IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

WILLIAM JAMES GRIFFIN, et al., Plaintiffs, v. BENEFYTT TECHNOLOGIES, INC., et al., Defendants.	Case No. 0:20- cv-62371-AHS

PLAINTIFFS' UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND INCORPORATED MEMORANDUM OF LAW

Plaintiffs William James Griffin, Ashley Lawley, William "Jeff" Cooper, Sandra Wilson and Vicki Needham ("Plaintiffs"), for themselves and the Settlement Class Members, and pursuant to the Court's December 1, 2023 Order Preliminary Approving Settlement and Providing for Notice (D.E. 216), move for (i) an award of attorneys' fees to Class Counsel of one third (approximately 33.33%) of the $13.5 million Class Payment[1] and (ii) reimbursement of expenses in the amount of $253,865.88 and state:

I. INTRODUCTION

After more than three years of hard-fought litigation, Plaintiffs, through Class Counsel, reached a settlement (the "Settlement") with Defendant Assurance IQ, LLC ("Assurance"). The Settlement requires Assurance to pay $13.5 million. In return, Assurance will receive a class release from all Settlement Class Members, except those who timely opt out.

[1] Unless otherwise noted, all capitalized terms shall have the meanings set forth in the Parties' Settlement Agreement.

Despite the substantial Class Payment, recovery in this case was far from guaranteed. Plaintiffs alleged that Defendants[2], along with other nonparties, worked together and conspired to mislead hundreds of thousands of consumers into buying their limited benefit indemnity plans and short term health plans. Plaintiffs further alleged that, while consumers thought they were buying comprehensive medical insurance, they were really buying health insurance plans that provided little to no coverage for medical expenses and that did not comply with the individual insurance mandate of the Affordable Care Act (the "ACA"). On a class basis, Plaintiffs sought to hold Defendants liable for the return of premiums paid and for damages lost resulting from the limited coverage provided by the plans sold by Defendants.

The risks Plaintiffs faced in obtaining recovery from Defendants were substantial. As an initial matter, Plaintiffs faced the risk of losing their pending motion for class certification. Significantly, this was not a risk that the plaintiffs in the related action, *Belin v. Health Insurance Innovations, Inc.*, No. 0:19-cv-61430-AHS (S.D. Fla.), faced when they settled with Benefytt. Moreover, class certification was far from a certainty even though this Court granted the plaintiffs' motion for class certification in *Belin*. Defendants raised substantial arguments in opposition to class certification, some of which were not made in *Belin*. For example, Defendants raised the possibility that the settlement reached and approved by the Court in *FTC v. Benefytt Technologies, Inc.*, No. 8:22-cv-01794-TPB-JSS (M.D. Fla.) on August 11, 2022, which required Benefytt to pay the FTC $100 million for purposes of providing redress to consumers, could make many putative class members whole and deprive them of standing. *See* D.E. 151, at 28. Similarly, Defendants argued at length that this case was distinguishable from *Belin* in that it concerns a broader array of products, distributors and marketing representations than those at issue in *Belin*, purportedly

[2] Defendant Assurance and defendants Benefytt Technologies, Inc. and Health Plan Intermediaries Holdings, Inc. (together, "Benefytt") are collectively referred to herein as "Defendants."

defeating the predominance of common issues and rendering class certification inappropriate. *Id.*, at 12-24. Defendants also filed motions to exclude the testimony of Plaintiffs' two experts supporting class certification. D.E. 155, D.E. 171. Even if Plaintiffs' motion for class certification were granted, Plaintiffs still would have faced the possibility of Rule 23(f) review by the Eleventh Circuit, as well as additional risks at summary judgment and trial. In addition, even if Plaintiffs were able to successfully prosecute their claims, their chances of collecting a judgment were complicated by the fact that Benefytt declared bankruptcy during the pendency of this litigation. For these reasons, the Settlement represents an excellent result for Plaintiffs and other Settlement Class Members.

Class Counsel prosecuted Plaintiffs' claims zealously throughout the life of this litigation. Over the more than three years since this case has been pending, Class Counsel have, *inter alia*:

- engaged in extensive motion practice, defeating multiple motions to dismiss and fully briefing their motion for class certification;
- conducted wide-ranging fact discovery, including voluminous document discovery and the taking and defending of numerous depositions;
- submitted two expert reports and completed expert discovery of both their two experts and Defendants' two experts; and
- participated in protracted settlement negotiations.

Class Counsel at Whatley Kallas, LLP and Matt Carroll Law LLC brought this case on a contingency basis and spent thousands of hours prosecuting it, advancing over $250,000 in out-of-pocket expenses. The firms are entitled to reasonable compensation for their efforts in prosecuting this case and obtaining the Settlement. Given the complexity, risk and labor required to reach the Settlement, Class Counsel seeks one third of the Settlement Fund ($4,500,000), plus

reimbursement of litigation expenses. This request is well within the range of reasonable fee awards in this Circuit and is justified by the significant risk that Plaintiffs would take nothing from Defendants through this action. Applying the factors in *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991), this Court should grant the requested fee to Class Counsel because of the substantial recovery Plaintiffs were able to obtain despite the obstacles they faced.

Further, Plaintiffs seek reimbursement of the $253,865.88 in expenses incurred by Class Counsel in prosecuting this action. These expenses include, for example, mediator fees, expert witness and consulting fees, court reporter costs and other discovery-related expenses. These expenses were necessary to further Plaintiffs' claims and facilitate the Settlement. The Court should therefore grant the reimbursement request and order that Class Counsel's expenses also be paid from the Settlement Fund.

II. BACKGROUND

Plaintiffs originally filed this action against Benefytt on May 5, 2020, in the Northern District of Alabama, the district where Plaintiffs reside. *See Griffin v. Benefytt Technologies, Inc.*, No. 2:20-cv-630-AKK (N.D. Ala.). In their original complaint, Plaintiffs alleged that Benefytt and its marketing partners Assurance, Nationwide and Simple Health -- which Plaintiffs identified as Benefytt's co-conspirators but did not name as Defendants -- marketed health insurance policies as comprehensive medical insurance that satisfied the ACA's individual insurance mandate but instead sold non-ACA compliant limited benefit indemnity plans and short term insurance plans along with various add-on products like discount cards, association memberships and accidental health insurance to make the health insurance seem more comprehensive than it really was. D.E. 1, at ¶ 1. Plaintiffs further alleged that the policies left consumers with little or no insurance, no

coverage for preexisting conditions and prescription drugs and minimal coverage for other services. *Id.* Based on these allegations, Plaintiffs, on behalf of themselves and a putative class of similarly situated consumers, asserted claims against Benefytt for violations of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961, *et seq.* Count I of the original complaint alleged violation of RICO, 18 U.S.C. § 1962(c); Count II alleged RICO conspiracy in violation of 18 U.S.C. § 1962(d); Count III alleged violation of 18 U.S.C. § 2 by seeking to aid and abet violations of 18 U.S.C. § 1962(c); and Count IV sought declaratory and injunctive relief under 18 U.S.C. § 1964(a). *Id.*, at ¶¶ 118-135.

In response to the original complaint, Benefytt brought a motion to dismiss for failure to state a claim (D.E. 18) as well as a motion to transfer the action, pursuant to the first-filed rule, to the Southern District of Florida, where the *Belin* action was pending. D.E. 27. In its motion to transfer, Benefytt argued that Plaintiffs "propose nearly the same putative class, allege nearly the same facts, and assert nearly the same claims against nearly the same defendants." D.E. 27, at 1. Shortly after Benefytt filed its motion to transfer, Plaintiffs filed a motion for leave to amend their complaint to add Assurance as a Defendant. D.E. 28.

On November 9, 2020, Judge Kallon of the Northern District of Alabama granted the motion to transfer and sent the action to the Southern District of Florida. D.E. 33. As grounds for transfer, Judge Kallon found that "because both cases assert most of the same allegations and accuse the defendants of virtually the same conduct, it would be a waste of judicial resources for two separate courts to evaluate these facts." *Id.*, at 11 (quotations and citations omitted).

Following transfer, on February 9, 2021, this Court granted Plaintiffs' pending motion for leave to amend their complaint and denied Benefytt's pending motion to dismiss as moot. D.E. 49. Plaintiffs filed an Amended Complaint on February 16, 2021, in which it named Assurance as a

Defendant. D.E. 50.

Benefytt and Assurance both filed motions to dismiss for failure to state a claim. D.E. 57, 78. In separate orders issued on February 25, 2021 and March 30, 2021, respectively, this Court denied both motions as to Plaintiffs' claims for damages but granted them as to Plaintiffs' claims for injunctive relief on the basis that it was unlikely that Plaintiffs would be misled by Defendants' sales practices again in the future. D.E. 84, 94.

Per Defendants' request, on May 6, 2022, Plaintiffs filed an unopposed motion for leave to file a Second Amended Complaint to clarify that Plaintiffs were not asserting the claims in this action on behalf of persons who previously released their claims in connection with the settlement reached in *Belin*, and to further clarify that Defendants' sales practices with respect to both limited benefit indemnity plans and short term insurance plans were at issue. D.E.103. The Court granted Plaintiffs' motion for leave to amend on May 16, 2022 (D.E. 106) and Plaintiffs filed their Second Amended Complaint on May 17, 2022. D.E. 107. Defendants answered the Second Amended Complaint on May 26, 2022, and May 31, 2022, respectively. D.E. 109 (Assurance), D.E. 110 (Benefytt).

The parties engaged in extensive discovery over the ensuing months. Plaintiffs issued 74 requests for production of documents to Benefytt and 47 requests for production of document to Assurance. D.E. 210-2. (Declaration of Patrick J. Sheehan, Esq.), at ¶ 8. Defendants produced well over 100,000 pages of documents in response to these requests, which Plaintiffs reviewed and analyzed. *Id.* Plaintiffs also issued 25 interrogatories to Benefytt and 17 interrogatories to Assurance. *Id.*

Plaintiffs also deposed the Defendants' corporate representatives pursuant to Federal Rule of Civil Procedure 30(b)(6), as well as several of Defendants' employees and Defendants' two

experts. *Id.*, at ¶¶ 10-12. Plaintiffs also filed and fully briefed a motion to exclude the testimony of one of Defendants' experts. *Id.*, at ¶ 12.

In addition, Plaintiffs served subpoenas upon several non-parties, including distributors American National and Priority Insurance (who Plaintiffs only learned through discovery had sold some of the products at issue to them) and former Benefytt executives and took their depositions. *Id.*, at ¶ 11.[3]

Each of the Plaintiffs responded to lengthy requests for production, interrogatories and requests for admission. *Id.*, at ¶ 9. Together Plaintiffs produced more than 1,000 pages of documents, including health-related documents containing personal information. *Id.* Plaintiffs also spent considerable time preparing for and sitting for their depositions. *Id.*

Plaintiffs' two experts likewise spent a significant amount of time preparing their reports as well as preparing for and sitting for their depositions. *Id.*, at ¶ 12. Plaintiffs also filed briefs in opposition to motions filed by Defendants to exclude the testimony of both of their experts. *Id.*

Plaintiffs' efforts in discovery culminated in the filing of a motion for class certification on January 30, 2023, which was supported by over 50 exhibits and two expert reports. D.E. 143, 159. On the same day, Plaintiffs filed a motion for leave to file a Third Amended Complaint conforming the class definitions to those in Plaintiffs' motion for class certification and identifying American National and Priority Insurance as Defendants' co-conspirators. D.E. 137. Plaintiffs' motion for leave to file the Third Amended Complaint was granted on February 1, 2023 (D.E. 140) and it was filed on the same day. D.E. 141. With the filing of Plaintiffs' reply in support of its motion for class certification on March 13, 2023 (D.E. 159), the motion was fully briefed.

Two months later, on May 23, 2023, the Benefytt Defendants filed voluntary petitions for

[3] "American National" refers to American National Benefits Group, LLC. "Priority Insurance" refers to Independent Insurance Consultant, Inc., d/b/a Priority Insurance.

relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas. D.E. 183. As a result, on May 26, 2023, this litigation was stayed as to Benefytt. D.E. 184. Thereafter, Plaintiffs and Assurance jointly requested that the Court stay the balance of the litigation pending their previously-scheduled mediation. D.E. 185. The Court granted the parties' request on June 7, 2023. D.E. 186.

While they were litigating, the parties engaged in extensive settlement negotiations, including multiple mediation sessions. The parties' first mediation session, in which Plaintiffs, Benefytt and Assurance all participated, took place on October 13, 2022, before John S. Freud. The mediation lasted a full day but resulted in an impasse. D.E. 210-2, at ¶ 14.

On June 19, 2023, Plaintiffs and Assurance participated in a second all-day mediation before Mr. Freud, following which they reached a $13.5 million settlement in principle. This agreement in principle was later reduced to writing in a term sheet that was executed on June 28, 2023 and, ultimately, memorialized in the final Settlement Agreement. *Id.*

Plaintiffs filed a Motion for Preliminary Approval of Settlement Agreement, Certification of Settlement Classes, Approval of Class Notice and Scheduling of a Fairness Hearing (the "Motion for Preliminary Approval") on November 14, 2023 (D.E. 210), and, following a hearing, the Court granted Plaintiffs' Motion for Preliminary Approval by Order dated December 1, 2023. D.E. 216. Plaintiffs bring the present motion in accordance with that Order.

III. ARGUMENT

A. Legal Standard for an Award of Attorneys' Fees in Common Fund Cases

The Supreme Court has long recognized that where counsel's efforts have created a "common fund" for the benefit of a class, counsel should be compensated from that fund. *See Boeing Co. v. Van Germert*, 444 U.S. 472, 478 (1980). Such compensation ensures those who

benefit are not "unjustly enriched." *Id.* In the Eleventh Circuit, "attorneys' fees awarded from a common fund must be based upon a reasonable percentage of the fund established for the benefit of the class." *See Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Gevaerts v. TD Bank*, No. 11:14-cv-20744, 2015 WL 6751061, at *10 (S.D. Fla. Nov. 5, 2015) ("[C]lass counsel is awarded a percentage of the fund generated through a class action settlement."). "There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *Camden I*, 946 F.2d at 774; *see also, e.g., Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1294 (1999) (discussing district courts' discretion to fix fee awards based on "individual circumstances of each case"). District courts have substantial discretion in determining the appropriate fee percentage awarded to counsel. *See, e.g., Gevaerts*, 2015 WL6751061, at *10.

Camden I directs district courts to consider 12 nonexclusive factors when evaluating the reasonable percentage to award class counsel: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *Camden I*, 946 F.2d at 772 n. 3, 775 (citing *Johnson v. Ga. Highway Express, Inc*., 488 F.2d 714, 717-19 (5th Cir. 1974)). "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and

the economics involved in prosecuting a class action." *Id*. at 775. In addition, the Eleventh Circuit encourages district courts to consider any other factors unique to the particular case. *See id*. Most fundamentally, "monetary results achieved predominate over all other criteria." *See id*. at 774.

The lodestar approach to determining a reasonable fee award is inapplicable when calculating class plaintiff "attorneys' fees awarded from a common fund." *Id*. A lodestar cross-check is unnecessary. In fact, "in the Eleventh Circuit, 'the lodestar approach should not be imposed through the back door via a 'cross-check.'" *Wilson v. EverBank*, No. 14-cv-22264, 2016 WL 457011, at *13 (S.D. Fla. Feb. 3, 2016)(quoting *In re Checking Account Overdraft Litig*., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011)). "The Eleventh Circuit made clear in *Camden I* that percentage of the fund is the *exclusive* method for awarding fees in common fund class actions." *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 (emphasis added). Lodestar "encourages inefficiency" and "creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation." *Id*. at 1362-63. Thus, "courts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all." *Id*. at 1363; *see, e.g., In re Takata Airbag Prods. Liability Litig*., No. 15-02599, 2017 WL 5706147, at *4-5 (S.D. Fla. Nov. 1, 2017); *Reyes v. AT&T Mobility Servs., LLC*, No. 10-20837, 2013 WL 12219252, at *6 (S.D. Fla. Jun. 21, 2013). *See also Belin v. Health Insurance Innovations, Inc.*, No. 19-61430-CIV-SINGHAL-VALLE, 2022 WL 11226006, at *3 (S.D. Fla. Mar. 10, 2022), *report and recommendation adopted* 2022 WL 1125788 (S.D. Fla. Apr. 15, 2022)(discussing legal standards applicable to awarding fees in common fund class actions).

Relevant here, district courts routinely apply the percentage method and *Camden I* factors to order fee awards totaling one-third or more of the common fund recovered for the class. *See Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26,

2012)("The average percentage award in the Eleventh Circuit mirrors that of awards nationwide — roughly one-third"); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-98 (11th Cir. 1999) (affirming class action fee award of 33 1/3% of the total available settlement fund); *Hanley v. Tampa Bay Sports & Ent. LLC*, No. 819CV00550CDHCPT, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (awarding a "slight increase from the one-third benchmark"); *Pritchard v. APYX Med. Corp.*, No. 819CV00919SCVAEP, 2020 WL 6937821, at *1 (M.D. Fla. Nov. 18, 2020) (33 1/3%); *George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (discussing the normality of 33% contingency fees); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 15-22782-Civ-COOKE/TORRES, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (35%); *Swift v. BancorpSouth Bank*, No. 1:10-CV-00090-GRJ, 2016 WL 11529613, at *19 (N.D. Fla. July 15, 2016)(35%); *Reyes*, 2013 WL 12219252, at *3 (awarding "one-third of the total maximum settlement fund"); Eisenberg, *Attorneys' Fees in Class Actions*: 2009-2013, 92 N.Y.U.L. REV/ 937, 351 (2017) (empirical study showing the median award in Eleventh Circuit is 33%). *See also Belin*, 2022 WL 11226006 (awarding 33.33% of fund plus expenses incurred).

B. <u>The Requested One-Third Fee Award is Reasonable</u>

Applying the percentage method and the factors referenced in *Camden I*, the Court should grant Class Counsel's request for a fee award of $4,500,000, which constitutes one third of the $13.5 million Settlement Fund. Class Counsel's request is justified here by the needs and complexity of this case, the results obtained by Class Counsel, the heavy investment of time and resources by Class Counsel, the risk of non-recovery surrounding this case and similar one-third fee awards in comparable class action cases.[4]

[4] As of the filing of this Motion, there have not been any objections to the Settlement. The deadline to object to the Settlement is March 1, 2024. Accordingly, one of the *Camden I* factors — "whether there are any substantial objections" — is premature at this time.

1. This action required a significant amount of time and labor

First, the Court should consider the significant time and labor devoted by Class Counsel to prosecute this case and reach a settlement. *See Camden I*, 946 F.2d at 772 n. 3, 775 (examining "the time required to reach a settlement" and "the time and labor required"). The scope and complexity of this case required Class Counsel to focus on it exclusively for extended periods of time. Class Counsel spent thousands of hours on this case without compensation, and have advanced over $250,000 in out-of-pocket expenses. Sheehan Decl. ¶¶ 6-7; Carroll Decl. ¶¶ 6, 8.[5]

After extensive investigation, Class Counsel pleaded claims for Plaintiffs that, after substantial briefing, survived two motions to dismiss. *See* D.E. 184, D.E. 194. During discovery, Class Counsel reviewed over 100,000 pages of documents received from Defendants, later using that material to build a detailed record in support of class certification. *See* D.E. 210-2, at ¶¶ 7-8; D.E. 210-3, at ¶¶ 8-9. Class Counsel also took the Rule 30(b)(6) and Rule 30(b)(1) depositions of Defendants' representatives. D.E. 210-2, at ¶ 10. In addition, Class Counsel responded to Defendants' comprehensive discovery requests and defended Plaintiffs' depositions. D.E. 210-2, at ¶ 9. Class Counsel filed a motion for class certification supported by voluminous documentary evidence and two expert reports (D.E.143, 159) and later responded to multiple *Daubert* motions directed at their experts. D.E. 210-2, at ¶ 12. Ultimately, following two full-day mediation sessions with Mediator John Freud and months of additional negotiations, Class Counsel secured a $13.5 million settlement with Assurance. *See* D.E. 210-2, at ¶ 14; D.E. 210-3, at ¶ 13.

[5] The Declarations of Patrick J. Sheehan, Esq. dated January 16, 2024, (the "Sheehan Decl.") and Matthew Carroll, Esq. dated January 16, 2024, (the "Carroll Decl."), in support of this Motion are attached hereto as **Exhibit 1** and **Exhibit 2,** respectively.

It is therefore apparent from the record that substantial time and labor were required of Class Counsel in prosecuting this case and to obtain the Settlement. These factors weigh in favor of Class Counsel's requested fee award. *See Dear v. Q Club Hotel, LLC*, No. 15-60474-CIV-COHN/SELTZER, 2018 WL 1830793, at *3 (S.D. Fla. Mar. 14, 2018).

2. Class Counsel achieved an excellent result for the Settlement Classes despite the complexity of the case and obstacles to recovery.

Next, the Court should consider the results obtained by Class Counsel in light of the complexity of the case and the considerable obstacles to recovery. *See Camden I*, 946 F.2d at 772 n. 3, 775 (examining "the novelty and difficulty of the questions involved" and "the amount involved and the results obtained, "and "any non-monetary benefits conferred upon the class").

Here, the Settlement constitutes a laudable achievement under the circumstances. Assurance is to pay $13.5 million for the benefit of the Classes. *See* Settlement Agreement, §§ I.(k), III.[6] Given the challenges that the Classes faced and would continue to face if a settlement were not reached, this is an exceptional result. As discussed above, the risks that Plaintiffs' motion for class certification could be denied, that one of both of their experts' testimony could be excluded, and that their claims could be defeated summary judgment or trial were significant.

Bringing RICO claims compounded these risks, as such claims require additional evidence pertaining to Defendants' intentional wrongdoing and involvement with the alleged scheme. Moreover, with various nonparties alleged to have been involved in the scheme, the Defendants stood to benefit from a so-called "empty chair" defense at trial. In this regard, Defendants would have likely attempted to shift the blame and give the jury a reason to reduce their liability for the Classes' damages.

[6] The Settlement Agreement is attached to the Plaintiffs' Motion for Preliminary Approval of Settlement Agreement as Exhibit 1. D.E. 210-1.

Thus, while Plaintiffs' claims, if fully successful, could have yielded a damages award against Defendants in the hundreds of millions of dollars, the recovery in this case is remarkable given the very real possibility that the Classes could have walked away with little to no recovery. Thus, the Settlement is an excellent achievement under the circumstances, even if it does not provide a near-full recovery to the Classes. *See Thorpe v. Walter Inv. Mgmt. Corp*., No. 1:14-CV-20880-UU, 2016 WL 10518902, at *10 (S.D. Fla. Oct. 17, 2016) (awarding a 33.33% fee to class counsel and describing as "excellent" and an "outstanding result" a recovery of 5.5% of the class' maximum damages and 10% of the class' most likely damages).

3. The action posed considerable risks to Class Counsel

The Court should place great weight on risks assumed by Class Counsel in bringing this case on a contingency fee basis. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining "whether the fee is fixed or contingent," "the 'undesirability' of the case," and "the economics involved in prosecuting a class action"). "Where class counsel undertakes suck risks on a pure contingency fee basis, as it did here, it 'often justifies an increase in the award of attorney's fees.'…In fact, this Court has recognized that the undertaking of suck risk alone 'can support a fee award of over 30% of the settlement fund.'" *Cabot East Broward 2 LLC v. Cabot*, No. 16-61218-CIV-DIMITROULEAS/SNOW, 2018 WL 5905415, at *4 (S.D. Fla. Nov. 9, 2018).

Class Counsel brought this case on a pure contingency fee basis and have not received any compensation for their efforts. Sheehan Decl. ¶ 5. As of the filing this Motion, Class Counsel have collectively devoted thousands of hours in attorney and paralegal time in prosecuting this case. Sheehan Decl. ¶ 6; Carroll Decl. ¶ 6. They have also incurred over $250,000 in unreimbursed expenses. Sheehan Decl. ¶ 7; Carroll Decl. ¶ 8. Class Counsel include less than 20 attorneys combined, so the financial impact of this case on Class Counsel was significant.

As discussed above, such time and resources were necessary to aggressively prosecute Plaintiffs' claims and secure a favorable settlement for the Classes. As also discussed above, Class Counsel made this investment of time and resources despite the various legal and factual obstacles to recovery for the Classes. Put simply, Class Counsel took a sizable risk in prosecuting this action.

These factors pertaining to the risks assumed by Class Counsel thus support the requested fee award. *See Cabot E. Broward 2 LLC*, 2018 WL 5905415, at *4 (finding substantial risk by class counsel because of "novel and difficult issues and…several affirmative defenses that could have reduced the value of the case to zero").

4. This case required Class Counsel's high level of skill and a meaningful relationship with the Plaintiffs

The next *Camden I* factors pertain to Class Counsel's capabilities, reputation and handling of the action for the Plaintiffs. *See Camden I*, 946 F.2d at 772 n. 3, 775 (examining "the skill requisite to perform the legal service properly," "the experience, reputation, and ability of the attorneys," and "the nature and length of the professional relationship with the client"). These factors similarly weigh in favor of a one-third fee award to Class Counsel.

Class Counsel has significant experience with class action and complex litigation and are well-respected litigators. *See* D.E. 210-2, at ¶¶ 19-20, Exhibit 1; 210-3 ¶ 18. Class Counsel deployed this experience and skill here to address the complicated pleading, discovery, briefing and settlement issues that were presented in this case. *See supra* Section B(1)-(2). Class Counsel faced formidable and sophisticated opposition from a 900-plus lawyer law firm, Seyfarth Shaw, and a 1,100-plus lawyer firm, King & Spalding.

As to their relationship with Plaintiffs, Class Counsel had never met the Plaintiffs before this case arose. *See* D.E. 210-3 at ¶ 4. Plaintiffs approached Class Counsel seeking representation to pursue their claims. *Id.* Class Counsel developed a meaningful working relationship with

Plaintiffs to collaborate on, for example, their investigation, pleadings, discovery obligations and settlement discussions. Through this collaboration and Class Counsel's skill, Plaintiffs were able to obtain a significant settlement with Assurance. These factors therefore weigh in favor of Class Counsel's requested fee award.

5. Preclusion from other employment and time limits imposed justify the requested fee

Class Counsel's requested fee award is also supported by the *Camden I* factors bearing on Class Counsel's preclusion from other employment as a result of this case and the time limits imposed by the circumstances. *See Camden I*, 946 F.2d at 772 n. 3 (examining "the preclusion of other employment by the attorney due to acceptance of the case" and "time limitations imposed by the client or the circumstances"). Class Counsel devoted thousands of hours to this case and over $250,000 in out-of-pocket expenses in the pursuit of Plaintiffs' claims. Given the size of Class Counsel's law firms (less than 20 attorneys combined), a case of this magnitude took away from their ability to pursue matters with guaranteed compensation from clients, as well as other contingency fee matters. Class Counsel complied with scheduling deadlines and acted expeditiously in prosecuting this case. At certain points, this required various attorneys' complete attention to this case. These factors further justify Class Counsel's request for a one-third fee award.

6. The requested fee award is consistent with customary fees and awards in similar class action cases

Finally, the factors pertaining to fee awards in other class action cases weigh in favor of Class Counsel's requested fee of one third of the Settlement Fund. *See Camden I*, 946 F.2d at 772 n. 3, 775 (examining "the customary fee" and "awards in similar cases"). As noted by Judge Scola, a "one-third recovery…is a customary fee" for class actions. *Diakos v. HHS Sys., LLC*, No. 14-

61784, 2016 WL 3702698, at *6 (S.D. Fla. Feb. 4, 2016). Courts in this Circuit routinely grant fee awards of one-third or more of the class settlement fund. *See, e.g.*, *Swift*, 2016 WL 11529613, at *19 (35%); *Cabot East Broward 2 LLC*, 2018 WL 7798110, at *11 (33.33%); *Dear*, 2018 WL 1830793, at *5 (33.3%); *Fernandez*, 2017 WL 7798110, at *4 (35%); *Wolff*, 2012 WL 5290155, at *7 (33%); *Hanley*, 2020 WL 2517766, at *6 ("slight increase from the one-third benchmark"); *Pritchard*, 2020 WL 6937821, at *1 (33 1/3%); *Reyes*, 2013 WL 12219252, at *3 ("one-third of the total maximum settlement fund"); *Atkinson v. Wal-Mart Stores, Inc*., No. 8:08-CV-691-T-30TBM, 2011 WL 6846747, at *7 (M.D. Fla. Dec. 29, 2011) (33 1/3%); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 12941, 1295-98 (11th Cir. 1999) (33 1/3%); *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1252 (S.D. Fla. 2016) (awarding 33%); *In re Terazosin Hydrochloride Antitrust Litig*., 1:99-MD-01317-PAS, 2005 WL 8181045, *4-5 (S.D. Fla. April 19, 2005) (33 1/3%). *See also Belin*, 2022 WL 11226006 (awarding 33.33% of fund plus expenses incurred).

Plaintiffs' fee arrangement with Class Counsel is customary in complex multiparty litigation. Class Counsel took this case on a contingency fee basis and seek compensation consistent with the above-cited awards in class action cases. As a result, these factors weigh in favor of awarding Class Counsel the requested fee.[7]

C. The Court Should Grant the Request for Reimbursement of Expenses

Plaintiffs also ask that Class Counsel be reimbursed for the litigation expenses incurred in prosecuting this case. Courts routinely award reimbursement from the common fund for reasonable

[7] Although, as noted above, the Eleventh Circuit does not require performing a lodestar cross-check in common fund cases, the fee requested here would fall well within the range of lodestar multipliers approved in common fund settlements within both this Circuit and this District. *See, e.g., Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007) (noting that "lodestar multiples in large and complicated class actions range from 2.26 to 4.5, while three appears to be the average" and that "[i]n many cases, including cases in this jurisdiction, multiples much higher than three have been approved.")(citations and quotations omitted). If the Court wishes to conduct a lodestar cross-check, Class Counsel will be happy to provide the information necessary for it to do so.

litigation expenses. *See, e.g., In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2015 WL 12641970, at *18; *Gevaerts*, 2015 WL 6751061, at *14. "Indeed, courts normally grant expense requests in common fund cases as a matter of course." *Hanley*, 2020 WL 5217766, at *6.

Here, Class Counsel incurred a total of $253,865.88 in expenses to date, with Whatley Kallas incurring $237,376.24 in expenses, and Matt Carroll Law incurring $16,489.64 in expenses. Sheehan Decl. ¶ 7; Carroll Decl. ¶ 8. These expenses include expert witness fees, mediation fees, electronic legal research, court reporters, deposition transcripts, process servers, photocopying and postage. Class Counsel submit that these expenses were necessarily incurred in furtherance of the litigation and should therefore be reimbursed from the Settlement Fund. *See, e.g., In re Checking Account Overdraft Litig.*, 2015 WL 12641970, at *18 (granting request for expenses of $976,191.34 from the settlement fund, where the expenses included expert fees, court reporter fees and transcripts, and mediator fees, which "were necessarily incurred in furtherance of the litigation of the Action and the Settlement"); *Cabot East Broward 2 LLC*, 2018 WL 5905415, at *9 (granting $1,728,947 in reimbursement of expenses from settlement fund).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court (i) award Class Counsel attorneys' fees in the amount of $4,500,000, which constitutes one third of the Settlement Fund, and (ii) order the reimbursement of $253,865.88 in litigation expenses to Class Counsel. The proposed final order and judgment attached as Exhibit 1.D. to the Settlement Agreement reflects the relief sought in this Motion.

Local Rule 7.1.(a)(3) Certification: Undersigned counsel have conferred with counsel for Defendants about this motion and confirmed that they do not oppose the relief requested herein.

Dated: January 16, 2024

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been electronically filed on January 16, 2024, with the Clerk of the Court using the CM/ ECF system which will send notification of such filing to the following counsel of record:

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

WILLIAM JAMES GRIFFIN, et al., Plaintiffs, v. BENEFYTT TECHNOLOGIES, INC., et al., Defendants.	Case No. 0:20- cv-62371-AHS

DECLARATION OF PATRICK J. SHEEHAN, ESQ.

Pursuant to 28 U.S.C. § 1746, I, Patrick J. Sheehan, Esq., declare as follows:

1. I am an individual over the age of twenty-one (21) and I submit this declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses.

2. I am a partner in the law firm of Whatley Kallas, LLP ("Whatley Kallas") and one of the attorneys serving as counsel for Plaintiffs in the above captioned matter. I make this declaration based on my personal knowledge and a review of the books and records of Whatley Kallas, and if called upon to do so, I could and would testify competently to these facts.

3. I reaffirm the statements made in my November 14, 2023 declaration submitted in this action as D.E. 210-2.

4. Whatley Kallas and co-counsel Matt Carroll Law LLC ("Carroll Law") (collectively, the "Firms") represent Plaintiffs in this action.

5. Whatley Kallas represents Plaintiffs on a contingency fee basis and has not received any compensation for its services in connection with this action.

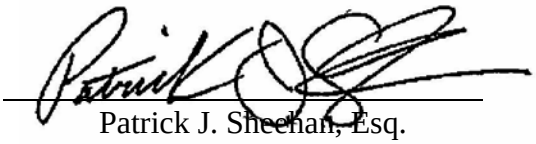
6. As of the date of this declaration, Whatley Kallas has devoted thousands of hours in attorney and paralegal time to this matter.

7. As of the date of this Declaration, Whatley Kallas has incurred $237,376.24 in unreimbursed litigation expenses in connection with this action. The following is a breakdown of these expenses:

Category	Amount
Conference Calls	$86.15
Court Reporters	$50,252.66
Experts	$153,210.00
Filing Fees	$2,224.95
Mediator Fees	$7,190.00
Online Research	$1,125.20
Express Mail	$1,205.18
E-Discovery Support Services	$18,534.75
Travel Expenses	$268.10
Copies	$3,279.25
TOTAL	**$237,376.24**

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 16, 2024



Patrick J. Sheehan, Esq.

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

WILLIAM JAMES GRIFFIN, et al., Plaintiffs, v. BENEFYTT TECHNOLOGIES, INC., et al., Defendants.	Case No. 0:20- cv-62371-AHS

DECLARATION OF MATTHEW CARROLL, ESQ.

Pursuant to 28 U.S.C. § 1746, I, Matthew Carroll, Esq., declare as follows:

1. I am an individual over the age of twenty-one (21) and I submit this declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses.

2. I am a solo practitioner and the name of my firm is Matt Carroll Law LLC ("Carroll Law"). Previously I was a partner at the law firm of Johnstone Carroll, LLC. I make this declaration based on my personal knowledge and a review of the books and records of my law firm, and if called upon to do so, I could and would testify competently to these facts.

3. I reaffirm the statements made in my November 14, 2023 declaration submitted in this action as D.E. 210-3.

4. Carroll Law and co-counsel Whatley Kallas, LLP ("Whatley Kallas") (collectively, the "Firms") represent the Plaintiffs in this action.

5. Carroll Law represents the Plaintiffs on a contingency fee basis and has not received any compensation for its services in connection with this action.

6. As of the date of this Declaration, Carroll Law, and its predecessor, Johnstone Carroll LLC, have devoted hundreds of hours in attorney and paralegal time prosecuting this

matter. This includes preparing and presenting witnesses for deposition, reviewing and editing pleadings, preparing discovery responses, and reviewing documents and numerous lengthy telephone recordings produced by the Defendants. Even before Johnstone Carroll and Whatley Kallas filed their original complaint in this matter, I and my firm devoted substantial time meeting with clients, making phone calls to clients' medical creditors, investigating Health Insurance Innovations, its business model, the allegations against it in the *Belin* matter and other complaints, and educating myself regarding the requirements of the Affordable Care Act.

7. For a firm of my size, the devotion of this much time to one contingency fee matter significantly limited my ability to pursue hourly fee paying work as well as other contingency fee matters.

8. As of the date of this Declaration, Carroll Law has incurred $16,489.64 in unreimbursed litigation expenses in connection with this action. The following is a breakdown of these expenses:

Category	Amount
Experts	$15,000.00
Online Research	$224.00
Express Mail	$187.00
Travel Expenses	$800.64
Copies	$278.00
TOTAL	**$16,489.64**

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 16, 2024

Matthew Carroll, Esq.