IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JERRY W. RAY, on Behalf of Himself and Others Similarly Situated, Plaintiff, v. ADAPTHEALTH CORP., Defendant.	Case No: 1:22-cv-00898-TDS-JGM

PLAINTIFF'S BRIEF IN SUPPORT OF HIS UNOPPOSED MOTION FOR ATTORNEY FEES AND EXPENSES

Plaintiff Jerry W. Ray, on behalf of himself and others similarly situated, respectfully submits this brief in support of his Unopposed Motion for Attorney Fees and Expenses.

Introduction

Just over four years ago, Class Counsel[1] filed this case against Defendant AdaptHealth Corp. on Plaintiff's behalf because of Defendant's billing practices over the span of 19 months after he returned the medical equipment he leased from it. Class Counsel discovered evidence that the issues Plaintiff faced with Defendant's billing practices were more widespread. So they executed a 33 1/3 percent Contingent Fee Engagement for Class Action with Plaintiff and asked the Court for leave to file a class action on behalf of all North Carolina consumers who purchased, leased, or rented medical equipment from

[1] Capitalized terms not otherwise defined herein are defined in the Settlement Agreement (Doc. 131).

Defendant and were sent one or more debt collection bills for charges they did not owe, which the Court granted. Despite facing considerable risk of non-payment and incurring substantial expense, Class Counsel then engaged in extensive discovery, motions practice, and multiple rounds of mediation over the next two and a half years. As a result of their tireless advocacy, the parties reached a Class Action Settlement Agreement under which Defendant will pay $14,311,500 to resolve the classes' claims. This will provide meaningful relief to members of two Settlement Classes. The 464 Settlement Class A members, who were billed for dates of service after returning, rejecting, or never receiving equipment from Defendant, will each receive $3,500, and the 142,539 Settlement Class C members, to whom Defendant sent bills indicating it may engage an attorney to pursue their purported debts, will each receive $47.

The Settlement Amount and class distributions exceed those recovered in many similar class actions, and they were only possible because Class Counsel and their team dedicated over 6,000 hours to pursuing the classes' claims. For instance, Class Counsel conducted exhaustive factual and legal research to underpin the classes' claims. They engaged in comprehensive discovery, including drafting and serving five sets of interrogatories, four sets of requests for production of documents, four sets of requests for admission, and nine third-party subpoenas, and taking three depositions. They analyzed over 500,000 pages of materials Defendant and these third parties produced. They engaged and worked with four expert witnesses. They prepared thorough briefing on various motions. And they participated in two lengthy mediations, which yielded a tentative settlement that the parties ultimately memorialized in the Class Action Settlement

Agreement after negotiating for three more months. Without Class Counsel, the Class Action Settlement Agreement would not have been reached, and the Settlement Classes would not have received any recovery. The Court should therefore grant Plaintiff's motion and award Class Counsel one-third of the Settlement Amount, $4,770,500, as their reasonable attorney fees through the date the parties executed the Class Action Settlement Agreement, as well as $427,271.71 in reasonable expenses.

Background

Plaintiff was hospitalized with COVID-19 in January 2021. (Doc. 105 ¶ 27.) When he was discharged, his physician prescribed oxygen. (*Id.* ¶ 29.) Defendant leases and sells medical equipment, including oxygen supplies, to consumers like Plaintiff, and it delivered three oxygen tanks and a compressor to his home on the day he was released from the hospital. (*Id.* ¶¶ 13, 28–30.) Plaintiff used Defendant's equipment for 24 days and then returned it according to Defendant's instructions. (*Id.* ¶¶ 32–36.) Approximately two weeks later, Defendant billed Plaintiff for more than he owed, and he paid. (*Id.* ¶¶ 37–39.)

This notwithstanding, over the next 19 months, Defendant sent Plaintiff at least 48 more bills, demanding he pay amounts he did not owe. (*Id.* ¶ 40.) While Defendant was billing Plaintiff, he called its 1-800 number and spoke with its representatives three times, explaining that he did not owe Defendant any money, and he sent Defendant at least seven letters disputing his alleged debt. (*Id.* ¶¶ 42, 46, 49, 54, 56, 59, 65, 71, 75, 86.) Despite Plaintiff's efforts, Defendant's bills kept coming. Defendant eventually engaged a collection agency, Simm Associates, Inc. to pursue Plaintiff, which prompted him to hire an attorney to dispute Defendant's billing. (*Id.* ¶¶ 58, 83.) Even so, Defendant continued

billing Plaintiff for over five more months. (*Id.* ¶¶ 83, 105.) All in all, Defendant sent Plaintiff at least four types of bills, including its "Seriously Past Due" and "Final Demand" bills, which respectively stated that Defendant "will review the account to determine whether to engage a collection agency or attorney to pursue this debt" and "must now make a decision to forward your account to an attorney or collection agency for resolution." (*Id.* ¶¶ 41–106.)

Before retiring, Plaintiff owned and operated a small, local painting company, and he met two members of Class Counsel while working as a painter at their office. (Hansen Decl. ¶ 18.) In July 2022, when he decided he needed legal help to stop Defendant's billing, he contacted Class Counsel about his experience and explained that he was worried Defendant was going to hurt his credit or make it hard for him to rent oxygen equipment in the future. (*Id.* ¶ 19.) After talking with Plaintiff, who was then 76, Class Counsel agreed to represent him *pro bono*. (*Id.* ¶ 20.) They filed Plaintiff's original complaint, alleging claims under the North Carolina Debt Collection Act ("NCDCA"), the Fair Debt Collection Practices Act ("FDCPA"), the North Carolina Fair Debt Collection Practices Act ("NCFDCPA"), and the North Carolina Unfair and Deceptive Trade Practices Act ("NCUDTPA") against Defendant, Family Medical Supply, LLC, and Simm in October 2022. (*Id.*; *see also* Doc. 1.)

Class Counsel later discovered evidence that they and Plaintiff believed showed that Plaintiff's experience with Defendant's billing practices was not a one-off experience, so they executed a 33 1/3 percent Contingent Fee Engagement for Class Action with Plaintiff. (Hansen Decl. ¶ 21.) Plaintiff asked the Court for leave to file a class action on behalf of

all North Carolina consumers "who purchased, leased, or rented medical equipment … from AdaptHealth" and "were sent one or more debt collection bills or notices" for "charge[s] the individual did not owe," which the Court granted.[2] (Doc. 32-1, p. 27 ¶ 124; *see also* Doc. 32; Hansen Decl. ¶ 21.)

After discovery and an early motion for class certification, Plaintiff sought leave to amend the class action complaint to address concerns Defendant raised in its opposition to certification, as well as to address Defendant's sworn admission that it does not litigate against patients to collect their purported debts. (*See generally* Docs. 69, 81, 83, 90.) The Court granted Plaintiff's motion, (May 15, 2025, Text Order), and Class Counsel then filed Plaintiff's operative Amended Class Action Complaint, which alleges claims on behalf of the following proposed classes:

- Class A ("Billed After Date of Service Class") consists of North Carolina consumers who were billed for dates of service after returning, rejecting, or never receiving equipment from Defendant.

- Class B ("Late Fee Class") consists of proposed Class A members whom Defendant threatened with or assessed late fees based on these non-existent debts.

- Class C ("Legal Action Class") consists of North Carolina consumers to whom Defendant sent its standardized "Seriously Past Due" or "Final Demand" bills, which falsely threaten that Defendant may engage an attorney to pursue the consumers' purported debts.

(Doc. 105 ¶¶ 132–34.)

[2] Plaintiff settled with Simm after filing the original complaint, and he withdrew from this case his FDCPA, NCFDCPA, and UDTPA claims, as well as all his claims against Family Medical Supply, when he filed the class action complaint. (*See generally* Doc. 50.) Plaintiff later settled these other federal and state law claims with Defendant. (*See* Joint Notice Concerning Agreement Made in Connection with Class Settlement.)

Plaintiff continued pursuing discovery from Defendant after filing the Amended Class Action Complaint, and he also disclosed reports and other supporting materials for four expert witnesses. (Doc. 124, p. 4.) While expert discovery was ongoing, the parties participated in two mediations, which were ultimately successful, as the parties tentatively agreed to a settlement. (*Id.*) After extensive negotiations between Class Counsel and Defendant's counsel, the parties signed a Class Action Settlement Agreement in April 2026, under which Defendant agreed to pay $14,311,500 to resolve the classes' claims. (*Id.*)

The lion's share of this money will be used to fund two Settlement Funds, out of which the members of Settlement Classes A and C will be compensated for the problems they experienced with Defendant's billing. (*Id.* at 4–5.) The 464 members of Settlement Class A, who purchased, leased, or rented medical equipment, supplies, and/or other products from Defendant and were subsequently billed for a date of service between April 3, 2019, and April 3, 2025, despite having returned, rejected, or never received the equipment, will each receive $3,500. (*Id.* at 5–6.) And the 142,539 Settlement Class C members, who purchased, leased, or rented equipment from Defendant and were subsequently sent "Seriously Past Due" or "Final Demand" bills associated with dates of service between April 3, 2019, and March 31, 2026, will each receive $47.[3] (*Id.*)

The Class Action Settlement Agreement also creates a $5,437,500 Fee Fund out of which the Court may award Class Counsel their reasonable attorney fees and expenses,

[3] There is no Settlement Class B because each member of Plaintiff's proposed Class B is also a member of Settlement Class A and will already receive substantial relief as such. (*See* Doc. 124, p. 4 n.2.)

including an Initial Award of attorney fees and expenses incurred through the date the parties executed the Class Action Settlement Agreement. (*See* Doc. 131, pp. 9 §§ 1.1.24–.25, 19–20 §§ 5.1–.2.) Consistent with the Class Action Settlement Agreement and the Court's Amended Order of Preliminary Approval of Class Action Settlement (Docs. 131, 140), Plaintiff now moves for an Initial Award of $5,197,771.71 in reasonable attorney fees and expenses.

This award is warranted because Class Counsel and their team have spent over 6,000 hours zealously advocating the classes' interest in this novel, complex, class action, despite considerable risk and expense, and have obtained significant, meaningful relief for the classes. (*See* Hansen Decl. ¶¶ 22–23, 45–50, 56.) For example, Class Counsel conducted exhaustive factual and legal research to underpin the classes' claims, which was complicated by the relative dearth of NCDCA caselaw. (*Id.* ¶ 32.) They engaged in comprehensive discovery, including drafting and serving five sets of interrogatories, four sets of requests for production of documents, four sets of requests for admission, and nine third-party subpoenas, and taking three depositions. (*Id.* ¶¶ 33–34, 36.) They analyzed over 500,000 pages of materials Defendant and the third parties produced to identify the members of the classes and prove their claims. (*Id.* ¶ 35.) They identified and retained four expert witnesses, including a data analytics expert, an inventory management and billing processes expert, a consumer survey expert, and a damages expert, and prepared and served expert disclosures for each. (*Id.* ¶ 38.) They prepared thorough briefing on various motions and attended multiple hearings across the district. (*See, e.g.*, *id.* ¶ 37.) They participated in two lengthy mediations, which yielded a tentative settlement that the parties ultimately

memorialized in the Class Action Settlement Agreement after three more months of painstaking negotiations. (*Id.* ¶¶ 41–42, 44.) The Class Action Settlement Agreement they obtained will provide significant and meaningful relief for the Settlement Classes. (*Id.* ¶ 50.) In the Class Action Settlement Agreement, "Defendant agree[d] not to oppose or object to Class Counsel's request for an Initial Award of … 33 1/3% … of the Settlement Amount plus Class Counsel's adequately supported expenses." (Doc. 131, p. 20 § 5.3.) And to the best of Class Counsel's knowledge, no one has objected to the Class Action Settlement Agreement. (Hansen Decl. ¶ 64.)

Argument

The Court should grant Plaintiff's motion and approve the requested attorney fees and expenses.

I. The attorney fees Plaintiff requests are reasonable.

Federal Rule of Civil Procedure 23(h) states that "[i]n a certified class action, the court may award reasonable attorney's fees … that are authorized by law or by the parties' agreement." "There are two primary methods for calculating attorneys' fees in the Fourth Circuit: the percentage of the fund method and the lodestar method." *Kirkpatrick v. Cardinal Innovations Healthcare Sols.*, 352 F. Supp. 3d 499, 504 (M.D.N.C. 2018). "The percentage of fund method provides that the court award attorneys' fees as a percentage of the common fund, while the lodestar method requires the court to determine the hours reasonably expended by counsel that created … the fund, then to multiply that figure by a reasonable hourly rate." *Id.* (cleaned up).

Plaintiff requests that the Court use the percentage of the fund method and award Class Counsel one-third of the Settlement Amount. "The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases," as it "aligns the interests of class counsel and class members" by tying "the attorneys' award to the overall result achieved rather than the hours expended by the attorneys." *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 758–59 (S.D. W. Va. 2009). "In contrast, when the lodestar method is applied, class counsel has an incentive to 'over-litigate' or draw out cases in an effort to increase the number of hours used to calculate their fees." *Id.* at 759.

Courts in this circuit have used two sets of factors to assess whether fees sought under the percentage method are reasonable. *See Kirkpatrick*, 352 F. Supp. 3d at 503–04 (noting courts have looked to the twelve factors from *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978)); *In re Neustar, Inc. Sec. Litig.*, No. 1:14cv885 (JCC/TRJ), 2015 WL 8484438, at *7 (E.D. Va. Dec. 8, 2015) (applying the seven factors from *In re Cendant Corp. Litig.*, 264 F.3d 201, 283 (3d Cir. 2001)). The *Barber* factors include:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectation at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fee awards in similar cases.

Phillips v. Triad Guar. Inc., No. 1:09CV71, 2016 WL 2636289, at *3 (M.D.N.C. May 9, 2016) (quoting *Barber*, 577 F.2d at 226 n.28). And the *In re Cendant* factors include:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Id. (quoting *In re Cendant*, 243 F.3d at 733). These factors largely overlap, so the Court need not choose one set over the other, and Plaintiff will discuss them both below. *See, e.g.*, *Halcom v. Genworth Life Ins. Co.*, No. 3:21-cv-19, 2022 WL 2317435, at *11 (E.D. Va. June 28, 2022) ("Because the applicable … factors overlap, they are combined in the discussion below.").

a. Defendant will pay more than $14,311,500 to resolve this case, providing meaningful relief to more than 142,000 North Carolina consumers.

"[W]hen a district court determines what fee is reasonable, the 'most critical factor' in that determination 'is the degree of success obtained.'" *Doe v. Chao*, 435 F.3d 492, 505 (4th Cir. 2006) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). The first *In re Cendant* factor and the eighth *Barber* factor account for this. Here, Defendant agreed to pay a total Settlement Amount of $14,311,500 to resolve the classes' claims. (Doc. 131, p. 13 § 1.1.44.) More than half of this money—$8,324,000—will fund Settlement Funds A and C. (*Id.* at 15 §§ 1.1.51–.52.) 464 Settlement Class A members will each receive $3,500 from Settlement Fund A, and 142,539 Settlement Class C members will each receive $47

from Settlement Fund C.[4] These recoveries are substantial, and in Class Counsel's view, they will provide meaningful relief to more than 142,000 North Carolina consumers, many of whom are elderly and suffer from chronic illnesses. The first *In re Cendant* factor and the eighth *Barber* factor therefore support Plaintiff's requested attorney fees. *See, e.g.*, *In re Wachovia Corp. ERISA Litig.*, No. 3:09cv262, 2011 WL 7787962, at *4 (W.D.N.C. Oct. 24, 2011) (deciding a $12.35 million settlement for approximately 150,000 class members was a "significant" and "fair result for the [c]lass").

b. To Class Counsel's knowledge, no one has objected to the Settlement.

The second *In re Cendant* factor asks whether any class members have objected to the Class Action Settlement Agreement and/or the fees Plaintiff requested. Here, no class member has lodged an objection, so the second *In re Cendant* factor supports approving Plaintiff's requested attorney fees. (Hansen Decl. ¶ 64); *see Berry v. Schulman*, 807 F.3d 600, 619 (4th Cir. 2015) ("That almost complete lack of objection to the fee request provides additional support for the district court's decision to approve it."); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 684 (D. Md. 2013) ("The lack of objections tends to show that at least from the class members' perspective, the requested fee is reasonable for the services provided and the benefits achieved by class counsel.").

[4] The remainder of the Settlement Amount will fund the Administration Fund, out of which the Administrator may be paid; the Fee Fund, out of which the award at issue and Class Counsel's additional reasonable attorney fees and expenses incurred during settlement administration may be paid; and the Incentive Fund, out of which the Court may approve an incentive award to compensate Plaintiff for serving as the class representative. (Doc. 131, pp. 4–5 § 1.1.2, 9 § 1.1.25, 10 § 1.1.30.)

c. Class Counsel used their substantial skill, experience, and positive reputation to efficiently litigate this complex class action.

The third and fourth *In re Cendant* factors and the third and ninth *Barber* factors instruct the Court to consider the skill and efficiency required and/or that Class Counsel demonstrated during the litigation of this complex case, as well as Class Counsel's experience and reputation. Class Counsel's relevant experience is extensively detailed in Chad Hansen's declaration. To highlight, Rich Keshian, Chad Hansen, and Jeff Fisher are all members of Kilpatrick's class action team, which consists of approximately 25 lawyers who litigate class actions across the country. (Hansen Decl. ¶¶ 7, 11.) They and Brad Roehrenbeck all have substantial skill and many years of experience litigating class actions, and their positive reputations are well-supported by the numerous recognitions they have received in publications like *Best Lawyers in America*, *Super Lawyers*, and *Chambers USA: America's Leading Lawyers for Business*. (*Id.* ¶¶ 11–16); *see, e.g.*, *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 481 (D. Md. 2014) (noting class counsel's "significant experience in consumer class action litigation" and "national[] recogni[tion] for excellence" supported the requested fee award).

Class Counsel put their extensive skill and experience to good use in this case, conducting extensive factual and legal research and discovery to develop the classes' claims, before reaching a just settlement with Defendant to bring this complex, state-wide class action to an efficient end before the Court had to resolve contested motions for class certification and summary judgment. *See, e.g.*, *Savani v. URS Prof. Sols. LLC*, 121 F. Supp. 3d 564, 571 (D.S.C. 2015) ("The Court recognizes that it takes skilled counsel to manage

any class action…. Few law firms have the experience and resources to pursue such litigation."); *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007) ("[I]t takes skilled counsel to manage a … class action, carefully analyze the facts and legal claims and defenses …, and bring a complex case to the point at which settlement is a realistic possibility. Additional skill is required when the opponent is a sophisticated corporation with sophisticated counsel."). Thus, the third and fourth *In re Cendant* factors and the third and ninth *Barber* factors weigh in favor of Plaintiff's requested attorney fees.

d. Class Counsel litigated this novel case on a contingency basis, risking non-payment and passing up paying work. So the Court should award them 33 1/3% of the Settlement Amount, as Plaintiff and Class Counsel agreed in the contingency agreement, and as is typical in cases like this.

The fifth *In re Cendant* factor and the second, fourth, fifth, sixth, and tenth *Barber* factors account for the various risks Class Counsel took in litigating the case, the undesirability of cases like this one due to these risks, and the fee Class Counsel expected and would typically receive in exchange for assuming these risks.

"In determining the reasonableness of an attorneys' fee award, courts consider the relative risk involved in litigating the specific matter compared to the general risks incurred by attorneys taking on class actions on a contingency basis." *Jones*, 601 F. Supp. 2d at 762. Generally, "[t]he risk undertaken by class counsel is evaluated by, among other things, … the ease of proving claims and damages, and, if the case resulted in settlement, the relative speed at which the case was settled." *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 464 (D. Md. 2014). Class Counsel took higher than usual risks litigating this case

because it is relatively novel, there is little caselaw construing the NCDCA, class certification was hotly contested and not guaranteed, the first mediation failed, and the litigation has been hard fought for more than four years. (*See, e.g.*, Hansen Decl. ¶¶ 32, 37, 41–43); *see, e.g.*, *Brown v. Charles Schwab & Co.*, No. 2:07-CV-03852-DCN, 2010 WL 11534521, at *3 (D.S.C. Nov. 9, 2010) (deciding a class action involving a "novel issue of state … law, requiring the first interpretation" of a state statue "weighs in favor of a substantial fee"); *Loudermilk Servs., Inc. v. Marathon Petrol. Co.*, 623 F. Supp. 2d 713, 721 (S.D. W. Va. 2009) ("Despite the skill and competence of class counsel, there existed some risk of non-recovery throughout litigation. The case might not have been profitable at all if the Court refused class certification."); *Boyd*, 299 F.R.D. at 464 (noting class counsel faced higher than average risks where "a prior mediation session was unsuccessful and the case had been in intense litigation for nearly four years").

Class Counsel and their team also invested over 6,000 hours of their time and $427,271.71 in expenses in this case, which they were unable to use on other litigation and would not have recovered if Plaintiff's claims on behalf of the classes failed. (Hansen Decl. ¶¶ 22, 56–57, 61); *see Savani*, 121 F. Supp. 3d at 572 (deciding class counsel's opportunity costs favored the requested fee award where they spent 3,260 hours "and expended substantial funds to finance the case—time and resources that could otherwise have been invested in other cases"); *In re MI Windows & Doors Inc. Prods. Liab. Litig.*, No. 2:12-mn-00001-DCN, 2015 WL 4487734, at *3 (D.S.C. July 23, 2015) ("Plaintiffs' counsel have obviously spent a substantial amount of time that could not be invested in other cases. Moreover, there was a risk of non-payment should … Plaintiffs not succeed in their

claims."); *In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig.*, No. 3:09-cv-00054, 2012 WL 5430841, at *4 (D.S.C. Nov. 7, 2012) ("In complex, multi-year class actions, … the risk of receiving little or no recovery is a major factor in awarding attorney fees…. Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and costs advanced, but lost the case despite their advocacy.").

To compensate Class Counsel for the significant risks they were taking and the opportunity costs they were incurring by agreeing to take this case, Plaintiff and Class Counsel executed a 33 1/3% Contingent Fee Engagement for Class Action at the outset of class litigation. (Hansen Decl. ¶¶ 21–22.) The Court must "recognize the significance of the contingency fee" they agreed to, because it demonstrates the fee Class Counsel expected from the start, and give it "the weight it [i]s due in the decisional calculus." *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 245 (4th Cir. 2010). Indeed, "contingency fee agreements transfer a significant portion of the risk of loss to the attorneys taking a case," so it "may be necessary to provide a greater return than an hourly fee offers to induce lawyers to take on representation for which they might never be paid, and it makes sense to arrange these fees as a percentage of any recovery." *Id.* at 246. This is especially true in cases like this one, as "the contingent nature of consumer protection cases" makes them "less desirable" because "of the 'far greater risk that the attorney will not see any payment at all than an attorney practicing in other areas of the law.'" *Denton v. PennyMac Loan Servs., LLC*, 252 F. Supp. 3d 504, 518 (E.D. Va. 2017) (quoting *Won Kim v. U.S. Bank, N.A.*, No. 1:12-cv-986, 2013 WL 3973419, at *5 (E.D. Va. 2013)). And courts have widely

held that 33 1/3% contingency agreements, like the one at issue here, are "reasonable and customary when compared to attorneys' fees awards in similar cases." *Ciarciello v. Bioventus Inc.*, 760 F. Supp. 3d 377, 400 (M.D.N.C. 2024) (collecting cases). The fifth *In re Cendant* factor and the second, fourth, fifth, sixth, and tenth *Barber* factors consequently support Plaintiff's requested attorney fees.

e. Class Counsel and their team have invested over 6,000 hours in this case.

The sixth *In re Cendant* factor and the first *Barber* factor consider how much time and labor Class Counsel dedicated to the case. Class Counsel and their team invested approximately 6,032 hours in this case before the parties executed the Class Action Settlement Agreement. (Hansen Decl. ¶ 57.) Class Counsel spent most of this time on several key activities. For instance, they conducted exhaustive factual and legal research to underpin the classes' claims and theories. (*Id.* ¶ 32.) They engaged in comprehensive discovery, including drafting and serving five sets of interrogatories, four sets of requests for production of documents, four sets of requests for admission, and nine third-party subpoenas, and taking three depositions, all of which was critical to advancing issues of liability and identifying the approximately 142,000 members of Settlement Classes A and C. (*Id.* ¶¶ 29, 31, 33–34, 36.) They analyzed over 500,000 pages of materials Defendant and the third parties produced. (*Id.* ¶ 35.) They served expert disclosures for four expert witnesses, including experts on data analytics, inventory management and billing processes, consumer surveys, and damages. (*Id.* ¶ 38.) They prepared thorough briefing, filings, and/or other documents, including an early motion for class certification, motions for leave to amend the complaint, and the Class Action Settlement Agreement. (*See, e.g.*,

id. ¶¶ 37, 44.) And they prepared for and participated in two lengthy mediations, which yielded a tentative settlement that the parties ultimately memorialized in the Class Action Settlement Agreement after Class Counsel and Defendant's counsel negotiated for three more months. (*Id.* ¶¶ 41–42, 44.) These efforts were pivotal to establishing Defendant's liability, identifying the members of the putative classes, and making the Class Action Settlement Agreement a reality.

Courts in this circuit have recognized that investments of similar amounts of time justify a substantial fee award. *See, e.g.*, *Smith v. FMC Corp.*, 225 F. Supp. 2d 707, 709 (S.D. W. Va. 2002) (awarding 48.7 percent of the settlement fund in "fees and costs" where class counsel "expended over 6000 hours on this action"); *Ciarciello*, 760 F. Supp. 3d at 400 (awarding 33 percent of the settlement fund where class counsel "spent close to 8,000 hours to litigate and resolve this case," including "investigation, filing complaints, litigating motions and discovery disputes, analyzing extensive discovery, preparing for depositions, briefing class certification, consulting with experts, and engaging in negotiations to reach a settlement agreement"); *Savani*, 121 F. Supp. 3d at 570–71, 574 (awarding 39.57 percent "of the total cash value of the recovery for the Subclass" where class counsel "documented a very significant investment of time and effort in litigating the case," amounting to 3,260 hours).

f. Plaintiff's requested attorney fees are consistent with those approved in similar cases.

The seventh *In re Cendant* factor and the twelfth *Barber* factor assess how Plaintiff's requested fee award compares to awards in similar cases. These factors "weigh[] in favor

of" Plaintiff's requested fees "because fee awards of one-third of the common fund are common." *Kirkpatrick*, 352 F. Supp. 3d at 506; *accord Ciarciello*, 760 F. Supp. 3d at 400 ("[T]he requested award of 33% of the settlement fund is reasonable and customary when compared to attorneys' fee awards in similar cases. Courts in the Fourth Circuit have found awards of approximately one-third of the class fund to be reasonable." (collecting cases)); *Phillips*, 2016 WL 2636289, at *6 ("In this jurisdiction, contingent fees of one-third … are common." (quoting *Smith*, 2007 WL 119157, at *2)).[5]

g. A lodestar cross-check supports Plaintiff's requested attorney fees.

Even when considering a fee award under the percentage of the fund method, some courts "incorporate[] a 'lodestar cross-check' into their review," because the lodestar method can "guard against attorney windfalls" by ensuring "the fee award is still roughly aligned with the amount of work the attorneys contributed." *Jones*, 601 F. Supp. 2d at 759–60 (cleaned up). "When using [the] lodestar method as a 'cross-check,' the Court need[] not apply the 'exhaustive scrutiny' typically mandated, and the Court may accept the hour[] estimates provided by [Class] Counsel." *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D. Va. 2009) (quoting *Jones*, 601 F. Supp. 2d at 765–66). A cross-check suggests the requested fee is reasonable, so long as Class Counsel's requested fee is within 2 and

[5] The seventh *Barber* factor is neutral because there were no "extraordinary time constraints imposed by the litigation." *E.g.*, *Liberty Mut. Ins. Co. v. Emp. Res. Mgmt., Inc.*, 176 F. Supp. 2d 510, 537 (D.S.C. 2001). And so is the eleventh *Barber* factor because Class Counsel have not represented Plaintiff in prior litigation. *See, e.g.*, *Jahagirdar v. Comput. Haus NC, Inc.*, No. 1:20-CV-33-MOC, 2025 WL 1202543, at *5 (W.D.N.C. Mar. 31, 2025) (noting "a first-time, one-time, and/or contingency relationship may render this factor irrelevant from the attorneys' fee analysis").

4.5 times their lodestar—i.e., their estimated number of hours multiplied by their reasonable hourly rate. *See Phillips*, 2016 WL 2636289, at *8 ("Courts have found that lodestar multipliers ranging from 2 to 4.5 demonstrate the reasonableness of a requested percentage fee."); *Decohen*, 299 F.R.D. at 483 ("Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorney's fee." (quoting *Singleton*, 976 F. Supp. 2d at 689)).

Class Counsel and their team of approximately ten attorneys and three professional staff invested approximately 6,032 hours in this case before the Class Action Settlement Agreement was executed. (Hansen Decl. ¶ 57.) Multiplying the number of hours each timekeeper contributed by their standard hourly rate and then adding those figures yields a total lodestar of $3,282,466.50. (*Id.* ¶¶ 57–58.) Plaintiff's requested attorney fee award, $4,770,500, is approximately 1.45 times Class Counsel's lodestar. (*Id.* ¶ 59.) So the cross-check indicates Plaintiff's requested fee award is reasonable. *See, e.g.*, *McCune v. Faneuil Inc.*, No. 4:23-cv-41, 2024 WL 3811411, at *7 (E.D. Va. Aug. 13, 2024) (describing a multiplier of 1.95 as "below the range that courts in this circuit have consistently held as reasonable"); *In re Genworth Fin. Sec. Litig.*, 210 F. Supp 3d 837, 845 (E.D. Va. 2016) ("[A] multiplier of 1.97 times is eminently reasonable"); *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 476 (W.D. Va. 2011) (concluding a 1.8 multiplier was "well within the normal range of lodestar multipliers").

II. The expenses Plaintiff requests are reasonable.

Rule 23(h) also provides that "the court may award … nontaxable costs … authorized by law or … the parties' agreement" in class actions. "Costs that may be

charged include 'those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services.'" *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 773 (D. Md. 2022) (quoting *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988)). Class Counsel incurred $427,271.71 in expenses before the parties executed the Class Action Settlement Agreement. (Hansen Decl. ¶ 61.) Class Counsel spent around 80 percent of this money retaining and working with Plaintiff's four expert witnesses, and they spent the remainder on, *inter alia*, electronic legal research fees, deposition and transcript fees, expert consulting fees, e-discovery and data-management charges, minimal travel, and postage. (*Id.* ¶¶ 61–62.) Courts in this circuit have widely recognized that expenses like these are reimbursable. *See Feinberg*, 610 F. Supp. 3d at 773 (noting "court costs, transcripts, travel, contractual personnel, photocopying, postal fees, telephone costs, and expert witness fees" are reimbursable); *accord Clark v. Duke Univ.*, No. 1:16-CV-1044, 2019 WL 2579201, at *4 (M.D.N.C. June 24, 2019).

Conclusion

In sum, the Court should grant Plaintiff's Unopposed Motion for Attorney Fees and Expenses. Class Counsel have dedicated over 6,000 hours and fronted nearly half a million dollars in expenses while pursuing this case over the last four years, without any guarantee of recovery. As a result of their efforts, the parties reached a just settlement, which will provide meaningful relief to more than 140,000 North Carolina consumers. The Court should therefore approve $4,770,500—one-third of the Settlement Amount—as Class Counsel's reasonable attorney fees to compensate them for the significant risks they took

and opportunity costs they incurred. This request is consistent with the Contingent Fee Engagement for Class Action and Class Counsel's expectation when they agreed to take this case. The Court should also approve Plaintiff's request that Class Counsel be reimbursed for $427,271.71 in out-of-pocket expenses.

Respectfully submitted, this 12th day of November 2026.

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that this Brief complies with Local Rule 7.3(d)(1). It was created using Microsoft Word and contains fewer than 6,250 words exclusive of the caption, signature block, certificate of word count, and certificate of service according to Word's word count.

This 12th day of November 2026.

/s/ Chad D. Hansen
Chad D. Hansen

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date I electronically filed the foregoing motion using CM/ECF, which will notify all counsel of record.

This 12th day of November 2026

/s/ Chad D. Hansen
Chad D. Hansen

Counsel for Plaintiff Jerry W. Ray and the Settlement Classes