AlaFile E-Notice

33-CV-2025-900186.00

Judge: BRIAN P HAMILTON

To: EVAN MICHAEL HARGETT
evan@rbmattorneys.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF FRANKLIN COUNTY, ALABAMA

HALEY WHITE ET AL V. PLAYSTUDIOS US, LLC.
33-CV-2025-900186.00

The following matter was FILED on 10/7/2026 2:13:49 PM

C001 WHITE HALEY

C002 ROBERTS DONOVAN

C003 MURNAGHAN HOPE

C004 ALLAHBEAUTIFUL PRINCE

C005 EBERSOLE CHRISTOPHER

C006 WHITNEY LUKE

MOTION FOR AN AWARD OF ATTORNEYS' FEES TO CLASS COUNSEL AND INCENTIVE AWARDS TO THE CLASS REPRESENTI

[Filer: HARGETT EVAN MICHAEL]

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CIRCUIT COURT OF
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HALEY WHITE ET AL V. PLAYSTUDIOS US, LLC.

CIVIL MOTION COVER SHEET

Name of Filing Party: C001 - WHITE HALEY
C002 - ROBERTS DONOVAN
C003 - MURNAGHAN HOPE
C004 - ALLAHBEAUTIFUL PRINCE
C005 - EBERSOLE CHRISTOPHER
C006 - WHITNEY LUKE

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.
EVAN MICHAEL HARGETT
P.O. BOX 669
RUSSELLVILLE, AL 35653
Attorney Bar No.: HAR411

☐ Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

☐ Default Judgment ($50.00)
☐ Joinder in Other Party's Dispositive Motion (i.e.Summary Judgment, Judgment on the Pleadings, orother Dispositive Motion not pursuant to Rule 12(b)) ($50.00)
☐ Judgment on the Pleadings ($50.00)
☐ Motion to Dismiss, or in the Alternative SummaryJudgment($50.00)
☐ Renewed Dispositive Motion(Summary Judgment,Judgment on the Pleadings, or other DispositiveMotion not pursuant to Rule 12(b)) ($50.00)
☐ Summary Judgment pursuant to Rule 56($50.00)
☐ Motion to Intervene ($297.00)
☐ Other _____
pursuant to Rule _____($50.00)

*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

☐ Local Court Costs $ 0

Motions Not Requiring Fee

☐ Add Party
☐ Amend
☐ Change of Venue/Transfer
☐ Compel
☐ Consolidation
☐ Continue
☐ Deposition
☐ Designate a Mediator
☐ Judgment as a Matter of Law (during Trial)
☐ Disburse Funds
☐ Extension of Time
☐ In Limine
☐ Joinder
☐ More Definite Statement
☐ Motion to Dismiss pursuant to Rule 12(b)
☐ New Trial
☐ Objection of Exemptions Claimed
☐ Pendente Lite
☐ Plaintiff's Motion to Dismiss
☐ Preliminary Injunction
☐ Protective Order
☐ Quash
☐ Release from Stay of Execution
☐ Sanctions
☐ Sever
☐ Special Practice in Alabama
☐ Stay
☐ Strike
☐ Supplement to Pending Motion
☐ Vacate or Modify
☐ Withdraw
☑ Other Motion for an Award of Attorneys' Fees to Class Counsel and Incentive Awards to the Class Representi
pursuant to Rule . (Subject to Filing Fee)

Check here if you have filed or are filing contemoraneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) ☐	Date: 10/7/2026 2:11:56 PM	Signature of Attorney or Party /s/ EVAN MICHAEL HARGETT

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.
**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

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CIRCUIT COURT OF
FRANKLIN COUNTY, ALABAMA
DERRICK SCOTT, CLERK

IN THE CIRCUIT COURT OF FRANKLIN COUNTY, ALABAMA

Haley White, Donavan Roberts, Hope Murnaghan, Prince AllahBeautiful, Christopher Ebersole, and Luke Whitney, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No. 33-CV-2025-900186.00**
v.	)	
Playstudios US, LLC,	)	
Defendants.	)	

MOTION FOR AN AWARD OF ATTORNEYS' FEES TO CLASS COUNSEL AND INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES

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COMES NOW the Plaintiffs, the Plaintiff Class, and Class Counsel, and file this Class Counsel's Fee and Expense Application and Application for Incentive Awards to Class Representatives. As stated in the Motion for Preliminary Approval, Class Counsel has agreed that in the event the relief provided in Paragraph 2.1(a)(ii) together with the attorney's fees awarded as a result of this petition exceed the sum value of 43.5% of the Total Settlement Amount as defined in the Settlement Agreement, to reduce the attorney's fees requested. Class Counsel has reserved their right to seek these requested fees, and Defendant has reserved its right to oppose any request for fees. Class Counsel hereby moves the Court for an order awarding 33 1/3% of the Total Settlement Amount as defined in the Settlement Agreement and calculated by the Settlement Administrator. The amount of fees and expenses sought in this petition is estimated to be $3,339,922.86 subject to Settlement Administrator's calculation of the Total Settlement Amount. As set forth below, Plaintiffs, Plaintiff Class, and Class Counsel additionally seek six Incentive Awards of $10,000 to each of the Class Representatives.

I. INTRODUCTION.

After litigating for more than two and a half years across six different states, Plaintiffs' class counsel have achieved a substantial recovery for the class including

recovery for a longer period of time than most of the states[1] allow for recovering losses individually, and the option to receive cash payments among other significant consideration. Class counsel now petition for an award of fees and expenses as well as for incentive awards to each class representative. As set forth below, one of the largest factors in evaluating an award for fees is the measure of success achieved, which warrants the requested awards in this matter.

In class actions that result in significant recoveries, courts and scholars commonly note that the upper limit of an appropriate attorneys' fee award is 50% of the recovery.[2] If ever a class action recovery merited an award at the highest level of 50%, it would be this unique and arduous litigation. However, class counsel are not seeking the highest-possible award; instead, the request in this case is approximately 30%, a number that represents the "benchmark" percentage often awarded and is more than supported by the substantial recovery in this case.

[1] Alabama, Tennessee, Ohio, New Jersey, and Massachussetts have longer statutes of limitation for third-party claims than they do for first-party claims. Kentucky's statute of limitation is the same for both third-party and first-party recovery.

[2] Appropriate attorney fee percentages in class action common-fund cases generally range between 20% and 50% of the recovery. Edelman & Combs v. Law, 663 So. 2d 957, 960 (Ala. 1995) ("40%, or even 50%, may be justified"); Reynolds v. First Alabama Bank, N.A., 471 So. 2d 1238, 1245 (Ala. 1985). "Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund...." 1 Alba Conte, Attorney Fee Awards § 2:8 (3d ed.) (May 2016 update); 5 William B. Rubenstein, Newberg on Class Actions § 15:83, p. 319 (5th ed. 2015) (electronic database updated June 2016) (same). See Waters v. Cook's Pest Control, Inc., No. 2:07-CV-00394, 2012 WL 2923542 at *18 (N.D. Ala. July 17, 2012) (Coogler, J.): "Neither Class Counsel nor the Court were able to locate instances of factually-similar litigation or similar recoveries in cases with comparable class sizes. However, an award of 35% of the Settlement Fund is well within the range of 20% to 50%, which has been generally established in this circuit. Camden I, 946 F.2d at 771." See also Kemp v. Unum Life Insurance Company of America, 2015 WL 8526689, *8 (E.D. La. 2015) ("50% as an upper limit"), and Miller v. CEVA Logistics USA, Inc., 2015 WL 4730176, *8 (E.D. Cal. 2015) ("50% is the upper limit").

II. THE ATTORNEY FEE SHOULD BE AWARDED AS A PERCENTAGE OF THE RECOVERY

The U. S. Supreme Court, in Boeing Co. v. Van Gemert, recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." 444 U.S. 472, 478 (1980). The Supreme Court also holds that, when determining how much of a common fund an attorney is entitled, generally, "a reasonable fee is based on a percentage of the fund bestowed on the class." Blum v. Stenson, 465 U.S. 886, 903 n.16 (1984). As a current senior judge on the Eleventh Circuit put it while serving in the District Court:

> When a representative party has created a "common fund" for the substantial benefit of a class, the court should award attorney fees based upon the benefit obtained. Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980); Mills v. Electric Auto–Lite Co., 396 U.S. 375, 392–93 (1970). "[C]ourts ... have acknowledged the economic reality that in order to encourage 'private attorney general' class actions brought to enforce ... laws on behalf of persons with small individual losses, a financial incentive is necessary to entice capable attorneys, who otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, time-consuming cases for which they may never be paid." Mashburn v. National Healthcare, Inc., 684 F.Supp. 679, 687 (M.D. Ala. 1988) (Dubina, J.); see also In re Domestic Air Transp. Antitrust Litig., 148 F.R.D. 297, 348–49 (N.D. Ga. 1993).

Columbus Drywall & Insulation, Inc. v. Masco Corporation, No. 1:04-cv-3066, 2012 WL 12540344 at *1 (N.D. Ga. Oct. 26, 2012) (Julie E. Carnes, J.).

The seminal case on common-fund attorneys' fee in Alabama is Edelman & Combs vs Law, 663 So. 2d 957 (Ala. 1995). The Edelman Court specifically held

"that in a class action where the plaintiff class prevails and the lawyer's efforts result in a recovery of a fund, by way of settlement or trial, a reasonable attorney fee should be determined as a percentage of the amount agreed upon in settlement or recovered at trial." 663 So. 2d at 959. Thus, Alabama joined the majority of federal courts in holding that the attorneys' fees in a class action are set as a percentage of the recovery.[3] The Alabama Supreme Court made it clear that the number of hours worked by counsel was not the central issue:

> Class actions are designed to provide a vehicle for redress where wrongful conduct has resulted in harm to a great number of people, but none has been hurt badly enough to justify pursuit of an individual claim. Where a recovery is made on behalf of a class, it is reasonable to award attorney fees on the basis of a percentage of the amount recovered. In some cases, 20% may be reasonable, based upon the amount of the award and other factors. In other cases 40%, or even 50%, may be justified. A trial court must carefully weigh the factors. For example, strict reliance on "the time consumed" factor in a common fund case could encourage and reward protracted litigation. Camden I Condominium Ass'n, Inc. v. Dunkle, 946 F.2d 768, 773 (11th Cir. 1991). It has been said that the "expended time" factor has limited significance in a common fund case:
>
> > "Professor Hornstein wrote in his article 'Legal Therapeutics: The "Salvage" Factor in Counsel Fee Awards,' 69 Harv.L.Rev. 658 (1956):
> >
> > > "'Where success is a condition precedent to compensation, "hours of time expended" is a nebulous, highly variable standard, of limited

[3] In so holding, the Alabama Supreme Court approvingly cited and extensively quoted the Third Circuit Task Force, 108 F.R.D. 237 (1985), which "recommended setting a percentage fee in cases like this one." Edelman, 663 So. 2d at 959. It also cited approvingly the Eleventh Circuit decision in Camden I Condominium Ass'n, Inc. v. Dunkle, which requires the percentage-of-recovery method of fee calculation. Edelman, 663 So. 3d at 960 (citing Camden I, 946 F.2d 768, 773 (11th Cir. 1991)

> significance. One thousand plodding hours may be far less productive than one imaginative, brilliant hour. A surgeon who skillfully performs an appendectomy in seven minutes is entitled to no smaller fee than one who takes an hour; many a patient would think he is entitled to more.'
>
> Id. at 660. Professor Hornstein's article was cited with approval by the United States Supreme Court in Mills v. Electric Auto–Lite Co., 396 U.S. 375, 394 n. 18, 90 S.Ct. 616, 626 n. 18, 24 L.Ed.2d 593 (1970)."

Edelman, 663 So. 2d at 960 (quoting Mashburn v. National Healthcare, Inc., 684 F. Supp. 679, 689 (M.D. Ala. 1988).

III. COURTS ARE TO CONSIDER THE 12 PEEBLES FACTORS AND OTHER FACTS

As noted above, the Alabama Supreme Court held in Edelman that the proper attorneys' fee should be determined as a percentage of the fund. 663 So. 2d at 960. The Court went on to state that the twelve factors it had previously set forth in Peebles v. Miley constituted the relevant factors for consideration by the Court in setting the percentage: "This Court has recognized the use of the Peebles factors in setting a percentage fee in common fund cases and has allowed percentages even higher than one-third in some cases." Edelman, 663 So. 2d at 959-60 (citing Peebles v. Miley, 439 So. 2d 137, 140-41 (Ala. 1983). Peebles, which was neither a class action nor a common-fund case, adopted a series of factors for a court to consider in deciding the amount of a reasonable fee. 439 So. 2d at 141-44. Peebles relied upon

an opinion of the old Fifth Circuit. Johnson v Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). Johnson, in turn, was based upon the Canons of Ethics of the American Bar Association (and that portion of the ABA Canon of Ethics was based, in turn, upon the first Code of Ethics of the State Bar of Alabama, written by former Alabama Governor and Federal Judge Thomas Goode Jones). The Peebles factors, as laid out by the Alabama Supreme Court in Edelman,[4] are:

(1) "the nature and value of the subject matter of the employment;"

(2) "the learning, skill, and labor requisite to its proper discharge;"

(3) "the time consumed;"

(4) "the professional experience and reputation of the attorney;"

(5) "the weight of his responsibilities;"

(6) "the measure of success achieved;"

(7) "the reasonable expenses incurred by the attorney;"

(8) "[w]hether the fee is fixed or contingent;"

(9) "[t]he nature and length of the professional relationship;"

(10) "[t]he fee customarily charged in the locality for similar legal services;"

(11) "[t]he likelihood that a particular employment may preclude other employment;" and

[4] See also Union Fidelity Life Ins. Co. v. McCurdy, 781 So. 2d 186, 192 (Ala. 2000), and Van Schaack v. AmSouth Bank, 530 So. 2d 740, 749 (Ala. 1986).

(12) "[t]he time limitations imposed by the client or by the circumstances." Edelman, 663 So. 2d at 959-60. See also Union Fidelity Life Ins. Co. v. McCurdy, 781 So. 2d 186, 192 (Ala. 2000), and Van Schaack v. AmSouth Bank, 530 So. 2d 740, 749 (Ala. 1986). Each of these 12 factors will be discussed below.

Courts recognize that not every factor is relevant to every case. "Although not all of these [Peebles factors] criteria are applicable in every case, a trial court may consider those that are, along with other pertinent facts, in approving attorney fees...." Edelman, 663 So. 2d at 960; Van Schaack v. AmSouth Bank, 530 So. 2d 740, 749 (Ala. 1986) (noting that these criteria are sometimes overlapping, and "not all the criteria will be applicable" in a particular case.) "Indeed, there would hardly ever be a case where the [determination] of attorney's fees brought into play every criterion." Graddick v. First Farmers & Merchants National Bank of Troy, 453 So. 2d 1305, 1311 (Ala. 1984). Also, "[t]he factors [e.g., Johnson factors, substantially the same as Peebles] are not applied formulaically, and the weight given to each factor may vary depending on the case." 2 McLaughlin on Class Actions § 6:24 (12th ed.) (database updated Dec. 2023).

In Camden I Condominium Ass'n, Inc. v. Dunkle, the Eleventh Circuit identifies additional factors to consider, including the time required to reach the settlement, objections from the class to settlement terms or the fees requested, non-monetary benefits, the "economics involved in prosecuting a class action," and other

factors "unique to a particular case." 946 F.2d 768, 775 (11th Cir. 1991). In addition, courts have recognized the importance of awarding fair attorneys' fees from a common fund, noting that "[t]o make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding." Hicks v. Morgan Stanley & Co., No. 01-10071, 2005 WL 2757792 at *9 (S.D. N.Y. Oct. 24, 2005); see also Maley v. Del Global Techs. Corp., 186 F. Supp. 2d 358, 374 (S.D. N.Y. 2002) ("Private attorneys should be encouraged to take the risks required to represent those who would not otherwise be protected from socially undesirable activities...."); Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 51 (2d Cir. 2000) ("There is ... commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest."); Cohen v. Office Depot, Inc., 204 F.3d 1069, 1082 (11th Cir. 2000) (noting that "the primary purpose of such an award [of attorneys' fees] is to encourage private enforcement of statutory policies.")

IV. THE CIRCUMSTANCES OF THIS CASE FULLY SUPPORT THE REQUESTED FEE

A. The nature and value of the subject matter of the employment

This factor does not weigh against the request for attorneys' fees in this case. This case concerns ancient concepts dating back to the English Statute of Anne, enacted in 1710. The cases involved multiple state statutes and precedents dating back to very early cases, even back to the founding of some states. Few lawyers

nationwide had the substantial experience present counsel had in prosecuting similar cases. There was no cookie-cutter, go-by briefs or research that class counsel could borrow from others. When class counsel filed the underlying cases, they knew they were entering uncertain and uncharted waters where there was no guarantee of any recovery. This case involved novel, difficult, and complex legal questions and facts at every turn.

B. The learning, skill, and labor requisite to its proper discharge

The attached affidavit from Wesley W. Barnett summarizes class counsel's experience in class actions and other complex litigation. (Exhibit A). The learning and skill of class counsel are extensive. As examples of the overall tasks required in this case, counsel successfully defended motions to dismiss, and navigated both litigation and arbitration.

As courts have recognized in many instances, the quality of work done by class counsel, and the efficacy and dedication with which it was performed, should be compensated. See, e.g., Amorin v. Taishan Gypsum Co., Ltd., 861 Fed. Appx. 730, 735-36 (11 th Cir. 2021) (affirming the District Court's approval of a fee much larger than that sought here (45%) and noting that the district court "contemplated the 'time, effort, and skill'" involved in the case and "consider[ed] the specific contributions of Class Counsel" and the "novelty and difficulty of the case.") Pinto v. Princess Cruise Lines, Ltd., 513 F.Supp.2d 1334, 1342 (S.D. Fla. 2007)

(approving fee petition were "[t]he skill of counsel is commensurate with the novelty and complexity of the issues in this case.") Vizcaino v. Microsoft, 290 F.3d 1043, 1048 (9th Cir. 2002); In re Pacific Enters. Sec. Litig., 47 F.3d 373, 379 (9th Cir. 1995).

Defendants are represented by highly skillful attorneys from a prestigious law firm. Class Counsel fought vigorously with Defendants' counsel to overcome complicated legal issues and to design a settlement and notice program that rendered substantial benefits to all class members. The law recognizes that application of such skill for such purposes justifies an award to class counsel of a benchmark percentage of the recovery achieved on behalf of the Class. See Vizcaino v. Microsoft, 290 F.3d 1043, 1048 (9th Cir. 2002).

Class counsel have extensive experience with class action litigation. Their level of skill is best measured by the results achieved for the class. See Behrens v. Wometco Enters., 118 F.R.D. 534, 547-48 (S.D. Fla.1988), aff'd, 899 F.2d 21 (11th Cir.1990) ("The quality of work performed in a case that settles before trial is best measured by the benefit obtained."). Here, class counsel have obtained substantial benefit for the class that is directly in line with similar settlements. See, e.g., Sornberger v. Sciplay, No. CV-2025-900003.00 (Cir. Ct. Franklin Co., Alabama Nov. 26, 2025); Reed v. Scientific Games, No. 2:18-cv-00565-RSL (W.D. Wash. 2022) (Doc. 164-1, Class Action Settlement Agreement); Benson v. DoubleDown

Interactive, LLC, 2023 WL 3761929 (W.D. Wash. 2023); Wilson v. Playtika, Ltd., 2021 WL 512230 (W.D. Wash. 2021); Kater v. Churchill Downs, Inc., 2021 WL 511203 (W.D. Wash. 2021); Fernando v. Zynga, Inc., 2022 WL 17741841 (W.D. Wash. 2022); Wilson v. Huuuge, Inc., 2021 WL 512229 (W.D. Wash. 2021); Kingston vs. SpinX Games Ltd., Case No. 24-CI-00062, in the Kentucky Circuit Court for Henderson County; Armstead v. VGW Malta Ltd, Case No. 2022-CI-00553, in the Kentucky Circuit Court for Henderson County Circuit Court; Wyland v. Woopla Inc., Case No. 2023-CI-00356, in the Kentucky Circuit Court for Henderson County. The results achieved, standing alone, demonstrate the skills of class counsel, and weigh heavily in favor of the requested fee award.

Aside from the benefits obtained for the class, this factor supports the requested fee award because the issues involved in this case were quite complex. To prosecute the claims, it was necessary that the class have highly-skilled lawyers with experience in complex and class litigation. See Columbus Drywall & Insulation, Inc. v. Masco Corporation, No. 1:04-cv-3066, 2012 WL 12540344, *3 (N.D. Ga. Oct. 26, 2012) (Julie E. Carnes, J.) ("Attorneys should be appropriately compensated for accepting complex and difficult cases." citing Johnson, 488 F.2d at 718 and Yates v. Mobile County Personnel Bd., 719 F.2d 1530, 1535 (11th Cir.1983).

Throughout this long process, class counsel have fairly, adequately, and vigorously represented the interests of the class in the most efficient manner

possible, dividing up responsibilities and avoiding duplication of effort. The Court is also in an excellent position to make its own assessment of the skills of class counsel, having conducted hearings in a number of related cases in which the same counsel participated. See Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) ("Class Counsel who have worked on this case are talented and experienced attorneys with excellent reputations in the legal community. I conclude this is a very strong factor in favor of the percentage sought. After seven years, I am very familiar with the quality and representation of Class Counsel."). Another "highly important" aspect of a court's evaluation of the skill required of the fee applicants is "[t]he trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work." In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F.Supp.2d 732, 789 (S.D. Tex. 2008), quoting Johnson, 488 F.2d at 718.

Novel and complex issues were the norm in this case, not the exception. See, e.g., Ressler v. Jacobson, 149 F.R.D. 651, 654 (M.D. Fla. 1992) (noting that plaintiff faced multi-faceted and complex legal questions). Many of the questions of law presented herein had never been tried in any court and could only be analogized to cases more (sometimes much more) than a century old. "Cases of first impression generally require more time and effort on the attorney's part." Johnson, supra, 488 F.2d at 717. Further, it is undisputed that, until the case was finally settled,

defendants litigated this action aggressively. See Yates v. Mobile County Personnel Bd., 719 F.2d 1530, 1535 (11th Cir. 1983) (extremely complicated litigation requires thorough and detailed research of almost every question involved). In summary, this case presented many novel and difficult issues, both factual and legal, that presented tremendous challenges to class counsel. The factual investigation alone was daunting. Mastery of the novel legal and factual issues involved in this case fully supports the requested fee.

Courts have recognized that another consideration for assessing the quality of the services rendered is the quality of the opposing counsel in the case. See, e.g., Holmes v. Oxford Chemicals, Inc., 510 F. Supp. 915, 920 (M.D. Ala. 1981) ("The relative strength of plaintiff's claim, the complexity of the issues involved, and the quality of opposing counsel's representation all made skillful representation by plaintiff's attorney necessary for the successful prosecution of this law suit."); In re Sunbeam Sec. Litig., 176 F. Supp. 2d 1323, 1334 (S.D. Fla. 2001); In re Warner Commc'ns Sec. Litig., 618 F. Supp. 735, 749 (S.D. N.Y. 1985), aff'd, 798 F.2d 35 (2d Cir. 1986). Defendants are represented by highly-experienced and skillful counsel. The Class's success in the face of formidable legal opposition confirms the quality of its representation. See, e.g., Schwartz v. TXU Corp., No. 3:02-CV-2243-K, 2005 WL 3148350 at *30 (N.D. Tex. Nov. 8, 2005) ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such

formidable legal opposition confirms the superior quality of their representation."); In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 467 (S.D.N.Y. 2004) ("'The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work.'"); and Clark v. Cameron-Brown Co., 1981 WL 1637 at *3-4 (M.D.N.C. Apr. 6, 1981) (awarding a 37% fee and noting that the fee was deserved in part because of the undesirability of the case "not only due to the risk of achieving no recovery for the burdensome amount of work involved, but also because of the reputation and pervasive influence of the defendants."). This factor further supports the requested percentage.

C. The time consumed

Because common-fund recoveries are judged purely on a percentage basis, this factor is either totally irrelevant or of minor importance. The first enumerated Johnson factor is "the time and labor required." "While the Johnson factors must be [separately considered and] addressed, 'rarely are all the Johnson factors applicable; this is particularly so in a common fund case.'" Di Giacomo v. Plains All American Pipeline, 2001 WL 34633373 at *9 (S.D. Fla. Dec. 19, 2001) (emphasis added). Indeed, this first Johnson factor is arguably relevant only to a lodestar cross-check analysis, and is not even an appropriate factor in determining a fair percentage fee. See Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1213-14 (S.D. Fla. 2006). Accordingly, to the extent this factor is even relevant, it is beyond

question that this two-and-a-half-year series of related cases spread across six states has demanded substantial time and labor, including extensive investigation, briefing, discovery, and arduous settlement negotiations. This Court is well aware of the extensive time spent by class counsel prosecuting the underlying cases and arbitrations. All of these facts easily support the requested fee award.

D. The professional experience and reputation of the attorney

As evidenced by the affidavit of Wesley W. Barnett, class counsel have extensive experience in complex and class litigation. Class counsel are well respected in the legal community have extensive legal careers individually.

E. The weight of his responsibilities

The risks undertaken by class counsel were extreme in this unique case. In the context of analyzing class action fees, the factor often called "undesirable" means that counsel had to commit to enter unchartered legal waters. Such concerns were definitely present here. Class counsel was required to extensively research obscure and ancient statutes and cases that date back decades and cover six jurisdictions. Thus, for purposes of choosing a fair attorneys' fee percentage, this case should be viewed as highly "risky," weighing in favor of the fee requested. Courts often elevate percentage fee awards due to the absence of prior or related litigation that could be of value to class counsel in prosecuting the matter. See City of Detroit v. Grinnell Corp., 495 F.2d 448, 471 (2d Cir. 1974); In re Gulf Oil/Cities Serv. Tender Offer

Litig., 142 F.R.D. 588, 597 (S.D.N.Y. 1992) ("[T]his is not a case where plaintiffs' counsel can be cast as jackals.... They did all the work on their own.").

By any reasonable view, this case was extremely risky. The issues were complex; the legal hurdles many and substantial; the opponents powerful and ably defended; and the time and expense demands daunting. Such circumstances justify a generous fee award. A court's consideration of this factor recognizes that counsel should be rewarded for taking on a case that is "undesirable" due to any number of things, including thorny factual circumstances, or complex, undecided legal questions. See In re Sunbeam Sec. Litig., 176 F. Supp. 2d 1323, 1336 (S.D. Fla. 2001).

This case was "undesirable" in another sense as well -- the factual risks and potential rewards of this case were unknown at the outset, with such basic as even the amount of potential recovery solely in the possession of the defendants. Class counsel were required to undertake extensive research and investigation to obtain this information. See Di Giacomo v. Plains All American Pipeline, 2001 WL 34633373, *12 (S.D. Fla. Dec. 19, 2001) (holding that an enhanced fee award is appropriate in cases that "carried risks that required investigation and ... discovery to uncover and analyze"). Even if class counsel felt confident about their assessment of the case, they did not – and could not -- appreciate the full value of the case until extensive data was analyzed. "In addition, risk 'must be evaluated from the

standpoint of plaintiffs' counsel as of the time they commenced the suit, not retroactively with the benefit of hindsight." Farmer v. Humana Inc., 2022 WL 22855817 at *5 (M.D. Fla. Dec. 28, 2022) (quoting Swift v. BancorpSouth Bank, 2016 WL 11529613 at *17 (N.D. Fla. July 15, 2016).

As to the undesirability of the case, courts have observed that "[c]ases may be deemed 'undesirable' when 'the defendant is a large corporation with substantial resources, financial and otherwise, for a vigorous defense; and the legal and factual issues presented risks to recovery absent settlement.'" Burford v. Cargill, Inc., No. 05-0283, 2012 WL 5471985 at *5 (W.D.La Nov. 8, 2012) (quoting In re Heartland Payment Systems, Inc. Customer Data Security Breach Litig., 851 F.Supp.2d 1040, 1085 (S.D. Tex. 2012)). "Where class counsel is 'a relatively small group of attorneys with limited resources pitted against ... [a larger entity] with access to enormous legal resources,' the tenth factor weighs in favor of a substantial fee." Id. (quoting In re Bayou Sorrel Class Action, No. 04-1101, 2006 WL 3230771, *6 (W.D. La. 2006)). In Columbus Drywall, future Eleventh Circuit judge Julie Carnes explained the role of risk and the funding of the action by class counsel:

> Undesirability of the Action
>
> This Court has recognized the risk and difficulty inherent in antitrust class actions, as well as the particular obstacles to recovery in this case. There are a limited number of firms that both possess the required skills and would undertake this representation, knowing that it would likely require expenditure of tens of thousands of hours (on a contingent basis) and the advancement of millions of dollars in out-of-pocket expenses.

> Class counsels' willingness to assume those risks should be reflected in the fee.

Columbus Drywall & Insulation, Inc. v. Masco Corporation, No. 1:04-cv-3066, 2012 WL 12540344, *6 (N.D. Ga. Oct. 26, 2012)

F. The measure of success achieved

Courts have consistently recognized the measure of the success achieved as a central factor, if not *the* central factor, in determining the size of an appropriate fee award. See, e.g., Hensley v. Eckerhart, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); Foster v. Board of School Com'rs of Mobile County, Ala., 810 F.2d 1021, 1024 (11th Cir. 1987) (applying Hensley's principal to a case which included successful and unsuccessful claims); Vizcaino v. Microsoft, 290 F.3d 1043, 1048 (9th Cir. 2002) ("Exceptional results are a relevant circumstance" in deciding a fee award in common fund cases.); In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F.Supp.2d 732, 796-97 (S.D. Tex. 2008) (noting that "[t]he United States Supreme Court and the Fifth Circuit have held that [degree of success is] 'the most critical factor' in determining the reasonableness of a fee award…." (citing and quoting Farrar v. Hobby, 506 U.S. 103, 114 (1992), and Hensely v. Eckerhart, 461 U.S. at 436).

In this regard the success of the litigation is not only determined by the gross amount of the recovery but also by the number of individuals who benefit from the

class settlement, the degree to which the settlement provides them with compensation, and the extent to which the settlement benefits the public. See, e.g., In re Vioxx Products Liability Litigation, 760 F.Supp.2d 640, 657-58 (E.D. La. 2010).; Turner v. Murphy Oil, USA, Inc., 472 F.Supp.2d 830, 866 (E.D. La. 2007); In re Educational Testing Service Praxis Principle, 447 F.Supp.2d 612, 632 (E.D. La. 2006) ;In re Diet Drugs Prods. Liab. Litig., 553 F.Supp.2d 442, 472-73 (E.D. Pa. 2008) ("the vast number of people who have benefitted from the Settlement Agreement and the level of participation among Class Members is a testament to the strength and efficacy of the Settlement Agreement").

It is well-established that one of the primary determinants of the quality of the work performed is the result obtained. Class counsel have obtained a recovery that is on par with substantially similar class settlements in other states. Sornberger v. Sciplay, No. CV-2025-900003.00 (Cir. Ct. Franklin Co., Alabama Nov. 26, 2025); Reed v. Scientific Games, No. 2:18-cv-00565-RSL (W.D. Wash. 2022) (Doc. 164-1, Class Action Settlement Agreement); Benson v. DoubleDown Interactive, LLC, 2023 WL 3761929 (W.D. Wash. 2023); Wilson v. Playtika, Ltd., 2021 WL 512230 (W.D. Wash. 2021); Kater v. Churchill Downs, Inc., 2021 WL 511203 (W.D. Wash. 2021); Fernando v. Zynga, Inc., 2022 WL 17741841 (W.D. Wash. 2022); Wilson v. Huuuge, Inc., 2021 WL 512229 (W.D. Wash. 2021); Kingston vs. SpinX Games Ltd., Case No. 24-CI-00062, in the Kentucky Circuit Court for Henderson County;

Armstead v. VGW Malta Ltd, Case No. 2022-CI-00553, in in the Kentucky Circuit Court for Henderson County; Wyland v. Woopla Inc., Case No. 2023-CI-00356, in the Kentucky Circuit Court for Henderson County.

After extensive investigation and litigation, class counsel assessed the strengths and weaknesses of their case, and have recovered by settlement a significant percentage of the class members' damages, over a longer period than most individual class members could seek on their own. As set forth in the Preliminary Approval Motion, the litigation spanning six states involved loss recovery statutes for both first-party and third-party losses. Such third-party loss recovery statutes often have longer statutes of limitation in states such as Alabama, Tennessee, Ohio, New Jersey, and Massachusetts. This settlement encompasses the longer statutes of limitations thereby allowing most class members to seek recovery for a longer period of time than the first-party loss recovery statutes allow.

Instead of facing additional years of costly litigation, class members will now share in the class wide recovery. A trial would have been lengthy and expensive. A settlement providing immediate benefit, and avoiding the cost and risk of continued litigation, is a positive result for all members of the class. See Enterprise Energy Corp. v. Columbia Gas Transmission, 137 F.R.D. 240, 246-247 (S.D. Ohio 1991) (noting that a cash settlement "provides immediate value to the Class and minimizes

the costs which plaintiffs must otherwise incur in moving forward and potentially obtaining a successful result").

"The quality of representation is best measured by comparing the possible recovery to the amount actually received." 2 Joseph M. McLaughlin, McLaughlin on Class Actions § 6:24 (12th ed.) (database updated Dec. 2023). See also Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 55 (2d Cir. 2000) ("We agree with counsel that the quality of representation is best measured by results, and that such results may be calculated by comparing 'the extent of possible recovery with the amount of actual verdict or settlement.'"). An enhancement of the fee award is appropriate in cases of exceptional success. Blum v. Stenson, 465 U.S. 886, 901 (1984).

G. The reasonable expenses incurred by the attorney

The affidavit of Wesley W. Barnett submitted herewith explains that while the firm incurred expenses prosecuting the matter in addition to their time and efforts, and while those expenses were at risk given the fully contingent nature of the matter, Class counsel has decided to seek fees that are inclusive of expenses instead of in addition to them. (Exhibit A).

H. Whether the fee is fixed or contingent

In this case, class counsel prosecuted this action for over two and a half years on an "at-risk" contingent-fee basis, meaning that counsel would be paid only if they

achieved a successful result. Contingent risk is obviously an important factor in determining the fee award, and the recognition of that risk -- as well as the proper assessment of it -- is necessary to provide incentives to experienced counsel. See Carpenters Health & Welfare Fund v. Coca-Cola Co., 587 F. Supp. 2d 1266, 1271 (N.D. Ga. 2008) ("Class counsel undertook this complex litigation on a contingent basis and advanced considerable funds with scant assurance of recovery.") Likewise, in the present case, class counsel assumed the risk of an unsuccessful result.

Class counsel have not received a dime of fees or expense reimbursement from any class member for the duration of this entire case. Class counsel undertook this litigation on a fully contingent-fee basis, with every hope of recovering anything, including the money counsel spent on expenses, dependent upon a successful result. In view of the complexity involved in litigating this action, counsel faced a significant risk that they would never be paid for the thousands of hours of time expended or the millions of dollars of out-of-pocket expenses incurred. The risk of non-payment in complex cases such as this is very real. See Ressler v. Jacobson, 149 F.R.D. 651, 655 (M.D. Fla. 1992)

In determining the amount of the fee in a common-fund case, courts should focus on the amount of contingent risk involved and enhance the award accordingly. The district court in Pinto v. Princess Cruise Lines, Ltd. spoke at length on this subject, offering the following observations that are equally applicable here:

> A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high. Cases recognize that attorneys' risk is "'perhaps the foremost' factor" in determining an appropriate fee award. Goldberger v. Integrated Res., Inc., 209 F.3d 43, 54 (2d Cir. 2000) (citation omitted); accord Jones v. Diamond, 636 F.2d 1364, 1382 (5th Cir. 1981) ("Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result.")....
>
> Class Counsel have received no compensation during the course of this litigation and have also incurred significant expenses in litigating on behalf of the Class, none of which would have been recovered if the case had not been successfully concluded. From the time Class Counsel filed suit, there existed a real possibility that they would achieve no recovery for the Class and hence no compensation. Class Counsel's investment of time and expenses has always been at risk and wholly contingent on the result they achieved. Although Class Counsel have successfully concluded the litigation, this result was not foreseeable at the outset. The relevant risks must be evaluated from the standpoint of Plaintiffs' counsel as of the time they commenced the suit and not retroactively with the benefit of hindsight. The financial risks borne by Class Counsel fully support the appropriateness of the fee requested.

2007 WL 853431, *5. Accord Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1214-15, 1216-17 (S.D. Fla. 2006) ("A contingency fee arrangement often justifies an increase in the award of attorneys' fees.... As recognized in Behrens, without a contingent fee, 'very few lawyers could take on the representation of a class client given the investment of substantial time, effort and money, especially in light of the risks of recovering nothing.'") (quoting Behrens v. Wometco Enters, Inc., 118 F.R.D. 534, 548 (S.D. Fla. 1988).

Indeed, the fee jurisprudence has historically recognized that there is a cardinal difference between the economic value of services performed on a currently billed fee-for-service basis and compensation that is contingent on success. Lindy Bros. Builders, Inc. v. Am. Radiator, 487 F.2d 161, 168 (3d Cir. 1973) ("No one expects a lawyer … whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success"); Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711, 735-36 (1987) (Blackmun, J., dissenting on other grounds) ("[L]awyers charge a premium when their entire fee is contingent on winning .... The premium added for contingency compensates for the risk of nonpayment if the suit does not succeed and for the delay in payment until the end of the litigation-factors not faced by a lawyer paid promptly as litigation progresses"). As the authoritative report by the Third Circuit Task Force on the award of counsel fees stated:

> It does not impugn the service that the plaintiffs' class action bar provides to note that the driving force in most cases is the opportunity to share in the plaintiffs' risk and ultimately in any reward they may receive. Like most prudent individuals, plaintiffs' counsel would not seek involvement in most class action cases ... unless the financial reward justified the risk that counsel undertakes. Because they have abilities that could be put to other uses, plaintiffs' counsel must find something in a class action that signals that it is financially attractive to be class counsel.
>
> It is plaintiffs' counsel who pay the expenses of the lawsuit, and who expect that they will lose much if not all of their out-of-pocket expenses

> if they are not ultimately successful in having a court certify a class and achieving either a settlement or a litigation victory. It is plaintiffs' counsel who work to obtain whatever recovery any member of the class who has not opted out of the litigation will receive. The fact that there will be no payment if there is no settlement or trial victory means that there is greater risk for plaintiffs' counsel in these class action cases than in cases in which an hourly rate or flat fee is guaranteed. The quid pro quo for the risk ... is some kind of risk premium if the case is successful.

Third Circuit Task Force Report on Selection of Class Counsel, 208 F.R.D. 340, 342-43 (2002).

Consistent with economic theory, the law uniformly recognizes that "[r]isk ... must be judged as it appeared to counsel at the outset of the case, when they committed their capital (human and otherwise)." In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 488 (S.D. N.Y. 1998) (citing Harman v. Lyphomed, Inc., 945 F.2d 969, 976 (7th Cir. 1991)). Accord, e.g., In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F.Supp.2d 732, 747 (S.D. Tex. 2008) ("risk must be assessed ex ante, from the outset of the case, not in hindsight.") (citing In re Cardinal Health Inc. Sec. Litig., 528 F.Supp.2d 752, 758 (S.D. Ohio 2007); In re Diet Drugs Prods. Liab. Litig., 553 F.Supp.2d 442, 478 (E.D. Pa. 2008) (risk of non-payment must be evaluated as of "the inception of the action and not through the rosy lens of hindsight"); In re Superior Beverage/Glass Container Consolidated Pretrial, 133 F.R.D. 119, 127 (N.D. Ill. 1990) ("Risk must be assessed ex ante. Lawyers make decisions about whether to bring lawsuits on the basis of the risks

and rewards they perceive at the beginning and must be compensated on the basis of the risks as they appeared at the beginning, not as the court perceives them at the end of the litigation").

The risk inherent in contingent fee representation such as this supports the requested fee. See Goldberger v. Integrated Res., Inc., 209 F.3d 43, 54 (2d Cir. 2000) (risk is "perhaps the foremost factor" in determining the appropriate fee); Rader v. Thrasher, 57 Cal. 2d 244, 253 (1962) (because a contingent fee case "involves a gamble on the result, [it] may properly provide for a larger compensation than would otherwise be reasonable"); Salton Bay Marina, Inc. v. Imperial Irrigation Dist., 172 Cal. App. 3d 914, 955 (1985) ("riskiness ... or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award"). As the Court of Appeal explained in Cazares v. Saenz:

> In addition to compensation for the legal services rendered, there is the raison d'etre for the contingent fee: the contingency. The lawyer on a contingent fee contract receives nothing unless the plaintiff obtains a recovery. Thus, in theory, a contingent fee in a case with a 50 percent chance of success should be twice the amount of a noncontingent fee for the same case.

208 Cal. App. 3d 279, 288 (1989).

"Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." In re Metlife Demutualization Litig., 689 F. Supp. 2d 297, 361 (E.D.N.Y. 2010); see also In re Am. Bank Note Holographics, Inc., Sec. Litig., 127 F. Supp. 2d 418, 432-33 (S.D. N.Y. 2001)

(concluding it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award."). "The Court is well aware that there are numerous contingent cases such as this where plaintiff's counsel, after investing thousands of hours of time and effort, have received no compensation whatsoever. Numerous cases recognize that the attorney's contingent fee risk is an important factor in determining the fee award. In evaluating [the contingent fee] factor the Court will not ignore the pecuniary loss suffered by plaintiff's counsel in other actions where counsel received little or no fee." Ressler v. Jacobson, 149 F.R.D. 651, 656-57 (M.D. Fla. 1992).

The risk of no recovery in complex cases of this type is real. There have been numerous class actions in which lead counsel expended thousands of hours and yet received no remuneration despite their diligence and expertise. See, e.g., Steed Fin. LDC v. Nomura Sec. Int'l, Inc., 148 F. App'x. 66 (2d Cir. 2005) (affirming summary judgment and dismissal of all plaintiffs' claims, including 10(b) and 20(a) claims); AUSA Life Ins. Co. v. Ernst & Young, 39 F. App'x 667 (2d Cir. 2002) (affirming district court's dismissal after a full bench trial and earlier appeal and remand); Robbins v. Koger Props., Inc., 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); Anixter v. Home-Stake Prod. Co., 77 F.3d 1215 (10th Cir. 1996) (appellate court overturned securities fraud class action

jury verdict for plaintiffs in case filed in 1973 and tried in 1988, on the basis of 1994 Supreme Court opinion); Backman v. Polaroid Corp., 910 F.2d 10 (1st Cir. 1990) (class won a substantial jury verdict and a motion for judgment n.o.v. was denied, but on appeal the judgment was reversed and the case dismissed, after 11 years of litigation); Winkler v. NRD Mining, Ltd., 198 F.R.D. 355 (E.D. N.Y. 2000) (granting defendants' motion for judgment as a matter of law after jury verdict for plaintiffs), aff'd sub nom. Winkler v. Wigley, 242 F.3d 369 (2d Cir. 2000); In re Clarent Corp. Sec. Litig., No. 01-03361 (N.D. Cal. Feb. 16, 2005) (defense verdict for Ernst & Young after four week trial); In re Biogen Sec. Litig., No. 94-12177 (D. Mass. May 6, 1998) (jury verdict for defendants in securities class action); In re Health Mgmt., Inc. Sec. Litig., No. 96-889 (E.D. N.Y. Oct. 26, 1999) (jury verdict for auditor in securities class action case); In re Walt Disney Co. Derivative Litig., 907 A.2d 963 (Del. Ch. 2005) (defense verdict on all counts after nine years of litigation and a three month bench trial), aff'd, 906 A.2d 27 (Del. 2006). In undertaking this case, the research for which began in 2021, class counsel were aware of many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, or changes in the law during the pendency

of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel.[5]

Counsel's assumption of this contingency fee risk, and its extensive litigation in the face of these risks, strongly supports the reasonableness of the fee. See Hill v. State St. Corp., No. 09-12146-GAO, 2015 WL 127728, *18 (D. Mass. Jan. 8, 2015) (considering the contingency risk in awarding attorneys' fees where counsel "litigated the Action on a fully contingent basis and were exposed to the risk that they might obtain no compensation for their efforts on behalf of the class"); In re Marsh ERISA Litig., 265 F.R.D. 128, 148 (S.D. N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk."); In re OCA, Inc. Sec. & Derivative Litig., No. 05-2165, 2009 WL 512081 at *22 (E.D. La. March 2, 2009) (where counsel faced challenges in establishing scienter and loss causation and in proving liability and damages at trial, "the risk plaintiffs' counsel undertook in litigating this case on a contingency basis must be considered in its award of attorneys' fees, and thus an upward adjustment is warranted."); Maley v. Del Global Techs. Corp., 186 F. Supp. 2d 358, 372 (S.D. N.Y. 2002) ("Class counsel undertook

[5] See, e.g., Phillips v. LCI Int'l, Inc., 190 F.3d 609 (4th Cir. 1999); In re Comshare Inc. Sec. Litig., 183 F.3d 542 (6th Cir. 1999); Levitin v. PaineWebber, Inc., 159 F.3d 698 (2d Cir. 1998); Suna v. Bailey Corp., 107 F.3d 64 (1st Cir. 1997); Chill v. General Electric Corp., 101 F.3d 263 (2d Cir. 1996); In re Syntex Corp. Secs. Litig., 95 F.3d 922 (9th Cir. 1996); Gross v. Summa Four, 93 F.3d 987 (1st Cir. 1996); Glassman v. Computervision Corp., 90 F.3d 617 (1st Cir. 1996); In re StacElecs. Sec. Litig., 89 F.3d 1399 (9th Cir. 1996); Epstein v. Washington Energy Co., 83 F.3d 1136 (9th Cir. 1996); Lovelace v. Software Spectrum, 78 F.3d 1015 (5th Cir. 1996); and San Leandro Emergency Medical Group Profit Sharing Plan v. Philip Morris Cos., 75 F.3d 801 (2d Cir. 1996).

a substantial risk of absolute non-payment in prosecuting this action, for which they should be adequately compensated.").

An award of attorneys' fees "should be structured as an incentive for lawyers to risk achieving the highest possible benefits for the greatest number of Class Members." Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1189 (S.D. Fla. 2006). The fees allowed in a case must also serve the function of covering situations where "attorneys have received no fees and litigated at substantial risk to themselves and in the best interest of the Class." Id. "This is not a situation where a class action is brought, soon settled, and Class Members receive an insignificant award and the lawyers get millions." Allapattah, at 1189.

In addressing this factor of whether the fee is fixed or contingent, the District Court in Columbus Drywall stated:

> As already noted, class counsel prosecuted this case on an entirely contingent fee basis. In doing so, counsel assumed significant risk of investing tens of thousands of hours and millions of dollars in out-of-pocket expenses with no compensation. Even the "ordinary" antitrust class action (if there is such a thing) is always "uncertain in outcome." In re Motorsports, 112 F.Supp.2d at 1334. Particularly in the absence of any criminal indictments or pleas, this case has always involved a high degree of risk of nonpayment. This substantial contingency risk favors the requested fee. As another district court from this circuit observed:
>
> > A contingency fee arrangement often justifies an increase in the award of attorney's 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 Enters., 118 F.R.D. 534, 548 (S.D. Fla.1988), aff'd, 899 F.2d 21 (11th Cir. 1990).

No. 1:04-cv-3066, 2012 WL 12540344, *5 (N.D. Ga. Oct. 26, 2012) (Julie E. Carnes, J.).

I. The nature and length of the professional relationship

Regarding this factor, the Johnson decision noted that "[a] lawyer in private practice may vary his fee for similar work in the light of the professional relationship of the client with his office." 488 F.2d at 719. However, this case was not one where an attorney might tend to discount his or her fees in anticipation of obtaining repeat business with an established client. There does not seem to be any likelihood that the named plaintiffs or class members were in a position to promise future business to these attorneys that would somehow offset thousands of hours and substantial expenses that class counsel invested in this case. Thus, class counsels' compensation for these risks must come entirely from the settlement fund, rather than from future business from these clients. See Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1189 (S.D. Fla. 2006) ("[A] higher fee may be warranted in class actions where counsel for the class had no prior relationship with the named plaintiffs ... [and where] the risk of representation was not diminished by a long and beneficial previous relationship.").

J. The fee customarily charged in the locality for similar legal services

Class counsel D. Frank Davis was one of the lead attorneys in Tolbert et al v. Monsanto Corp. (N.D. Ala. No. 01-cv-1407). The case was one of the largest toxic tort settlements in United States history. In Tolbert, Judge U.W. Clemon based upon his own personal knowledge of the legal community in Alabama and what customary contingent fees are paid, and in relying on that, he approved an attorneys' fee of 40% of the global settlement. The Affidavit from Wesley W. Barnett further confirms that the customary fee for similar legal services in this area conforms to the amount sought by class counsel. (Exhibit A).

In Bates v. Stewart, the Alabama Supreme Court noted that "the trial court entered an order denying Avery's motion and finding that a 40% attorney fee in the Monsanto litigation was reasonable pursuant to the 12 criteria this Court enumerated in Pharmacia Corp. v. McGowan, 915 So. 2d 549, 552-53 (Ala. 2004) (quoting Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 749 (Ala.1988))." Bates v. Stewart, 99 So. 3d 837, 842 (Ala. 2012). As Judge Posner recognized in Matter of Cont'l Illinois Sec. Litig., 962 F.2d 566, 572 (7th Cir. 1992), courts should look to the marketplace to evaluate the reasonableness of a percentage fee:

> The judicial task might be simplified if the judge and the lawyers spent their efforts on finding out what the market in fact pays not for the individual hours but for the ensemble of services rendered in a case of this character. This was a contingent fee suit that yielded a recovery for the "clients" (the class members) of $45 million. The class counsel are entitled to the fee they would have received had they handled a similar

> suit on a contingent fee basis, with a similar outcome, for a paying client. Suppose a large investor had sued Continental for securities fraud and won $45 million. What would its lawyers have gotten pursuant to their contingent fee contract?

Accord In re Synthroid Mktg. Litig., 264 F.3d 712, 718 (7th Cir. 2001) (requiring that "common fund" percentage awards be determined by the market rate for contingency-fee agreements on a prospective basis at the outset of the case).

Other courts have reached similar conclusions about reliance upon the market price for legal services in these types of complex cases. For example, in Pinto v. Princess Cruise Lines, Ltd., 2007 WL 853431, *6 (S.D. Fla. Feb. 16, 2007), the district court adopted Judge Posner's reasoning and concluded that "[i]n private litigation, attorneys regularly contract for contingent fees between 30% and 40% directly with their clients.... These percentages are the prevailing market rates throughout the United States for contingent representation." See also Kirchoff v. Flynn, 786 F.2d 320, 323 (7th Cir. 1986) (40% contractual award if case went to trial). The evidence in this case establishes that, in Alabama, and in the USA, the market price for services in this type of case for a single client would range between 33% - 50%.

Class litigation against powerful foes presented enormous risks for class counsel. As the district court in Allapattah explained:

> This was an "all or nothing" case for the Plaintiffs. Class Counsel, having worked on this case since 1992, faced a potential catastrophic risk in the event the case was lost at trial or, thereafter, at each level of

> review. Given the length of this case, and the significant risks inherent in the litigation, I conclude that the most appropriate way to establish a bench mark is by reference to the market rate for a contingent fee in private commercial cases tried to judgment and reviewed on appeal.

Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1203 (S.D. Fla. 2006). Once again, the typical Alabama lawyer agreeing to accept and litigate – on a purely contingent basis – an untested claim like this case would surely have charged a fee percentage of at least 40%. This fact weighs heavily in favor of approving the fee request by Class Counsel.

In setting the percentage, "the most appropriate way is to establish a bench mark is by reference to the market rate for a contingent fee in private commercial cases tried to judgment and reviewed on appeal." Allapattah Services, Inc. v. Exxon Corp., 454 F.Supp.2d 1185, 1203 (S.D. Fla. July 6, 2006) (citing Camden I Condo. Assn., Inc. v. Dunkle, 946 F.2d 768, 772 n. 5 (11th Cir. 1991) and In re Synthroid Market'g Litig., 264 F.3d 712, 718 (7th Cir. 2001)). See also City of Ozark v. Trawick, 604 So. 2d 360, 364-365 (Ala. 1992) (awarding one-third of the common fund in a taxpayer class action); State v. Brown, 577 So. 2d 1256, 1260 (Ala. 1991) (noting an award of one-third "would be appropriate had a common fund been established"). In Waters v. Cook's Pest Control, Inc., Judge Coogler of the Northern District of Alabama stated that "[t]he rates charged by Class Counsel are well within the customary fees charged for comparable service. Wiggins Childs Quinn & Pantazis, LLC, customarily enters into contingent fee agreements allowing for

recovery of 33% in low risk cases with uncontested or moderately contested liability, and up to 49% in higher risk cases with difficult liability issues." No. 2:07-CV-00394-LSC, 2012 WL 2923542, *17 (N.D. Ala. July 17, 2012) The U. S. Supreme Court has recognized that an appropriate fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. Missouri v. Jenkins, 491 U.S. 274, 285 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 40% of the recovery, a higher percentage than class counsel seeks here.

Courts from other jurisdictions have commonly awarded fees of 35% or higher. For example, a 36% fee was approved in In re U.S. Bancorp Litig., a case where the court held that class counsel "obtained significant monetary relief on behalf of the class." 291 F.3d 1035, 1038 (8th Cir. 2002). The class action was filed because the defendant bank supplied confidential customer account information to unaffiliated third parties for marketing purposes. The Eighth Circuit relied heavily upon Judge Dubina's opinion in Mashburn v. National Healthcare, Inc., 684 F. Supp. 679 (M.D. Ala. 1988), in approving the 36% fee award. Accord In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, 410 F. Supp. 680 (D. Minn. 1975) (class counsel awarded 37% of a $45 million common fund). In a case in the Eastern District of New York, class counsel cited thirty-seven cases nationwide in which attorneys' fees equaled or exceed 33 percent of the common fund. In re Crazy

Eddie Sec. Litig., 824 F. Supp. 320 (E.D. N.Y. 1993). The court then concluded that, in light of the contingent nature of the case and the tenacity of the class counsel, the requested fee of $14.2 million, representing 33.8% of the proposed settlement fund of $42 million, was reasonable. Here, with the same contingent nature and ongoing tenacity of class counsel, a 30% fee is more than reasonable. See also Adair v. Bristol Tech. Sys., Inc., 1999 WL 1037878, at *3 (S.D. N.Y. Nov. 16, 1999) (awarding a one-third fee and noting that the district had previously awarded fees exceeding 33% "on numerous occasions"); Greene v. Emersons Ltd., 1987 WL 11558 (S.D. N.Y. May 20, 1987) (awarding fees and expenses representing 46.2% of the common fund.)

In Pinto v. Princess Cruise Lines, Ltd., the Southern District of Florida stated:

> In private litigation, attorneys regularly contract for contingent fees between 30% and 40% directly with their clients. (See Engel Aff. [D.E. 937] ¶ 19). Phemister v. Harcourt Brace Jovanovich, Inc., 1984 WL 21981 (N.D. Ill. 1984) ("Contingent fee arrangements in non-class action damage lawsuits are the simple method of paying the attorney a percentage of what is recovered for the client. The more the recovery, the more the fee. The percentages agreed on vary, with one-third being particularly common."); Kirchoff v. Flynn, 786 F.2d 320, 323 (7th Cir. 1986) (observing that "40% is the customary fee in tort litigation" and noting, with approval, contract providing for one-third contingent fee if litigation settled prior to trial). These percentages are the prevailing market rates throughout the United States for contingent representation.

This is repeated, with approval, in a matter in which class counsel D. Frank Davis was lead counsel in Faught v. Am. Home Shield Corp., No. 2:07- CV-1928-RDP,

2010 WL 10959222 at *2 (N.D. Ala. April 27, 2010) (Proctor, J.); see also Ford v. Sprint Commc'ns Co. L.P., No. 3:12-CV-00270-SLC, 2012 WL 6562615 at *3 (W.D. Wis. Dec. 14, 2012); Francisco v. Numismatic Guar. Corp. of Am., No. 06-61677-CIV, 2008 WL 649124 at *14 (S.D. Fla. Jan. 31, 2008).

As stated above, this settlement, including the amount of the requested fee are on par with, if not less than, similar settlements in other jurisdictions. Sornberger v. Sciplay, No. CV-2025-900003.00 (Cir. Ct. Franklin Co., Alabama Nov. 26, 2025); Reed v. Scientific Games, No. 2:18-cv-00565-RSL (W.D. Wash. 2022) (Doc. 164-1, Class Action Settlement Agreement); Benson v. DoubleDown Interactive, LLC, 2023 WL 3761929 (W.D. Wash. 2023); Wilson v. Playtika, Ltd., 2021 WL 512230 (W.D. Wash. 2021); Kater v. Churchill Downs, Inc., 2021 WL 511203 (W.D. Wash. 2021); Fernando v. Zynga, Inc., 2022 WL 17741841 (W.D. Wash. 2022); Wilson v. Huuuge, Inc., 2021 WL 512229 (W.D. Wash. 2021); Kingston vs. SpinX Games Ltd., Case No. 24-CI-00062, in the Kentucky Circuit Court for Henderson County; Armstead v. VGW Malta Ltd, Case No. 2022-CI-00553, in the Kentucky Circuit Court for Henderson County Circuit Court; Wyland v. Woopla Inc., Case No. 2023-CI-00356, in the Kentucky Circuit Court for Henderson County.

K. The likelihood that a particular employment may preclude other employment

Class Counsel consists of two firms that practice in various legal areas. Every hour spent on this case could have been spent on hourly work or on other contingency-fee cases that most likely would have successfully terminated in a two-to-four-year range. This suit severely limited counsel's ability over years to take on other representation. The statement of the Peebles Factor 11, "the likelihood that a particular employment may preclude other employment," is an understatement in this case. As Judge Carnes discussed the preclusion of other employment in Columbus Drywall:

> Johnson held that a fee award should be higher if the attorney was precluded from accepting other employment because of the case at issue. Johnson, 488 F.2d at 718. Further, "[p]riority work that delays the lawyer's other legal work is entitled to some premium." Id. ***This case has required eight years of work, punctuated by extended periods requiring the undivided attention of multiple lawyer and staff members***, including the period from late 2011 (when the Court set the July trial date) through mid-September 2012, when the parties executed comprehensive settlement papers. Class counsel have devoted tens of thousands of hours to this case that could have been used in the pursuit of other matters that would have paid a guaranteed return by the hour. This factor tends to favor the requested award.

2012 WL 12540344 at *4 (N.D. Ga. Oct. 26, 2012) (Julie E. Carnes, J.) (emphasis added):

L. The time limitations imposed by the client or by the circumstances

See subsection K, just above.

V. THE CIRCUMSTANCES OF THIS CASE FULLY SUPPORT THE FEE REQUEST

To sum up on the Peebles factors, every factor weighs very heavily on the side of class counsel in this case being deserving of the highest possible attorneys' fees award. Everyone who has ever touched this case concedes that it is literally unique. Every legal issue was an issue of first impression. There was never any guarantee of a successful conclusion to this unique litigation. If the maximum attorneys' fees award that could ever properly be awarded in a common-fund class action is 50%, then the amount sought here is extremely conservative, because this class action has required as much effort, skill, and novel legal thinking as any that has existed.

VI. SIX INCENTIVE AWARDS ARE REQUESTED

The Plaintiffs, the Plaintiff Class, and Class Counsel request the awarding of service awards (also commonly known as incentive awards) for each of six plaintiffs who brought these cases in Alabama, Tennessee, Kentucky, Ohio, New Jersey and Massachusetts. Haley White, Donavan Roberts, Hope Murnaghan, Prince AllahBeautiful, Christopher Ebersole, and Luke Whitney each request $10,000 in incentive awards.

While the Eleventh Circuit has rejected such incentive awards, commentators have noted that it remains the only court in the country to have made this decision.

11th Circuit Stands Alone in Barring All Class Incentive Awards, David A. Karp, July 12, 2023, available at https://www.carltonfields.com/insights/blogs/classified-the-class-action-blog/migrated/11th-circuit-stands-alone-in-barring-all-class-incentive-awards; see also Johnson v. NPAS Solutions, LLC, 975 F. 3d 1244, 1257-58 (11th Cir. 2020). Not only has no other circuit followed it, but NPAS Solutions has also been explicitly rejected by the Second and Seventh Circuits, which stated that the case "extended … late nineteenth-century cases to reach the surprising conclusion that incentive awards are per se unlawful." Moses v. New York Times Co., 79 F.4th 235, 254-55 (2d Cir. 2023); Scott v. Dart, 99 F.4th 1076, 1085 (7th Cir. 2024). The Scott court went on to cite numerous cases that granted incentive awards and to hold that their reasoning for doing so was correct:

> The opinions in these cases demonstrate that this consensus was not a "product of inertia and inattention." [NPAS Solutions], 975 F.3d at 1259. It instead reflects a significant historical development. As the Second Circuit recently explained, "Greenough and Pettus have been superseded, not merely by practice and usage, but by Rule 23, which creates a much broader and more muscular class action device than the common law predecessor that spawned nineteenth-century precedents." Moses v. New York Times Company, 79 F.4th 235, 254–55 (2d Cir. 2023); see also Johnson v. NPAS Solutions, LLC, 43 F.4th 1138, 1144–50 (11th Cir. 2022) (mem.) (Jill Pryor, J., dissenting from denial of rehearing en banc) (explaining that the panel decision in Johnson "fail[ed] to account for the historical development of incentive awards").

Scott, 99 F. 4th at 1085.

The Alabama Supreme Court has not cited NPAS Solutions or addressed the continued validity of incentive awards, which have long been commonplace in class actions throughout the country. See, e.g., Parsons v. Brighthouse Networks, LLC, 2015 WL 13629647 at *16 (N.D. Ala. Feb. 5, 2015) (approving $5,000 incentive award for class representative); Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming class representative's $25,000 incentive award); Allapattah Servs., Inc. v. Exxon Corp., 454 F.Supp. 2d 1185, 1218-19 (S.D. Fla. 2006) (incentive awards are not uncommon in class action litigation where, as here, a common fund has been created for the benefit of the class."); Martin v. Dun & Bradstreet, Inc., 2014 WL 9913504 at *3 (N.D. Ill. Jan. 16, 2014) (awarding incentive award of $20,000 in class action). As the reaction of other courts noted above makes clear, NPAS Solutions remains an extreme outlier, and there is no reason to believe that its bar on incentive awards will be adopted by Alabama state courts. In reality, though the Alabama Supreme Court has not addressed the continued validity of such awards, Alabama courts have granted incentive awards post NPAS Solutions. For example, in Sides v. The Sheffield Group, Inc., a recent class action in the Circuit Court of Jefferson County, Alabama, the court granted incentive awards to five class representatives. Case No. 01-CV-2024-900745.00, Doc. 79 (Ala. Cir. Ct. Jan. 22, 2025).

It is therefore likely that Alabama state courts will continue to follow the practice that existed throughout the country before NPAS Solutions and has continued in every court outside the Eleventh Circuit since. Courts 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." In re Southern Ohio Correctional Facility, 175 F.R.D. 270, 276, 279 (S.D. Ohio 1997). "Incentive payments to named class representatives are fairly customary." Faught v. Am. Home Shield Corp., No. 2:07-CV-1928-RDP, 2010 WL 10959222, *6 (N.D. Ala. April 27, 2010) (Proctor, J.). As a leading treatise stated:

> At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class. Most courts call that payment an "incentive award," though some courts label it a "service award" or "case contribution award." The names capture the sense that the payments aim to compensate class representatives for their service to the class and simultaneously serve to incentivize them to perform this function.

5 William B. Rubenstein, Newberg on Class Actions § 17:3, p. 497 (5th ed. 2016). The treatise goes on, stating that service awards:

> work [1] to compensate class representatives for work done on behalf of the class, [2] to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, [3] to recognize their willingness to act as a private attorney general. Many courts have also noted a fourth rationale for incentive payments: that such payments do precisely what their name hopes they will — incentivize class members to step forward on behalf of the class. Courts regularly reference these four rationales behind incentive awards.

> Most courts state that an incentive award to the class representatives is meant to compensate those entities for the service that they provided to the class. Generally, these services are the time and effort the class representatives invest in the case. Class representatives perform certain functions that arise in most cases, such as monitoring class counsel, being deposed by opposing counsel, keeping informed of the progress of the litigation, and serving as a client for purposes of approving any proposed settlement with the defendant.

Id. at 499.

It is not only true that "[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." Allapattah Servs., Inc. v. Exxon Corp., 454 F.Supp.2d 1185, 1218 (S.D. Fla. 2006) (quoting Ingram v. Coca–Cola Co., 200 F.R.D. 685, 694 (N.D. Ga. 2001)). It is also true that many courts have approved much larger incentive payments than plaintiffs are requesting here. In Allapattah, for example, the court granted service awards of over $1.7 million dollars each to the nine named plaintiffs. 454 F.Supp. 2d at 1218. In Ingram, the Court used 2.2% of the common fund to award incentives of about $300,000 each to four class representatives in an employment discrimination class action that settled within 14 months of its inception. 200 F.R.D. at 694.

Scholarly treatises on class actions also explain why courts choose to give incentive awards:

> Courts often premise incentive awards on the risks that the class representatives undertook in stepping forward to represent the class. These risks are at least two-fold: in some circumstances, the class

> representative could be liable for the costs of the suit, while in other circumstances, a class representative might face retaliation. Where the risks are specific and substantial, courts may increase the incentive award accordingly

5 William B. Rubenstein, Newberg on Class Actions § 17:13 (5th ed. 2016) at pp. 504-05. In determining the appropriateness and amount of incentive awards, courts often use very similar considerations, though one finds various formulations in different courts. A five-factor test from California is widely used, focusing on:

> 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation

Here, the class representatives often have very little financial stake in their own claims. They have gone out of their way to put their names, as well as their time and effort, into this case because they desired to help not only themselves but other people who had lost money to what plaintiffs believe were illegal gambling games.

In addition, all class representatives expose themselves to potential assessments of court costs to be taxed against them if the plaintiff class does not ultimately prevail. In Lankhorst v. Independent Savings Plan Co., the court certified a class action but then taxed thousands of dollars in court costs against the two class representatives when it granted summary judgment in favor of the defendant. 2015 WL 5724369 at *10 (M.D. Fla. Sept. 28, 2015) (explaining that a class representative

can agree that the costs of prosecuting the action (the plaintiff attorneys' expenses) will not be recoverable if the plaintiff does not recover, or will be spread among all class members if the plaintiffs do recover, but that the class representative cannot shirk his duty to be responsible for the prevailing defendant's court costs.) The Lankhorst court agreed with a California court that:

> it would be entirely appropriate to place the entire cost burden on the named representative plaintiff(s) who has (have) chosen to instigate the action rather than on the absent class members.... While imposition of the entire cost burden on the named plaintiffs may have a chilling effect on the willingness of plaintiffs to bring class action suits, this effect easily may be outweighed by the potential recovery. All potential litigants [i.e., the representative plaintiffs] must weigh costs of suit against likelihood of success and possible recovery before deciding to file suit. Those who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful not those who did not make the choice.

Earley v. Superior Court of Los Angeles County, 95 Cal.Rptr.2d 57, 66 (Cal. Ct. App. 2000).

Other courts have found that exposure to such costs is one reason to grant incentive awards. Sykes v. Harris, No. 09 CIV. 8486 (DC), 2016 WL 3030156, *18 (S.D. N.Y. May 24, 2016) (awarding four plaintiffs $30,000 each, finding that, "[l]ead Plaintiffs exposed themselves to liability for costs."); see also Wren v. RGIS Inventory Specialists, No. C-06-05778 JCS, 2011 WL 1230826 at *36 (N.D. Cal. Apr. 1, 2011) ("Finally, Plaintiffs contend that they faced the possibility that, if RGIS prevailed in this case, they would be liable for some portion of its litigation

costs under both Federal Rule of Civil Procedure 54(c) and California Labor Code § 218. The Court has considered Plaintiffs' arguments and finds that Plaintiffs have demonstrated that they faced potential risks as a result of pursuing this lawsuit against their employer. Thus, this factor also supports an incentive award.").

Court costs in Alabama include such items as witness fees, costs of any deposition introduced into evidence, travel expenses, and copying costs. Ala. R. Civ. P. 54. "Costs for both depositions used at trial and for those not used at trial are taxable and recoverable." 2 Ally Windsor Howell, Alabama Personal Injury and Torts § 14:31 (2014 ed.) (database updated Dec. 2015); Ennis v. Kittle, 770 So. 2d 1090, 1092 (Ala. Civ. App. 1999), cert. denied (Ala. 2000) (same). Thus, the huge financial risk, alone, is sufficient reason for a $10,000 service or incentive award to each class representative.

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 William B. Rubenstein, Newberg on Class Actions § 17:1 (6th ed. 2024); See also Smith v. Tower Loan of Mississippi, Inc., 216 F.R.D. 338, 367-68 (S.D. Miss. 2003) (approving special payments totaling $45,500 to Class Members other than the Class Representatives of the present action, given that those other plaintiffs "contributed to the settlement."). "When class actions suits generate a substantial amount of press, the named plaintiffs and their families may be subjected to criticism and ridicule

from their neighbors and from the media. Such negative publicity risks temporary or permanent damage to the class representative's reputation and livelihood. If incentive awards are not offered, individuals may not be willing to bring class action suits in the first place." Elisabeth M. Sperle, Here Today, Possibly Gone Tomorrow: An Examination of Incentive Awards and Conflicts of Interest in Class Action Litigation, 23 Geo. J. Legal Ethics 873, 881 (2010). In Waters v. Cook's Pest Control, Inc., No. 2:07-CV-00394-LSC, 2012 WL 2923542, *15 (N.D. Ala. July 17, 2012), Judge Coogler made a service award to a plaintiff who said: "I have taken time away from both work and personal obligations, held myself up to public scrutiny and ridicule and forever associated my name and reputation with a cause I believed, but which has exposed me to potential risks and scorn in some quarters of the community."

It is a fundamental fact that "without a named plaintiff there can be no class action." In the Matter of Cont'l Illinois Sec. Litig., 962 F.2d 566, 571 (7th Cir. 1992). In determining whether to approve an incentive award, federal courts give great weight to the level of risk that the class representative may have incurred through its efforts on behalf of the class members. Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1220-21 (S.D. Fla. 2006). In particular, courts have taken note of the risks that are incurred by a class representative in an action against a large corporation, observing that incentive awards are "particularly appropriate ... where

taking a high-profile role threatened to jeopardize class representatives' relationships with their suppliers." In re Linerboard Antitrust Litigation, 2004 WL 1221350, *18 (E.D. Pa. June 2, 2004).

"[W]here lawyers are rewarded for their risk and efforts on behalf of the class, but class representatives are not, there is little incentive for class representatives to serve as active client participants in the litigation, thus negating the 'adequate representation' safeguard of Rule 23 and transferring all decision-making responsibility to class counsel." Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1221-22 (S.D. Fla. 2006). Accordingly, federal courts have recognized that an incentive award can be appropriate to encourage or induce an individual to participate in the suit. Matter of Cont'l Illinois Sec. Litig., 962 F.2d 566, 571 (7th Cir. 1992). "[A] meaningful incentive is necessary to induce a company to put the target on its back for the greater good of the class." Ingram v. Coca-Cola Co., 200 F.R.D. 685, 694 (N.D. Ga. 2001).

An empirical study was published several years ago at Theodore Eisenberg and Geoffrey P. Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study, 53 UCLA L. Rev. 1303 (2006). "[T]he average total award was $128,803." Id. at 1308. The total requested here is $105,000, but this case lasted much longer than normal, was more complex than average, and required a high level of risk taking (e.g., the potential liability for costs). Incentive awards averaged "0.16 percent of

the class recovery." Id. This request is an estimated .001 percent of the approximately $10 million settlement value. For all of the same reasons argued above about the attorneys' fee, the service awards likewise ought to be on the high end of the range of what courts have deemed to be reasonable. And, there surely can be no question but that service awards are deserved in this case. "Service awards are common in class-action cases because they are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiff." Marroquin Alas v. Champlain Valley Specialty of New York, Inc., 2016 WL 3406111, *5 (N.D. N.Y. June 17, 2016).

There is a long history of federal court cases which authorize incentive awards for representative plaintiffs in class actions. See, e.g., Denney v. Jenkens & Gilchrist, 230 F.R.D. 317, 355 (S.D. N.Y. 2005); Karic v. Major Auto. Companies, Inc., No. 09 CV 5708 (CLP), 2016 WL 1745037, at *7-8 (E.D. N.Y. April 27, 2016) ($20,000 each to of 7 plaintiffs); Been v. O.K. Indus., Inc., No. CIV-02-285-RAW, 2011 WL 4478766, *12-13 (E.D. Okla. Aug. 16, 2011 ($100,000 each to of 5 plaintiffs); Mentor v. Imperial Parking Sys., Inc., No. 05 CV 7993, 2010 WL 5129068, *1–2 (S.D. N.Y. Dec. 15, 2010) (granting $40,000 and $15,000 service awards); McCoy v. Health Net, Inc., 569 F.Supp.2d 448, 480 (D. N.J. 2008) (awarding $60,000 to each class representative); Bradburn Parent Teacher Store v. 3M (Minnesota Mining

and Manufacturing Company), 513 F.Supp.2d 322, 342 (E.D. Pa. 2007) ($75,000); In re Elec. Carbon Products Antitrust Litigation, 447 F.Supp.2d 389 (D. N.J. 2006) ($300,000 total; $50,000 to each of 6 plaintiffs); Bynum v. Dist. of Columbia, 412 F.Supp.2d 73, 81 (D. D.C. 2006) (awarding $200,000 incentive fee to named plaintiffs for their contribution to the class); In re Remeron End-Payor Antitrust Litig., No. 02-2007 (FSH), 2005 U.S. Dist. LEXIS 27011, at **93-95 (D. N.J. Sept. 13, 2005) (approving awards of $30,000 to both of the named plaintiffs); In re Linerboard Antitrust Litigation, 2004 WL 1221350, *19 (E.D. Pa. June 2, 2004) (approving incentive awards of $25,000 to each of five named plaintiffs); In re Graphite Electrodes Antitrust Litigation, MDL No. 1244 (E.D. Pa. Order of September 8, 2003) ($80,000); In re Busiprone Antitrust Litigation, MDL No. 1413 (S.D. N.Y. Order of April 7, 2003) ($25,000); In re Cendant Corp. Derivative Litig., 232 F. Supp. 2d 327, 344 (D. N.J. 2002) (approving award of $25,000 to the lead plaintiff); In re Cardizem CD Antitrust Litigation, MDL No. 1278 (S.D. Mich., Order of Nov. 26, 2002) ($20,000); Brotherton v. Cleavland, 141 F.Supp.2d 907 (S.D. Ohio 2001) ($50,000); In re Revco Securities Litigation, Nos. 851 & 89 CV 593, 1992 WL 118800 (N.D. Ohio May 6, 1992) ($90,000); In re Dun & Bradstreet Credit Servs. Customer Litig., 130 F.R.D. 366, 374 (S.D. Ohio 1990) (awarding two class representatives $55,000 each and three class representatives $35,000 each); and, In First Jersey Securities, Inc., MDL No. 681 (E.D. Pa. 1989) ($24,000).

The Court is urged to follow these many examples, as well as examples that continue to occur in Alabama and approve the request for a service award of $10,000 each for each of the plaintiffs. At the time of filing this petition, no one has objected to the request for service awards.

VII. CONCLUSION

For the reasons stated above, the Plaintiffs, the Plaintiff Class, and Class Counsel seek an order that grants the relief sought herein: (1) contingency-fee attorneys' fee award to class counsel in the amount of 33 1/3% of the Total Settlement Amount as calculated by the Settlement Administrator (the amount is estimated to be $3,339,922.86 inclusive of expenses) subject to the percentage cap as defined in the settlement agreement and also calculated by the Settlement Administrator; and (2) incentive awards in the amount of $10,000 to each class representative, Haley White, Donavan Roberts, Hope Murnaghan, Prince AllahBeautiful, Christopher Ebersole, and Luke Whitney.

Respectfully submitted this 7th day of October, 2026,

/s/Wesley W. Barnett
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CERTIFICATE OF SERVICE

I hereby certify that I have on this day electronically filed the foregoing document with the Clerk of the Court using the AlaFile Electronic Filing System which will affect service of this filing on all counsel of record on the foregoing date of filing.

/s/ Jeffrey L. Bowling
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33-CV-2025-900186.00
CIRCUIT COURT OF
FRANKLIN COUNTY, ALABAMA
DERRICK SCOTT, CLERK

IN THE CIRCUIT COURT OF FRANKLIN COUNTY, ALABAMA

Haley White, Donavan Roberts, Hope Murnaghan, Prince AllahBeautiful, Christopher Ebersole, and Luke Whitney, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No. 33-CV-2025-900186.00**
v.	)	
Playstudios US, LLC,	)	
Defendants.	)	

AFFIDAVIT OF WESLEY W. BARNETT

1. My name is Wesley W. Barnett. I am over the age of nineteen and competent to state the testimony below.

2. I am a partner with Davis & Norris, LLP. I have approximately twenty two years of experience practicing law. I have personally handled a wide range of large and complex cases including environmental, personal injury, consumer protection, mass actions, mass arbitrations, and class actions.

3. Attached hereto as Exhibit 1 is a firm resume for Davis & Norris, LLP outlining the qualifications and experience of the firm and attorneys. The firm resume is an accurate depiction of relevant experiences.

4. As set forth in the firm resume attached hereto, D. Frank Davis and Wesley W. Barnett have been involved in large and complex matters in the past including the Tolbert et al. v. Monsanto Corp. (N.D. Ala. No. 01-cv-1407) in which Mr. Davis was one of the lead counsel. In that matter, the presiding judge, U.W. Clemon, awarded a 40% fee noting that it was the customary fee in the area for similar matters.

5. Another noteworthy case on the attached firm resume is Faught v. Am. Home Shield Corp., No. 2:07- CV-1928-RDP, 2010 WL 10959222 at *2 (N.D. Ala. April 27, 2010) (Proctor, J.). Wesley W. Barnett and D. Frank Davis were involved in that case as well with Mr. Davis being lead counsel. Judge Proctor in the Faught case approved an award of fees for class counsel and that award was upheld on appeal.

6. Additionally, in a substantially similar case to the present matter, Mr. Wesley W. Barnett and D. Frank Davis were appointed as class counsel in a class action settlement involving six states and hundreds of thousands of class members. Sornberger v. Sciplay, No. CV-2025-900003.00 (Cir. Ct. Franklin Co., Alabama Nov. 26, 2025).

7. Based on the undersigned experience in practicing law in this area, the fee request in this case is in line with the typical contingency fees that are generally charged in cases in this area for similar work.

8. During the litigation involving Playstudios, Davis & Norris, LLP has incurred significant expenses that were at risk given the contingent nature of the representation. Expenses included multiple filing fees and arbitrations, expert expenses, travel expenses for meetings with clients, and typical overhead type expenses such as research, staff, and utilities. Davis & Norris, LLP has decided to waive the expenses incurred, and will only be paid its sought attorneys' fees as approved by the Court.

9. Class Counsel Jeffrey L. Bowling is a seasoned attorney with over three decades of legal experience, serving clients in Russellville and the broader Franklin County area. Mr. Bowling has been class counsel in several prior cases including Neal Hargett v. Quaker State Corp., et al., CV-1996-000159 (Cir. Ct. Franklin Co.); Steven Hammack, et al. v. Quaker State Corp., et al.,

CV-1996-000227 (Cir. Ct. Franklin Co.); and James Taff v. Caremark RX Inc., et al., CV-2000-000072 (Cir. Ct. Franklin Co.).

10/6/26
Date

Affiant

STATE OF ALABAMA)
COUNTY OF Jefferson)

Before me Janet Denise Haynes a Notary Public in and for said county in said State, personally appeared Affiant, who being first duly sworn, makes oath that they have read the foregoing Affidavit and knows the contents thereof, and that the facts alleged therein are true and correct.

Subscribed and sworn to before me this 6th day of October, 2026.

Notary Public
(SEAL)

JANET DENISE HAYNES
Notary Public, Alabama State at Large
My Commission Expires April 5, 2028

Davis & Norris, LLP was formed in 2003 when its two founding partners, D. Frank Davis and John E. Norris, left their long-time employment with a large defense law firm setting out to even the playing field for the average American. Wesley W. Barnett who joined the firm in 2008 became a partner in 2020. Dargan M. Ware, a senior associate with the firm joined in 2014. Davis & Norris, LLP has helped tens of thousands seek justice in a variety of complex legal matters.

Founding partner, D. Frank Davis, has been practicing for over forty years. During that time, he has devoted a substantial portion of his practice to class action and mass tort litigation. He has represented both plaintiffs and defendants in countless class actions. He has both settled and tried class actions. Mr. Davis is a member of the Alabama and Tennessee bars and is currently admitted to practice in the United States Supreme Court, the Fifth and Eleventh Circuit Courts of Appeals, and each federal district court in Alabama. He has been admitted, at one time or another, on a pro hac vice basis, in federal and state courts in most of the states in the Country.

Prior to forming Davis & Norris, LLP, Mr. Davis participated in numerous class action and mass tort cases where he was either lead counsel or co-lead counsel including:

a) Williams v. America Online, Inc.: Lead counsel for the defendant in a national consumer class action over purported false statements about a service.
b) Leonard v. National Rent-A-Car: Lead counsel for the defendant in a national consumer class action involving purported false statements about a service.
c) Hammack v. Quaker State Corporation: Lead counsel for the plaintiffs in a case of purported false statements about a product. The case of consumers was certified as a national class action and concluded with a multi-million dollar settlement.
d) Singleton v. Splitfire, Inc.: Lead counsel for the Plaintiffs. The case involved purported false statements about a product. It was certified as a national consumer class action and concluded with a multi-million dollar settlement.
e) Wilson v. Dahberg: Lead counsel for the Plaintiffs. The case concerned alleged false statements about a product. It was certified as a national consumer class action and concluded with a multi-million dollar settlement.
f) Dyer v. Monsanto, et al.: Lead counsel for plaintiff property owners in a class action for damages arising from the pollution of a lake by PCBs. The case settled for $43 million.
g) Tolbert v. Monsanto, et al.: Co-lead counsel for approximately 18,000 plaintiffs for damages to persons and property from PCBs manufactured by Defendant. The case combined cases settled for more than $600 million.
h) Aaron v. Chicago Housing Authority, et al.: Mr. Norris and Mr. Davis handled this plaintiff class action until they left their prior firm in January of 2003. The case settled shortly thereafter for a multi-million dollar number.

In addition to these actions Mr. Davis has been counsel in dozens and dozens of other class actions. Some of them were of historic importance such as Swint v. Pullman Standard, and Hayes v. Republic Steel.

Founding partner, John E. Norris, has been practicing law for over 29 years. He has devoted a substantial portion of his practice to class actions. Mr. Norris has represented parties in a significant number of class action cases resulting in important decisions on class action law, including Pettway v. American Cast Iron Pipe Co., Cox v. USX, and Beavers v. American Cast Iron Pipe Co. Mr. Norris is a member of the bars of the State of Alabama, the State of Tennessee, the United States Supreme Court, the Nineth Circuit Court of Appeals, the Eleventh Circuit Court of Appeals, and all of the United States District Courts in Alabama. Mr. Norris has additionally been admitted on a pro hac vice basis in numerous state and federal courts throughout the Country. Johnny Norris is a veteran trial and appellate lawyer and a founding partner of Davis & Norris. He was one of the co-lead counsel in Tolbert v Monsanto, an environmental case involving thousands of personal injury and property damage claims. The 2004 settlement in that case was the largest toxic tort settlement in history. Mr. Norris has handled numerous class and other complex cases throughout the country. His experience as a partner in a large regional defense law firm gives him valuable insight into the perspective of large companies.

An Alabama native, Mr. Norris graduated magna cum laude from Birmingham-Southern College in 1988, where he was a member of Phi Beta Kappa. He was on the Managing Board of the Alabama Law Review at the University of Alabama School of Law, from which he graduated in 1991. Before practicing law he clerked for the late Judge William M. Acker, Jr. of the United States District Court for the Northern District of Alabama.

Wesley W. Barnett is a partner in the firm. Mr. Barnett joined the firm in 2008 from a firm that handled numerous complex legal matters such as mass torts, toxic torts, products liability, and Multi-District Litigation throughout the Country. At his former firm, Mr. Barnett worked on the In re: Ephedra Products Liability Litigation, MDL-2071 in the Southern District of New York. Mr. Barnett also worked on large toxic tort matters such as the infamous PCB litigation in Anniston, Alabama in Tolbert v. Monsanto, and chemical spill litigation against Chevron in Lake Charles, Louisiana. Mr. Barnett has handled all aspects of complex litigation from inception through trial, and even appeal in his 21 years of practice. While with Davis & Norris, LLP, Mr. Barnett was principally responsible for the firm's involvement as non-settling plaintiff's counsel in the confirmatory discovery for In re: In re: Hyundai and Kia Fuel Economy Litigation, MDL-2424. Mr. Barnett has participated in the trial of multiple-million-dollar federal jury cases to more than two hundred individual consumer arbitration cases, and everything in between. Mr. Barnett is licensed in or has practiced in Alabama, all federal courts within Alabama, Washington DC, Eleventh Circuit Court of Appeals, Fifth Circuit Court of Appeals, Eighth Circuit Court of Appeals, Ninth Circuit Court of Appeals, Sixth Circuit Court of Appeals, Connecticut District Court, District Court for the Northern District of New York, and numerous other courts on a pro hac vice basis. Mr. Barnett is also in the process of being admitted to practice in Tennessee. Mr. Barnett is recognized as a Top 100 attorney by The National Trial Lawyers Association.

Dargan Ware is the principle researcher and brief writer for Davis & Norris. He graduated in the top 5% of his class at the University of Alabama School of Law and then

clerked for the Honorable L. Scott Coogler in the Northern District of Alabama. He has worked for Davis and Norris since 2014. Mr. Ware has been principally responsible for drafting motions and briefs filed in state and federal courts throughout the nation, including the Northern District of California. He has successfully handled numerous appeals in both state and federal appellate courts, including the Ninth Circuit. Mr. Ware is licensed to practice in Alabama and California as well as numerous other courts and jurisdictions throughout the United States either by admission or on a pro hac vice basis.

Since Davis & Norris, LLP was formed, counsel with the firm has handled numerous complex litigation such as class actions and mass cases including:

a) The Vietnam Assoc. for Victims of Agent Orange/Dioxin, et al. v. Dow Chemical Co., et al.: Co-lead as counsel for a purported plaintiff class of between 2-4 million Vietnamese nationals and residents of Vietnam who suffered damages as a result of Dioxin exposure during the Vietnam War.
b) Faught v. American Home Shield: Lead counsel in a nationwide consumer class action over claims handling. The case involved approximately 4.3 million consumers. The creative nationwide settlement in this case was affirmed by the Eleventh Circuit Court of Appeals.
c) Abney v. American Home Shield: Lead counsel in a nationwide consumer class action involving RESPA. This case settled on a nationwide basis.
d) Barker v. Old Republic Home Protection Company: Lead counsel in a nationwide consumer class action.
e) Green v. Bissell Homecare, and Boyd v. TTl Floorcare: Lead counsel with in a nationwide consumer class action involving misleading advertising in the sale of steam-vac carpet cleaners that in no way uses steam in its operation.
f) Robinson, et al. v. T-Mobile USA: Lead counsel in an action related to T- Mobile's practice of reactivating own stolen or lost cell phones for use on its network.
g) Veal v. Citrus World, Inc.: Lead counsel in a nationwide class action related to the marketing and sales practices of orange juice manufactured and sold by Citrus World, Inc. The case was transferred to an MDL and later resolved. Davis & Norris, LLP was appointed to the leadership structure of the Plaintiffs.
h) Maturani v. Hyundai: A purported class action filed against Hyundai related to inflated miles per gallon claims. The case was transferred to an MDL where Davis & Norris, LLP participated with non-settling plaintiffs' counsel from across the Country in performing confirmatory discovery which lead to an eventual settlement. Davis & Norris, LLP was awarded a fee in the matter for its efforts in the case.
i) Numerous cases alleging misleading or false "Made in the USA" claims against pet food manufacturers and vitamin manufactures. The cases settled on confidential bases.
j) McWhorter v. Ocwen – Lead counsel on a class action case involving illegal fees charged to make payments on loans. The case settled for approximately $9.7 million.
k) Morandi v. Mr. Cooper - Potential class action now on interlocutory appeal to the 9th circuit, involving illegal fees to make payments on loans.

l) Lemp v. Seterus - Potential class action currently awaiting class certification decision by the Eastern District of California, involving illegal fees to make payments on loans.
m) Garcia v. Nationstar – Davis & Norris, LLP was co-lead counsel in a consumer class action related to fees charged while making payments on a mortgage. The case resulted in an approved class-wide settlement.
n) Consumer TCPA and FDCPA – Davis & Norris, LLP represented approximately 4,000 consumers in litigation against a sub-prime auto lender for violations of the TCPA and FDCPA in federal court and in arbitrations. The complex legal matter extended over several years, and ultimately resulted in confidential settlements.
o) McWhorter v. Ocwen: Mr. Davis, Mr. Norris, and Mr. Barnett were appointed as class counsel in a multi-million dollar nationwide settlement completed in 2017.
p) Consumer Deceptive Trade Claims Against Windstream – Davis & Norris represented several thousand customers of Windstream bringing claims over substandard internet speeds in individual arbitrations. The cases resulted in numerous claimant verdicts until Respondent Windstream declared bankruptcy.
q) Consumer Deceptive Trade Claims Against An Internet Service Provider – Davis & Norris, LLP represented several hundred claimants against an internet service provider for substandard internet speeds that resulted in a confidential settlements.
r) Discrimination Claims Against An App Service Provider – Davis & Norris, LLP represented several hundred claimants in individual arbitrations under California's Unruh Act related to discrimination in charges for the service. The matters resulted in confidential settlements.
s) Consumer Deceptive Trade Claims Against Samsung Electronics America – Davis & Norris, LLP currently represents numerous claimants with claims against Samsung for misleading advertisements in individual arbitrations.
t) Consumer Deceptive Trade Claims Against Intuit – Davis & Norris, LLP represents numerous claimants regarding Intuit's conduct of misleadingly charging for tax return services that should have been provided for free. These matters are proceeding as individual consumer arbitrations.
u) Consumer Magnuson Moss Claims Against a Home Service Warranty Provider – Davis & Norris, LLP represented numerous individuals with claims against a Home Service company that wrongly denied claims for repair. The matters resulted in confidential settlements.
v) Mel Comes et al v. Harbor Freight Tools USA, Inc. – Davis & Norris is co-lead counsel in consolidated nationwide class actions in the United States District Court for the Central District of California related to recalled and defective automobile jack stands.
w) Consumer Deceptive Trade Claims against Apple – Davis & Norris represents numerous claimants with deceptive trade claims related to Apple's throttling update.
x) In re: Vioxx Products Liability Litigation, MDL 1657 – Davis & Norris, LLP represented approximately 700 claimants in the MDL proceedings that resulted in a large dollar settlement.

Davis & Norris, LLP has been recognized by federal courts by appointment to leadership roles including as a member of the executive committee in an MDL in the United States District

Court for the Western District of Missouri against The Coca-Cola Company in In re: Simply Orange Orange Juice Marketing and Sales Practices Litigation, MDL-2361. Davis & Norris, LLP has also been involved as non-settling plaintiffs during confirmatory discovery in In re: Hyundai and Kia Fuel Economy Litigation, MDL-2424.

We are prepared to commit the necessary substantial resources in time, financing, and personnel to this case. We have repeatedly done so in similar cases.