inc. et al.*, United States District Court, Southern District of Florida, 2014-CV-20106;
- *Matthew W. Sowell, P.A. v. Bactes Imaging Solutions, Inc.*, In the Circuit Court of Duval County, Florida, 09-CA-018050;
- *St. John v. The Progressive Corporation*, In the Common Pleas Court of Cuyohoga County, Ohio, 392581;
- *Tate v. Navy Federal Credit Union*, In the Circuit Court of Duval County, Florida, 14-CA-000756;
- *Webb v. Touch of Class Catalog, Inc.*, In the District Court of Sequoyah County, Oklahoma, Case No. CJ-2000-306;
- *West v. City Auto Group-Tallahassee, LLC d/b/a City Hyundai*, In the Circuit Court of Leon County, Florida, 2012-CA-042109;
- *Williams v. New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, Inc.*, United States District Court, Middle District of Florida, 3:17-cv-570-25JRK;
- *Williams v. Tallahassee Property Investors, LLC and Apartment Management Consultants, L.L.C.*, In the Circuit Court of Leon County, Florida, 2015-CA-002097;
- *Wood, Atter & Wolf, P.A. v. Record Reproduction Service, Inc.*, In the Circuit Court of Duval County, Florida, 2015-CA-00763;
- *Wood, Atter & Wolf, P.A. v. Star-Med, LLC*, In the Circuit Court of Duval County, Florida, 2016-CA-6096;
- *Wood, Atter & Wolf, P.A. v. University of Florida Jacksonville Physicians, Inc.*, In the Circuit Court of Duval County, Florida, 16-2014-CA-005771;
- *Wolfe v. S2 Matthews, LP*, In the Circuit Court of Duval County, Florida, 16-2022-CA-001434;
- *Zilinsky v. LeafFilter North, LLC*, In the District Court for Southern District of Ohio, Case No. 2:20-CV-6229-MHW-KAJ.

In 2018, the firm tried and won a class action through a successful jury trial in the Middle District of Florida in *Baez v. LTD Financial Services, L.P.* Case No. 6:15-cv-1043.

V&W also performs considerable appellate work on the class action cases it prosecutes throughout the United States. This complex appellate litigation and concomitant success is considerable for a relatively small firm indicating the firm's high level of expertise in public interest, class actions and appellate law.

Steines v. Westgate Palace, L.L.C., ___ F.4th ___, 2024 WL 4052630, at *1 (11th Cir. 2024)(Military Lending Act preempts Federal Arbitration Act);

Calderon v. Sixt Rent a Car, LLC, 2024 WL 3823210 (11th Cir. 2024) (reversed dismissal of all claims by District Court in breach of contract class action);

AIA Burrito Works, et al. v. Sysco Jacksonville, Inc., 2023 WL 8440855 (11th Cir. 2023) (successful appeal reversing dismissal in a consumer class action).

Calderon v. Sixt Rent a Car, LLC, 5 F.4th 1204 (11th Cir. 2021) (successfully defended District Court denial of motion to compel arbitration);

Home Depot U. S. A., Inc. v. Jackson, 139 S. Ct. 1743 (2019) (successful defense of Fourth Circuit order remanding a consumer class action under CAFA);

Sellers v. Rushmore Loan Management Services, LLC, 941 F.3d 1031, 1034 (11th Cir. 2019) (successful appeal reversing denial of class certification in a consumer class action);

Rainsbarger et. al. v. Alaska USA Federal Credit Union et al., S-17360 (May 14, 2019) (successful affirmance of class certification by Alaska Supreme Court);

Katrina Bushnell v. Portfolio Recovery Assoc., LLC, 255 So.2d 473 (Fla. 2d DCA 2018) (successful amicus brief on appeal to Florida Supreme Court in an access to justice consumer case);

Friedman v. Guthy Renker LLC, Case No. 17-56456 (9th Cir. 2017) (successful defense of class settlement approval in appeal from objectors);

Salvato v. Miley, 790 F.3d 1286, 1289 (C.A.11 (Fla.), 2015)(qualified immunity in 1983 action);

Dudley v. Eli Lilly & Co., 778 F.3d 909 (11th Cir. 2014) (successful defense of remand order based on CAFA jurisdiction);

HHH Motors, LLP v. Holt, 152 So. 3d 745 (Fla. 1st DCA 2014) (successful affirmance of denial of motion to compel arbitration in consumer class action);

Mann v. Unum Life Ins. Co. of America, 505 Fed. Appx. 854 (11th Cir. 2013)(Affirming motion to remand under CAFA jurisdiction).

Kuehn v. Cadle Co., Inc., 335 Fed.Appx. 827, 828, 2009 WL 1606868, at *1 (11th Cir. 2009)(Fair Debt Collection Practices Act judgment as a matter of law);

Jim Moran & Associates, Inc. v. Reynolds, 4 So.3d 1225 (Fla.App. 1 Dist.,2009)(FDUTPA class action);

Asbury Auto Group v. Palasack, 237 S.W.3d 462 (Ark. 2006) (Arkansas Supreme Court reversed denial of class certification and granted summary judgement to plaintiff class on appeal);

AT&T Corp. v. Allen, 541 U.S. 1027 (2004) (denial of certiorari from an Oklahoma Supreme Court affirmance of nationwide class certification);

The logo for Gordon & Partners is displayed within a dark blue rounded rectangular box with a yellow border. The text "GORDON & PARTNERS" is written in white, with a stylized ampersand between the words.

Gordon & Partners, P.A. was founded twenty-eight (28) years ago and has four (4) offices with over 100 employees, which includes 20 lawyers and approximately 50 paralegals. Gordon & Partners, P.A.'s attorneys are recognized as some of the most qualified and skilled professionals in their fields. Through legal skills, financial resources, investigative talent, and administrative support, Gordon & Partners, P.A. has successfully litigated against some of the world's most powerful corporations.

Gordon & Partners, P.A. takes great pride in its firm's leadership role in cases resulting in landmark decisions and precedent-setting rulings. The firm has tried numerous Tobacco cases that have resulted in excess of \$400 million dollars in verdicts. The Firm's practice also includes Consumer Class Actions, Mass Torts, Multi-District Litigation (MDL), and complex litigation, including difficult insurance coverage and statutory matters, in both Federal and State Courts.

PRIMARY ATTORNEYS ON THIS MATTER

Geoff S. Stahl

Geoff Stahl became a partner at Gordon & Partner in 2021 and is part of a select group of attorneys who have been declared Board Certified Civil Trial Lawyers by the Florida Bar. Mr. Stahl has extensive litigation experience in both class actions as well as representation of individuals. Mr. Stahl's practice involves complex civil and commercial litigation, banking and finance disputes, consumer fraud and protection issues, insurance denials (including coverage disputes, auto, life, homeowners, and health) as well as statutory interpretation disputes and contractual violations. Mr. Stahl has publicly spoken on online, e-signature issues and violations

of consumer collection practices and predatory conduct, and he also works closely with appellate issues including through the conclusion of appeals.

Mr. Stahl is admitted to practice in Florida State Courts; the US Court of Appeals, Sixth Circuit; the US Court of Appeals, Eleventh Circuit; the US District Court, Northern District of Florida; the US District Court, Middle District of Florida; the US District Court, Southern District of Florida; and, the US District Court, Eastern District of Michigan. Mr. Stahl has also been admitted Pro Hac Vice in several jurisdictions relative to Consumer Class Action matters.

Prior to practicing law, Mr. Stahl earned bachelor's degrees in both Business Administration and Psychology at Austin Peay State University, where he was also a four-year starter and letterman for the University's football team. After 5 years in non-profit management, Mr. Stahl pursued a new career, obtaining a JD/MBA in only two and half years through a joint degree program at St. Thomas University in Miami Gardens, Florida where he finished at the top of both of his business and law classes.

Mr. Stahl is the immediate past Board Chair of the Anti-Defamation League (or ADL's) Florida Regional Board, and previously served as its Board Vice-Chair and Chair of the Advocacy & Engagement Committee (focusing on lobbying efforts to state and federal legislatures as well as consul generals to countries around the world). Mr. Stahl also serves on ADL's National Commission as well as ADL's National Awards Committee. Mr. Stahl is a past Executive Committee and Board Member of the Mandel Jewish Community Center of the Palm Beaches, where he also served as a past JCC Maccabi Games Delegation Chair. He also served as a past Young Lawyers Division Appointed Board Member for the Florida Justice Association.

Mr. Stahl has been awarded the following awards: 2021 – ADL's Daniel R. Ginsberg National Leadership Award; 2018 - Robert S. and Ceil N. Levy Young Leadership Award by the

Jewish Federation of Palm Beach County; 2018 - Award of Appreciation by the Florida Justice Association Research and Education Foundation; 2015 - Steven Shapiro New Leadership Award for Outstanding Contribution and Leadership to the Mandel Jewish Community Center of the Palm Beaches. Mr. Stahl has been involved in the following class action matters and complex litigation:

- *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 980 (11th Cir. 2016)
- *Heritage Operating, L.P. v. Williams*, 211 So. 3d 1038 (Fla. 2d DCA 2016)
- *Cabrera v. U.S. Bank Nat'l Ass'n*, 281 So. 3d 516, 518 (Fla. 4th DCA 2019)
- *Jervis v. Castaneda*, 243 So. 3d 996, 997 (Fla. 4th DCA 2018).
- *Batchelor v. GEICO Cas. Co.*, 2016 WL 3552729 (M.D. Fla. June 30, 2016)
- *Gelsomino v. ACE Am. Ins. Co.*, 207 So. 3d 288, 289 (Fla. 4th DCA 2016)
- *Lewis, et al. v. PGT Industries, Inc. and PGT, Inc.*; Case No. 13-CA-011785, 15th Judicial Circuit, Palm Beach County, Florida.
- *US Bank Trust NA as Trustee For Lsf10 Master Participation Trust v. Lewis, Joseph*; Case No. 50-2017-CA-000969-XXXX-MB 15th Judicial Circuit, Palm Beach County, Florida.
- *Green, Rena v. State Farm Mutual Automobile Insurance Company*; Case No. 50-2015-CA-002899-XXXX-MB, 15th Judicial Circuit, Palm Beach County, Florida.
- *Shannet Brown-Peterkin, et. al. v. Geico General Insurance Co., et. al.*; Case No. CACE-15-016906; 15th Judicial Circuit, Palm Beach County, Florida.
- *Hasan Tukel, et. al. v. Geico Indemnity Company*; Case No. 05-2020-CA-030230; In the 18th Judicial Circuit, Brevard County, Florida.
- *Calderon, et al v. SIXT RENT A CAR, LLC*; Case No.19-cv-62408, United States District Court, Southern District of Florida.
- *Speerly et al. v. General Motors, LLC*; Case No. 19-cv-11044, United States District Court, Eastern District of Michigan.
- *Gregorio, et al. v. Ford Motor Company*; Case No. 20-cv-11310, United States District Court, Eastern District of Michigan.
- *Skrandel v. Costco*; Case No. 9:21-CV-80826, United States District Court Southern District of Florida
- *Orozco, et al. v. FCA US LLC*; Case No. 21-cv-12823, United States District Court, Eastern District of Michigan.

- *Harrison v. General Motors, LLC*; Case No. 21-cv-12927, United States District Court, Eastern District of Michigan.
- *Lyman v. Ford Motor Company*; Case No. 21-cv-10024, United States District Court, Eastern District of Michigan.
- *Maugain v. FCA US LLC*; Case No. 22-cv-00116, United States District Court, District of Delaware
- *Diaz v. FCA US LLC*; Case No. 21-cv-00906, United States District Court, District of Delaware
- *Gustavo Diaz, et al v. FCA US LLC*, Court of Appeals Docket #: 24-1197
- *Petro v. FCA US LLC*, Case Number: 1:22-cv-00621, United States District Court, Eastern District of Michigan

Steven G. Calamusa

Steven G. Calamusa became a partner at Gordon & Partners in 2004. Mr. Calamusa attended the University of Miami School of Law. While at the University of Miami, Mr. Calamusa was on the Dean's List and Business Law Review. Mr. Calamusa joined the firm approximately twenty-four (24) years ago after serving as an Assistant County Attorney for Palm Beach County. His practice involves complex litigation in both Federal and State Courts, including Consumer Class Action and Multi-District Litigation (MDL).

During his career, Mr. Calamusa has achieved several distinctions within the legal community. He has been recognized as one of the Top 100 attorneys in the State of Florida, has been awarded the honor of "Super Lawyers" for multiple years, including 2021, and maintained the highest rating possible, an AV rating, with the Martindale-Hubbell legal directory of exemplary lawyers since 2004.

Mr. Calamusa has been involved in the following class action matters and complex litigation:

- *Colon v. South Florida Blood Banks, Inc.; Robert Bosch Corporation; Cummins Engine Company, et al.*; Case No. 03-CA-001313, 15th Judicial Circuit, Palm Beach County, Florida
- *Bornander v. Sundry Inn Inc., dba Sundry House; Dey, Inc.; Dey, LP, et al.*; Case No. 08-CA-012219, 15th Judicial Circuit, Palm Beach County, Florida
- *Toral v. Outback Steakhouse of Florida, dba Outback Steakhouse, et al.*; Case No. 03-CA-951, 19th Judicial Circuit, Martin County, Florida
- *Goldman v. Babe Ruth League, Inc. and Jupiter Tequesta Association, Inc.*; Case No. 13-CA-016431, 15th Judicial Circuit, Palm Beach County, Florida
- *Lewis, et al. v. PGT INDUSTRIES, INC. and PGT, INC.*; Case No. 13-CA-011785, 15th Judicial Circuit, Palm Beach County, Florida
- *IN RE: Navistar Maxxforce Engines Marketing, Sales Practices and Products Liability Litigation*; Case No. 14-cv-10318, (N.D. Ill.).
- *Hankinson, et al. v. RTG Furniture Corp., dba Rooms To Go*; Case No. 15-cv-81139, (S.D. Fla.).
- *IN RE: Takata Airbag Products Liability Litigation*; MDL No. 2599/Master File No. 15-md-2599, (S.D. Fla.)
- *Johannessoehn, et al. v. Polaris Industries Inc.*; Case No. 16-cv-03348, (D. Minn.)
- *Ariza, et al. v. Luxxotica*; Case No. 1:17-cv-05216, (E.D.N.Y)
- *IN RE: Chrysler- Dodge-Jeep Eco Diesel Marketing, Sales Practices, and Products Liability Litigation*; MDL No. 2777 / Master File No. 17-md-02777, (N.D. Cal.)
- *Ponzio, et al. v. Mercedes-Benz USA LLC, et al.*; Case No. 18-cv-12544, (D.N.J)
- *Simmons, et al. v. Ford Motor Company*; Case No. 18-cv-81558, (S.D. Fla.)
- *Duffy v. General Motors, LLC*; Case No. 18-cv-81726, (S.D. Fla.)
- *Won, et al. v. General Motors, LLC*; Case No. 19-cv-11044, (E.D. Mich.)
- *Calderon, et al v. SIXT RENT A CAR, LLC*; Case No.19-cv-62408, (S.D. Fla.)
- *Gregorio, et al. v. Ford Motor Company*; Case No. 20-cv-11310, (E.D. Mich.)
- *Orozco, et al. v. FCA US LLC*; Case No. 21-cv-12823, (E.D. Mich.)
- *Skrandel v. Costco*; Case No. 9:21-CV-80826, United States District Court Southern District of Florida
- *Harrison v. General Motors, LLC*; Case No. 21-cv-12927, United States District Court, Eastern District of Michigan.

- *Lyman v. Ford Motor Company*; Case No. 21-cv-10024, United States District Court, Eastern District of Michigan.
- *Maugain v. FCA US LLC*; Case No. 22-cv-00116, United States District Court, District of Delaware
- *Diaz v. FCA US LLC*; Case No. 21-cv-00906, United States District Court, District of Delaware
- *Gustavo Diaz, et al v. FCA US LLC*, Court of Appeals Docket #: 24-1197
- *Petro v. FCA US LLC*, Case Number: 1:22-cv-00621, United States District Court, Eastern District of Michigan

Mr. Calamusa has been selected as lead attorney for numerous depositions in class matters, including depositions of engineers, experts, key corporate officers, key corporate custodians, and key witnesses. Mr. Calamusa is also very familiar with complex litigation ESI discovery and protocol. In addition to class action matters, Steven Calamusa has litigated numerous products liability claims. He was lead counsel in a single event complex product liability case against a German auto parts manufacturer and its U.S. Subsidiary. This complex case involved electrical circuit boards and engine management and required the translation of 1,000's of documents from German to English. Moreover, Mr. Calamusa took numerous depositions of corporate custodians and engineers in Hamburg, Germany. The result was an eight (8) figure resolution.

Mr. Calamusa is admitted to practice in Florida State Courts as well as the United States District Court, Southern District of Florida. Mr. Calamusa is also admitted in the United States District Court, Eastern District of Michigan. Mr. Calamusa has been admitted Pro Hac Vice in a number of jurisdictions relative to Consumer Class Action matters. Mr. Calamusa has also given back to the community as he formerly served on the Palm Beach County Safe Kids Coalition as well as the Palm Beach County Sheriff's Foundation, and he was the President of the Palm Beach County Chapter of Mothers Against Drunk Driving (MADD).