IN THE SUPERIOR COURT OF WHITE COUNTY
STATE OF GEORGIA

MIKE ALLEN and MONTE POMROY, individually and on behalf of all others similarly situated as defined herein,	*	
Plaintiffs,	*	
v.	*	**CASE NO. SUCV2020000385**
DOLGENCORP., LLC. and DOLLAR GENERAL CORP.,	*	
Defendants.	*	

ORDER ON PLAINTIFFS' UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

This matter came before the Court on Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards. Having considered the submissions by Class Counsel, as well as the arguments presented by them at the Final Fairness Hearing, the Court is prepared to rule.

A. ATTORNEYS' FEES AND EXPENSES

In accordance with the Settlement Agreement reached between the parties and approved by this Court, Class Counsel request, and Defendants do not oppose, an award of attorneys' fees and reimbursement of litigation expenses constituting 30% of the $3.1 million "Maximum Settlement Amount" as defined in the Settlement Agreement.[1] The Court has reviewed the affidavit of Class Counsel detailing the work performed in investigating and pursuing this matter and ultimately

[1] Per the affidavit of R. Brent Irby, Class Counsel has incurred $14,364 in unreimbursed expenses in pursuing this litigation. Accordingly, the attorneys' fee award requested constitutes 29.5% of the Maximum Settlement Amount. The Maximum Settlement Amount, per the Settlement Agreement, does not include the value or cost of the programmatic relief component of the class benefit.

consummating this Settlement. For the reasons outlined below, the Court is satisfied that the percentage sought by Class Counsel is reasonable and consistent with fee awards routinely approved by Georgia courts in class litigation.

In *Friedrich v. Fidelity Nat. Bank*, 247 Ga.App. 704 (2001), the Georgia Court of Appeals held that an award of attorneys' fees to class counsel is to be based on the "percentage of the fund" method after consideration of the factors set forth in *Camden I Condo. Assn. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991) ("*Camden I*"). In accordance with these authorities, the Court will explain below how each factor affected the selection of the percentage awarded in this case.

In *Camden I*, the Eleventh Circuit provided a set of factors that the Court may use to determine a reasonable percentage to award as an attorneys' fee to class counsel: (1) the time and labor required; (2) the novelty and difficulty of the relevant questions; (3) the skill required to properly carry out the legal services; (4) the preclusion of other employment by the attorney as a result of his acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the clients or the circumstances; (8) the results obtained, including the amount recovered for the clients; (9) the experience, reputations, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the clients; and (12) awards in similar cases. 946 F.2d at 772 n.3 (citing factors in *Johnson v. Ga. Highway Express, Inc.,* 488 F.2d 714, 717-19 (5th Cir. 1974)). These factors are guidelines and are not exclusive. The Court may also consider the time required to reach a settlement, whether there are any substantial objections to the settlement terms or requested fees, any non-monetary benefits to the class, and the economics of prosecuting a class action. *Id.* at 775. As applied here, the *Camden I* considerations support approval of the requested fee.

1. Achieving Settlement Required Substantial Time and Labor.

As the submitted declaration demonstrates, Class Counsel invested substantial time and effort to achieve a favorable result for the Class. Class Counsel devoted time and resources to investigate the facts and claims, including product testing, consumer interviews, and legal research into state law claims, remedies, and class certification for different states; drafted and filed Complaints in multiple states; reviewed and analyzed documents and informal discovery produced by Defendants; and devoted significant time to negotiating the settlement, as well as to the preliminary approval process and, most recently, to the final approval process. Class Counsel's work will continue beyond the approval of the Settlement, with no additional compensation.

In sum, having reviewed the declaration of Class Counsel and hearing from them at the Fairness Hearing, the Court is satisfied that the time and resources devoted to this litigation by Class Counsel support the requested fee.

2. The Case Involved Difficult Legal Hurdles and Presented Significant Risk for Class Counsel.

"Attorneys should be appropriately compensated for accepting complex and difficult cases." *Columbus Drywall & Insulation, Inc. v. Masco Corporation*, 2012 WL 12540344, at *3 (N.D. Ga. Oct. 26, 2012) (citations omitted). "It is common knowledge that class action suits have a well-deserved reputation as being most complex." *Cotton v. Hinton*, 559 F.2d. 1326, 1331 (5th Cir. 1977). "Undesirability" and the risks and difficulty of the litigation should be evaluated from the standpoint of class counsel when they commenced the suit—not retroactively, with the benefit of hindsight. *Gunthert v. Bankers Standard Ins. Co.*, 2019 WL 1103408 (M.D. Ga. March 8, 2019) (citations omitted).

Here, the difficulty of the legal issues involved created significant risk for Class Counsel. The risks were not merely one, but several. The Settlement achieved provides relief to a certified

class of consumers across 45 states. Obtaining and maintaining class certification of consumer claims of this nature is difficult in a single-state contested class proceeding, let alone in a multi-state class. Moreover, Defendants strongly dispute liability and maintain several defenses to the merits of the claims. Indeed, at the Fairness Hearing the Court was made aware of the 12(b)(6) dismissal of a similar "coffee servings" consumer class action against another defendant.

The challenges facing Plaintiffs at class certification and on the substantive merits underscore the risk that Class Counsel undertook in accepting this case on a contingency basis. In light of the risks and uncertainty faced by Class Counsel, the fact that they negotiated relief for a nationwide class weighs strongly in favor of approving the requested amount for Class Counsel's attorneys' fees and expenses.

3. Class Counsel Possessed the Skill, Ability, Experience, and Reputation to Achieve a Successful Result Against Capable Opposing Counsel.

"The appropriate fee should also reflect the degree of experience, competence, and effort required by the litigation." *Columbus Drywall*, 2012 WL 12540344, at *4. The prosecution of any complex class action requires unique legal skills and abilities that should be considered when determining a reasonable fee. "[T]he Court should consider the quality of the opposition, as well." *Id*. This case presented difficult questions, which required commensurate skill to litigate the case properly. Class Counsel have extensive experience litigating and settling complex and class action litigation in the state and federal courts (*see generally*, Irby Aff'd.). Class Counsel's skill and extensive experience and reputation were important to achieving the strong result for the Class here. In addition, Defendants were represented by skilled and experienced counsel, McGuireWoods LLP, underscoring the skill required of and displayed by Class Counsel. *See Smith v. Krispy Kreme Doughnut Corp.*, 2007 WL 119157, at *2 (M.D.N.C. Jan 10, 2007) ("Additional skill is required when the opponent is a sophisticated corporation with sophisticated counsel.").

The skill and experience required of and demonstrated by Class Counsel further support the reasonableness of the fee requested.

4. Class Counsel Have Devoted Significant Time, Resources, and Effort to this Matter to the Preclusion of Other Employment.

Class Counsel are members of small law firms that have devoted significant time and resources to this case at the expense of other available legal work. Had they not taken on the instant litigation, Class Counsel would have spent significant time on other matters. (Irby Aff'd., ¶19). This dynamic will continue beyond final approval, as Class Counsel are duty bound to ensure proper distribution of the settlement proceeds and address any issues that arise following final approval. Accordingly, this factor weighs in favor of the fee request.

5. The Customary and Contingent Nature of the Fee Warrant Its Approval.

"The customary fee in class actions is a contingency fee, because it is not practical to find any individual that will pay attorneys on an hourly basis to prosecute the claims of numerous strangers and take on the significant additional expenses of fighting with the defendant over class certification." *Columbus Drywall,* 2012 WL 12540344 at *4.

> A contingency 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 given the significant investment of substantial time, effort, and money, especially in the light of the risks of recovering nothing.

Id. (citation omitted).

Class Counsel undertook this case purely on a contingent basis. (Irby Aff'd., ¶19). In so doing, they assumed a significant risk that they would not be paid for their work, a risk that is very real in a consumer class action of this nature.

The Court gives substantial weight to the contingent nature of Class Counsel's fees in assessing the fee request. Indeed, courts have consistently recognized that the risk of receiving

little or no recovery is a major factor in determining the award of fees. *See In re Checking Account Overdraft Litig*., 830 F. Supp. 2d 1330, 1364 (S.D. Fla. 2011) ("Numerous cases recognize that the contingent fee risk is an important factor in determining the fee award."); *Pinto v. Princess Cruise Lines*, 513 F. Supp. 2d. 1334, 1339 (S.D. Fla. 2007) ("attorneys' risk is 'perhaps the foremost factor' in determining an appropriate fee award"); *In re Friedman's Inc. Sec. Litig*., 2009 WL 1456698, at *3 (N.D. Ga., May 22, 2009) ("A contingency fee agreement often justifies an increase in the award of attorneys' fees.").

As noted above, Class Counsel faced a number of hurdles that could have resulted in a smaller recovery or no recovery at all. Indeed, because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result. Thus, the contingent nature of the case and the substantial risks involved in this complex litigation strongly support Class Counsel's fee request. *Blum v. Stenson*, 465 U.S. 886, 902 (1984) (Brennan, J. concurring) (noting "the risk of not prevailing, and therefore the risk of not recovering any attorney's fees, is a proper basis on which a district court may award an upward adjustment to an otherwise compensatory fee.").

6. <u>The Fee Request Is Reasonable in Light of the Excellent Result Obtained for the Class.</u>

Class Counsel have secured substantial and meaningful benefits for the Class that directly address the objectives in pursuing the litigation. Class Members are entitled to cash relief to compensate for any lost benefit of the bargain, with and without proof of purchase, via a consumer-friendly claims process. Besides significant cash relief, the Settlement provides meaningful non-monetary benefits in the form of programmatic relief in order to remedy the alleged false advertising.

Although the monetary benefit of the Maximum Settlement Amount alone justifies Class Counsel's attorneys' fees, the Court also considers the value of the non-monetary relief that Plaintiffs achieved for the Class Members by prosecuting this action and achieving settlement through Class Counsel's efforts. *See generally Ingram v. The Coca-Cola Co.,* 200 F.R.D. 685, 689 (N.D. Ga. 2001) (approving settlement where "the programmatic relief" in addition to monetary relief was significant). Here, Plaintiffs' lawsuit prompted Defendants to change the alleged false representations on their coffee Products. Courts may consider the non-monetary relief provided to the Class as "part of the settlement pie." *Poertner v. Gillette Co.,* 618 Fed. Appx. 625, 628 (11th Cir. 2015)(per curiam), *cert. denied sub nom. Rank v. Poertner,* —U.S.—, 136 S.Ct. f1453, 194 L:.Ed.2d 575 (2016). And when analyzing the value of the non-monetary benefits, courts should consider changes to a defendant's business practices. *See Faught v. Am. Home Shield Corp.,* 668 F.3d 1233, 243-44 (11th Cir. 2011)(portion of fee properly allocated to compensation for "non-monetary benefits [counsel] achieved for the class — like company-wide policy changes…").

Without Class Counsel's efforts, it is possible that the Class would not have obtained any relief whatsoever, particularly on a nationwide-class basis. The strong results achieved here support the requested fee.

7. <u>Class Counsel Are Unlikely to Receive Any Future Business or Benefit from Plaintiffs as a Result of this Representation.</u>

The eleventh *Camden I* factor is "the nature of and length of the professional relationship with the client." 946 F.2d at 772. This factor recognizes that "[a] lawyer in private practice may vary his fee for similar work in light of the professional relationship of the client with his office[,]" *id*., by, for example, "discount[ing] his or her fees in anticipation of obtaining repeat business with an established client." *Columbus Drywall*, 2012 WL 12540344 at *6. Here, Plaintiffs and members of the Class are individual consumers who are unlikely to provide any future business to Class

Counsel. As such, Class Counsel's compensation for their work on this case "must come entirely from the settlement fund, rather than future business from these clients." *Id*. Accordingly, this factor supports Class Counsel's fee request.

8. <u>The Fee Request Is Reasonable Considering Fee Awards in Similar Cases.</u>

Here, Class Counsel seek an award of 30% of the $3.1 million Maximum Settlement Amount to cover *both* their attorneys' fees and expenses incurred. Because the request is inclusive of expenses, it would result in an attorneys' fee of slightly less than 30% (29.5%) of the Maximum Settlement Amount.[2]

The Court finds that this percentage is consistent with percentages that have been awarded by other Georgia state and federal courts hearing class action cases. *See, e.g., Teachers Retirement System of Georgia v. Plymel*, 296 Ga. App. 839 (2009) (affirming fee and expense award of 30% of the common fund over defendant's objection); *see also In re: Arby's Restaurant Group, Inc. Data Security Litigation* 2019 WL 2720818 (N.D. Ga. June 6, 2019) ("[a]wards of up to 33% of the common fund are not uncommon in the Eleventh Circuit, and especially in cases where Class Counsel assumed substantial risk by taking complex cases on a contingency basis."); *accord Lundsford v. Woodforest National Bank*, 2014 WL 12740375 (N.D. Ga. May 19, 2014) (approving award of one-third of the settlement fund and collecting other Georgia federal court cases awarding one-third); *Columbus Drywall*, 2012 WL 12540344 at *7 (same). "[E]mpirical studies show that … fee awards in class actions average around one-third of the recovery[,]" and [t]he average percentage awarded in the Eleventh Circuit mirrors that of awards nationwide – roughly one-third." *Wolff v. Cash 4 Titles,* No. 03-cv-22778, 2012 WL 5290155, *5 (S.D. Fla. Sept. 26 2012)

[2] As noted previously, the Maximum Settlement Amount does not include the value or cost of the Settlement's non-monetary benefits. Additionally, Class Counsel has incurred $14,364 in unreimbursed expenses.

(collecting cases), *adopted*, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012); *accord George v. Academy Mortg. Corp*., 369 F.Supp.3d 1356, 1382 (N.D. Ga. 2019) (collecting cases from the Northern District of Georgia and other districts within the Eleventh Circuit in which fees were awarded in the amount of one-third of the recovery); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1294-95 (11th Cir. 1999)(affirming a fee award of one-third of a $40 million settlement plus expenses). *Morgan v. Public Storage*, 301 F.Supp. 3d 1237 (S.D. Fla 2016) (approving fee award of one-third of the settlement fund in a class action brought under Florida's Unfair and Deceptive Trade Practices Act).

A fee award of slightly less than 30% of the Maximum Settlement Amount is reasonable in this case in light of the result obtained for the Class and the risk that Class Counsel undertook to achieve that result.

9. Additional *Camden I* Factors Support the Requested Fee and Expense Award.

As demonstrated above, Class Counsel's experience in complex and sophisticated class action litigation was likely essential in reaching the result achieved here. In light of litigation obstacles and with the case defended by experienced and competent counsel at a large international law firm, it is doubtful Class Counsel could have achieved the results obtained in this case. That Class Counsel were able to achieve substantial results in the most efficient manner possible without requiring protracted and extended litigation further supports the 30% fee and expense award under the *Camden I* analysis. *See McLendon v. PSC Recovery Systems, Inc.*, 2009 WL 10668635, at *4 (N.D.Ga. June 2, 2009) ("This swift and successful conclusion supports an upward deviation from the benchmark.") (citations omitted).

Further, the economics of prosecuting small damages consumer class actions like this one favor the fee and expense request. Class counsel often work for small law firms with limited resources, but face off against large corporations and large law firms with virtually unlimited

resources. Class counsel often devote substantial amounts of their own time and money to prosecute class actions on a contingent basis and sometimes receive little or nothing for their efforts. Such economic considerations are relevant to determining what constitutes an appropriate fee. *In re Checking Account Overdraft Litig*., 2013 WL 11319392 at*17 ("The burdens of this litigation and the relatively small size of the firms representing Plaintiffs lend support to the fee awarded. This fee is firmly rooted in 'the economics involved in prosecuting a class action.'"); *Ressler v. Jacobson*, 149 F.R.D. 651, 657 (M.D. Fla. 1992) ("In evaluating this factor the Court will not ignore the pecuniary loss suffered by plaintiff's counsel in other actions where counsel received little or no fee.").

Finally, public policy further favors the requested fee and expense award. Given the small damages amount at stake for each individual class member here, it is highly unlikely that their rights or claims would have been vindicated absent the efforts and resources of a class attorney willing to pursue this matter on a contingency basis. Public policy favors fee awards that encourage capable attorneys to undertake socially desirable litigation. *Columbus Drywall,* 2012 WL 1254344 at *7 ("[C]ourts should award fees that provide capable attorneys with a suitable incentive to represent clients in this type of litigation and compensation for success in doing so.").

B. CLASS REPRESENTATIVE SERVICE AWARDS

The Court finds that the service awards of $3,250 to each of the Class Representatives are fair, reasonable, and appropriate for their efforts on behalf of the Class.

C. CONCLUSION

For these reasons, the attorneys' fees, expenses, and Class Representative service awards requested by Class Counsel are reasonable, fair, and due to be granted. The parties are directed to

disburse these amounts in accordance with the Settlement Agreement reached between them and approved by this Court.

SO ORDERED. This 1st day of July, 2021.

Judge Joy R. Parks