IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)

SHARNESE HALL On Her Own Behalf and on Behalf of All Others Similarly Situated, Plaintiff, v. HWS, LLC t/a HENRY'S WRECKER SERVICE, *et al.* Defendants.	Civil Action No. 8:22-cv-00996-BAH

Plaintiff's Memorandum in Support of Motion for Award of Attorney's Fees

Richard S. Gordon (Fed. Bar No. 06882)
Benjamin H. Carney (Fed. Bar No. 27984)
GORDON, WOLF & CARNEY, CHTD.
11350 McCormick Rd.
Executive Plaza 1, Suite 1000
Hunt Valley, MD 21031
Tel. (410) 825-2300
Fax. (410) 825-0066
rgordon@GWCfirm.com
bcarney@GWCfirm.com

Attorneys for Representative Plaintiff and the Settlement Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

TREATISES

EXHIBITS

I. Introduction[1]

This novel litigation challenged the uniform and consistent efforts of the largest towing company in Montgomery County, Maryland – HWS, LLC and Henry's Wrecker Service Company of Fairfax County, Inc. (collectively "Henry's Towing") – to assert a "possessory lien" over vehicles that it had trespass towed, requiring consumers, including the Representative Plaintiff, Sharnese Hall ("Ms. Hall"), to pay all towing fees and charges as a pre-condition to retaking possession of her vehicle, even though Possessory Liens, in Maryland, are unlawful. *See T.R. v. Lee*, 55 Md. App. 629 (1983).

Class Counsel pioneered this new area of litigation, at considerable risk. *See* **Exhibit 2**, Declaration of Richard S. Gordon ("Gordon Decl.") at ¶¶ 12-13. Before Class Counsel filed a similar lawsuit against one of Henry's Towing's competitors in early 2015, no other lawyers had pursued a similar class action against a trespass towing company.[2] No other lawyers were willing to devote the resources required to pursue this case for years and endure the delay in payment – and risk of no payment at all – which is inherent in litigation like this which is undertaken on a contingency basis. *See Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473 at *3 (D. Md. Jan. 28, 2020) ("no other law firm had been willing to devote the necessary resources to prosecute this type of action. Without question, this case required a willingness by counsel to risk very significant amounts of time and money 'in the face of vigorous resistance' by the defendants.") (citation omitted).

---

[1] For the Court's convenience, the Settlement Agreement is attached hereto as **Exhibit 1**. *See also* ECF No. 106-2.

[2] In the class action *Yang, et al. v. G&C Gulf, Inc. dba G&G Towing, et al.*, case no. 403885-V (Cir. Ct. Mont. Cty), which Class Counsel filed in the Circuit Court for Montgomery County in April 2015, the plaintiff alleged, like this case, that a trespass towing company, uniformly and consistently asserted a "possessory lien" in violation of Maryland's Towing or Removal of Vehicles from Parking Lots Law, Md. Code Ann., Transp. § 21-10A-01 *et seq*. (the "Maryland Towing Act") and Montgomery County's Tow Ordinance, Montgomery County Code, § 30C-1, *et seq*. (the "MC Tow Law") and the common law. The Circuit Court in *G&G Towing* ultimately held that the towing company had asserted an illegal possessory lien against more than 30,000 consumers and entered final judgment on that basis. Gordon Decl. at ¶ 13.

Now, after years of litigation and negotiation, Class Counsel has secured a settlement under which Henry's Towing has agreed to create a common non-reversionary settlement fund of $3 million, plus payment of an incentive fee separate from the settlement fund.

The settlement is an excellent result for Settlement Class members. The challenged conduct here – which required Class Member to pay Henry's Towing a standard charge of $150^{00} (each time that their vehicle was towed) as a condition for retaking possession of their vehicle – will result in each Settlement Class Member recovering a substantial percentage of what they initially paid to Henry's Towing. If every one of the 33,443 potential Settlement Class Members file claims, assuming one tow per claimant, each would be entitled to receive an average of roughly $59.80 from the common fund – or approximately 40% of the fee paid to Henry's Towing – even after deducting out an allocation for attorney's fees and expenses. That is a good result on its own.[3]

But the payment here is likely to be much higher. Claims rates in consumer class actions rarely exceed 7%. *See, e.g.*, *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) (en banc) (noting that the claims rates do not normally exceed 7%

[3] As noted in Plaintiff's Motion for Final Approval of Class Action Settlement, filed contemporaneous with this Motion for Award of Attorney's Fees, class action settlements typically only recover less than 10% of potential damages. *See In re Ravisent Techs., Inc. Sec. Litig.,* No. Civ. A. 00–CV–1014, 2005 WL 906361, at *9 (E.D.Pa. Apr. 18, 2005) (approving settlement, which amounted to 12.2% of damages, and citing study by Columbia University Law School, which determined that "since 1995, class action settlements have typically recovered between 5.5% and 6.2% of the class members' estimated losses") (internal citations omitted); *see also City of Pontiac Gen. Employees' Ret. Sys. v. Lockheed Martin Corp.*, 954 F. Supp. 2d 276, 280 (S.D.N.Y. 2013) ("while the recovery represents only approximately 10% of the plaintiff's best-case damages model, it is unlikely that, if the case were to go to trial, plaintiff would recover its best-case model."); *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust*, 834 F.2d 677, 682 (7th Cir. 1987) (finding settlement of 10% of the total amount sought is adequate due to risks and costs of trial); *Viceral v. Mistras Group, Inc.*, Case No. 15-cv-02198-EMC, 2016 WL 5907869 *7 (N.D. Cal. Oct. 11, 2016) (settlement payment equal to 11.6% and 5.2% of estimated value of state and federal claims is fair and reasonable in light of strength and variability of claims and risks on merits).

"even with the most extensive notice campaigns."); *see also Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 290 (6th Cir. 2016) ("response rates in class actions generally range from 1 to 12 percent, with a median response rate of 5 to 8 percent"). If the claims rate is in line with the 7% expectation identified in *Sullivan*, each claiming Settlement Class Member will receive more than **$850**, or **560%** of the fees paid to Henry's Towing, again, ***after*** deducting out the attorney's fees and expenses from this case.[4]

That would represent substantially more than a 100% recovery for participating Settlement Class members. *See*, *e.g.*, *Ware v. CKF Enterprises, Inc.*, No. CV 5:19-183-DCR, 2020 WL 2441415, at *13 (E.D. Ky. May 12, 2020) (reasonableness of class action settlement supported because "consultants ***who participate*** will receive a substantial portion of unpaid wages") (emphasis added).

Having secured an excellent recovery for the Settlement Class, Class Counsel now respectfully requests an award of attorney's fees of one-third (33⅓%) of the Common Settlement Fund plus reimbursement of a portion of Class Counsel's litigation costs in the amount of $10,494[63], pursuant to *Fed.R.Civ.P.* 23(h) and 54(d)(2) and ¶ 22 of the Settlement Agreement.

The requested award is well-supported by decisions including *Decohen v. Abbasi, LLC*, 299 F.R.D. 469 (D. Md. 2014), which approved a one-third attorney's fee in another consumer class action brought by these same Class Counsel. *Decohen*'s rationale and result has been cited approvingly and followed by numerous courts in Maryland and elsewhere. *See, e.g., Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020) (holding that "a one-third fee is the market rate" for similar class action attorney's fees, awarding of attorney's fees of $4,666,667, which represented one-third of the common fund); *Krakauer v. Dish*

[4] Given that 33,443 notices were mailed to the potential Settlement Class members, a 7% claims rate would result in approximately 2,341 claims.

Network, L.L.C., No. 1:14-CV-333, 2018 WL 6305785, at *5 (M.D.N.C. Dec. 3, 2018) (awarding attorney's fee of $20,447,600, which represented one-third of the common fund); *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758, at *5 (M.D.N.C. Sept. 25, 2019) (awarding attorney's fee of $18,166,666.67, which represented one-third of the common fund). Class Counsel's requests of an award of one-third (33⅓%) of the common fund, is consistent with the "market rate."

In the end, the ultimate touchstone of any fee recovery is related to success. And this settlement undoubtedly reflects success. This lawsuit challenged Henry's Towing's illegal "possessory lien" – and recovered a common fund of $3 million, despite the fact Henry's Towing vigorously defended its practice, attempted to have the Maryland Legislature ***retroactively*** amend the Maryland Tow Act, Md. Code Ann., Transp. § 21-10A-01 *et seq*. to permit possessory liens,[5] and argued, in any event, that it had an implied right to assert a possessory lien. These excellent results justify the award requested. *See* Part III.C.1, *infra*.

Cross-checking the requested award against Class Counsel's lodestar also shows that it is reasonable. Class Counsel spent substantial time researching the facts and applicable law for this case, drafting pleadings, taking discovery, briefing class certification, preparing for and conducting mediation and settlement negotiations, and on other necessary matters. *See* Gordon Decl. at ¶¶ 14-27. Thus far, Class Counsel have devoted more than 1,053 hours to this litigation (resulting in a lodestar of $721,890$\underline{00}$) – and expect that the time spent on this litigation will substantially increase as notice is disseminated to the Class and Class Counsel responds to inquiries from Settlement Class members and other administrative issues during the notice period, and as the settlement is ultimately distributed to Settlement Class members and inquiries and administrative duties continue. *See* Gordon Decl. at ¶¶ 45-46. Lodestar multipliers of up to 4.5 are reasonable. *See Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 483 (D. Md. 2014).

[5] *See* Gordon Decl. at ¶¶ 32-36.

The fee requested here represents a lodestar multiplier of **only 1.39**. *See* Part III.C.6, *infra*.

For all these reasons and the reasons discussed below, Class Counsel's requested fee of one-third (33⅓%) of the Common Fund is reasonable and should be approved.

II. Case Background

A. Factual Background

The facts alleged in the Second Amended Complaint (ECF No. 45) are set forth in Part II of Plaintiff's Motion for Final Approval of Class Action Settlement, filed contemporaneous with this Motion for Award of Attorney's Fees, and will not be repeated here.

Plaintiff merely notes here that the Second Amended Complaint ("SAC") attempted to hold a number of different parties liable for Henry's Towing's widespread and unlawful scheme to tow vehicles without the owners' consent, and then to ransom the vehicles back to their owners by exercising an illegal possessory lien: (1) Henry's Towing, the largest trespass towing company in Montgomery County; (2) Henry's Towing's management and policy makers – Defendants Fred Scheler , Richard Barakat, Joshua Welk; and (3) Henry's business partners – Wheaton Metro Residential Holdings, LLC and Foulger-Pratt Residential, LLC. Each of these Defendants are participating in the settlement of this case.

Plaintiff also notes that the SAC sought statutory for the recovery of damages under both the Maryland Towing Act, Trans. Art. § 21-10A-05 and the MC Tow Law, § 30C-10, both of which generally provide for the return of triple all towing fees. In addition, for ***any and all violations*** of the MC Tow Law, the "property owner and [] towing service are jointly and severally liable," for "3 times the amount of any towing, release or storage fees charged." § 30C-10.

B. Course of the Litigation

This case was filed in the Circuit Court for Montgomery County, Maryland on

March 23, 2022. As a result of Henry's Towing's unlawful practices, Representative Plaintiff alleged five statutory counts against the Henry's Towing Defendants: violations of the Maryland Tow Act, Md. Code Ann., Transp. §§ 21-10A-01, *et seq*. (Count I), violations of the MC Tow Law (Count II), violations of the Maryland Consumer Protection, Md. Code Ann., Com. Law §§ 13-101, *et seq*., (Count III), violations of the Maryland Consumer Debt Collection Act, Md. Code Ann., Com. Law §§ 14-201, *et. seq*. (Count IV), and for issuance of a declaratory judgment under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq*. (Count V). **Exhibit 2**, Gordon Decl. at ¶ 18.

Henry's Towing removed this case to this Court on April 22, 2022, after which Plaintiff filed an Amended Complaint on May 9, 2022. The Amended Complaint added claims against the owners of the Parking Lot in Ms. Hall's mother's apartment building – Wheaton Metro Residential Holdings, LLC and Foulger-Pratt Residential, LLC. *Id*. *See* also ECF no. 14.

Following service of the Amended Complaint, Defendants filed Answers to the Complaint, ECF nos. 18 and 25, and the Parties engaged in extensive discovery regarding Rule 23 certification. After many months of discovery, that included the exchange of significant written discovery and documents, as well as depositions, Plaintiffs filed a comprehensive Motion for Certification of the Plaintiff Class on July 21, 2023, ECF no. 46 (the "Class Certification Motion"), as well as a Second Amended Complaint, ECF no. 45, adding the owners and directors of Henry's Towing – Fred Scheler, Richard Barakat and Josh Welk – as Defendants. Gordon Decl. at ¶ 19.

Rather than respond to the Class Certification Motion, the Defendants filed lengthy omnibus motions to dismiss. *See* ECF Nos. 75 & 76. Those motions, though fully briefed, have not been ruled on. Gordon Decl. at ¶ 20.

In addition, during the litigation Class Counsel also met with regulators and interviewed scores of absent Class members, to confirm that the uniformity and

consistency of the allegations in the Complaint.[6] Gordon Decl. at ¶ 16.

But that is not all. Class Counsel also had to fight off multiple attempts in Maryland's General Assembly to ***retroactively*** amend the Maryland Tow Act, Md. Code Ann., Transp. § 21-10A-01 *et seq*. to permit possessory liens. Gordon Decl. at ¶¶ 32-36. During the 2024 Session of the Maryland General Assembly, lobbyists hired by Henry's Towing in response to this lawsuit, introduced S.B. 107 and H.B. 514, both of which, if passed, would have applied retroactively in an attempt to wipe out the present action. **Exhibits 2-A** and **2-B** to Gordon Decl. In particular, each Bill provided that "this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any action for the wrongful retention of a motor vehicle arising out of the towing or removal of the motor vehicle from a privately owned parking lot under Title 21, Subtitle 10A of the Transportation Article occurring before the effective date of this Act." Gordon Decl. at 34.

S.B. 107 and H.B. 514, were each defeated, in part, because of Class Counsels' substantial opposition to the legislative effort. Gordon Decl. at ¶ 35. They also resulted in the Office of the Attorney General, weighing in against a last-minute effort to amend the proposed legislation. *See* **Exhibit 2-C** to Gordon Decl., Letter from Natalie R. Bilbrough to the Honorable Sara Love dated April 5, 2024 (citing this Court's decision in *Huemmer v. Mayor & City Council of Ocean City*, 474 F. Supp. 704, 711 (D. Md. 1979), and the Fourth Circuit's affirmance in *Huemmer v. Mayor & City Council of Ocean City*, 632 F.2d 371 (4th Cir. 1980)). *See also* 73 Md. Op. Atty. Gen. 349 (Md.A.G.), 1988 WL 482024 (Dec. 19, 1988) (Maryland does not recognize possessory lien in favor of towers).

The legislative failure in the 2024 Session did not deter the Henry's Towing Defendants. Henry's lobbyists introduced two (2) similar Bills again in the 2025 Session of the Maryland General Assembly, S.B. 883 and H.B. 1405. These Bills, like their 2024

[6] Declarations from seven (7) of the absent Class members were included with the Motion for Certification of the Class, ECF Nos. 46-13 through 46-20.

counterparts, also were defeated, again due, in part, to Class Counsels' substantial opposition to the legislative effort. *See* Gordon Decl. at ¶ 36.

C. Settlement Negotiations

The Parties began discussing the potential for a negotiated resolution in early 2023 (*see* ECF No. 35) and agreed to engage the Hon. James R. Eyler (Ret.) as mediator. *See* ECF No. 37; *see also* **Exhibit 2**, Gordon Decl. at ¶ 18. Judge Eyler conducted an in-person mediation session on February 7, 2023, and additional sessions – either in person or by Zoom – on April 25, 2023, December 6, 2023, August 19, 2024, September 20, 2024, September 30, 2024 and October 11, 2024. *See* ECF Nos. 55, 57 and 97; *see also* Gordon Decl. ¶¶ 18-19. All totaled, seven (7) formal mediation sessions, over twenty-one (21) months, were required to resolve this case. Gordon Decl. at ¶¶ 21-22.

In addition to these in-person mediations, the parties continued their intensive negotiations through November 2024. *Id.* ¶ 23. It is safe to say that the Parties' efforts to resolve this case were lengthy, intensive, and arms-length. *See also* Gordon Decl. ¶¶ 26-27. The negotiations between the parties were characterized by substantial compromise on both sides, mutual give-and-take, and the absence of collusion. *Id.* at ¶ 26. These extended arms-length efforts to reach compromise resulted in the Settlement Agreement. *Id.* at ¶ 27.

During mediation, the Plaintiffs also conducted extensive due diligence, to assure Counsel that the ultimate settlement is fair and adequate. For their part, Defendants provided substantial additional information and documents concerning the allegations in the Complaint both during litigation and in connection with mediation. *See* Settlement Agreement ¶ 10.

D. The Class Was Notified of Class Counsels' Request for Attorney's Fees

Class members were informed of Class Counsel's request for attorney's fees as part of Class Notice. After this Court gave preliminary approval to the Settlement, the Court appointed Settlement Administrator prepared and disseminated notice to

Settlement Class Members. Each Notice states that Class Counsel intends to apply for an award of one-third (33⅓%) of the Common Fund Settlement as attorney's fees plus litigation costs. The Notice was mailed to 33,443 potential Settlement Class Members on April 9, 2025. *See* Gordon Decl. ¶¶ 40-42.

III. Legal Standards Governing the Award of Attorney's Fees

A. An Award of Attorney's Fees is Warranted Under the Common Fund Doctrine

Under Federal Rule of Civil Procedure 23(h), "the court may award reasonable attorney's fees … that are authorized … by law or by the parties' agreement." *Id.*; *see also Decohen*, 299 F.R.D. at 480–81 (same). Under the "common fund doctrine," "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The common fund doctrine is based on the inherent powers of the federal court to "prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Id.* As one court noted in memorable language, quoting the Book of Deuteronomy, a common fund fee award is designed to ensure that attorneys will continue to take the risks and invest the resources to confer such benefits:

> Were it not for the efforts of the attorneys, there would be no funds to dispute. Thou shalt not muzzle the ox that treadeth out the corn.

Equifax. Inc. v. Luster, 463 F. Supp. 352, 358 (E.D. Ark. 1978), *aff'd per curiam*, 604 F.2d 31 (8th Cir. 1979), *cert. denied*, 445 U.S. 916 (1980); *see also Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 921 F.2d 1371, 1392 (8th Cir. 1990) (same).

B. A Percentage-of-Recovery Award Is Appropriate

In class actions, " '[t]here are two main methods for calculating the reasonableness of attorneys' fees—the lodestar method and the percentage-of-recovery method. … A district court may choose the method it deems appropriate based on its judgment and the facts of the case.'" *Amaya v. DGS Constr., LLC*, No. CV TDC-16-3350,

2023 WL 8188628, at *2 (D. Md. Nov. 27, 2023) (*quoting McAdams v. Robinson*, 26 F.4th 149, 162 (4th Cir. 2022)).

"The Supreme Court has suggested that percentage-of-the-fund is the appropriate method for awarding fees under the common fund doctrine." *In re Peanut Farmers Antitrust Litig.*, No. 2:19-CV-00463, 2021 WL 9494033, at *1 (E.D. Va. Aug. 10, 2021) (*citing Blum v. Stenson*, 465 U.S. 886. 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' ... a reasonable fee is based on a percentage of the fund bestowed on the class ...."); *see also Kelly*, 2020 WL 434473, at *2 (same).

Indeed, the percentage-of-recovery approach "is 'overwhelmingly' preferred." *Kelly*, 2020 WL 434473, at *2 (*citing Krakauer v. Dish Network, L.L.C.*, No. 14-333, 2018 WL 6305785, at *2 (M.D.N.C. Dec. 3, 2018); *Archbold v. Wells Fargo Bank, N.A.*, No. 13-24599, 2015 WL 4276295, at *5 (S.D.W. Va. July 14, 2015) ("[T]he Court concludes that there is a clear consensus ... that the award of attorneys' fees in common fund cases should be based on a percentage of the recovery.")); *see also Boger v. Citrix Sys., Inc.*, No. 19-CV-01234-LKG, 2023 WL 1415625, at *9 (D. Md. Jan. 31, 2023) ("the percentage-of-recovery approach is not only permitted, but is the preferred approach to determine attorney's fees' in class actions.") (*quoting Starr v. Credible Behav. Health, Inc.*, No. CV 20-2986 PJM, 2021 WL 2141542, at *5 (D. Md. May 26, 2021) (*quoting Savani v. URS Pro. Sols. LLC*, 121 F. Supp. 3d 564, 568 (D.S.C. 2015)); *Jones v. Dominion Resource Servs., Inc.*, 601 F. Supp. 2d 756, 759 (S.D.W. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases.").[7]

[7] Attorney's fee calculations are subject to a different standard in cases involving statutory fee-shifting. For example, in cases under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, unlike "many common fund cases," a lodestar-based fee is preferred due to the text of the statute. *Amaya v. Young & Chang, Inc.*, No. CIV. PWG-14-749, 2014 WL 3671569, at *4 (D. Md. July 22, 2014).

The percentage-of-the-fund approach is preferable as a matter of policy because it aligns the interests of the Class and Class Counsel, and encourages efficient and effective representation:

> The trend among most courts seems to be towards favoring the percentage-of-the-fund approach to awarding attorney's fees in class action cases because it "better aligns the interests of class counsel and class members ... [by] t [ying] the attorneys' award to the overall result achieved rather than the hours expended by the attorneys." *Kay Co. v. Equitable Production Co.,* 749 F.Supp.2d 455, 461 (S.D.W.Va.2010). The percentage-of-the-fund approach rewards, counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorney's fees on an hourly basis. *Id.*

DeWitt v. Darlington Cnty., S.C., No. 4:11-CV-00740-RBH, 2013 WL 6408371, at *6 (D.S.C. Dec. 6, 2013).

Furthermore, "the percentage method is more efficient and less burdensome that the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases." *Strang v. JHM Mortgage Sec. Ltd. Partnership,* 890 F.Supp. 499, 503 (E.D.Va.1995); *see also In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig.*, No. 3:09-CV-00054, 2012 WL 5430841, at *2 (D.S.C. Nov. 7, 2012) (same). "Courts within the Fourth Circuit have cautioned against the lodestar approach in determining attorneys' fees in common fund cases such as this ... the lodestar method 'create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits.'" *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *3 (M.D.N.C. Sept. 29, 2016) (*quoting Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (other citations and internal quotations omitted).

The percentage-of-the-fund method is particularly appropriate in cases like this one, in which Class Counsel has a contingent fee agreement with the Representative Plaintiff.

> Class Counsel were not hired on an hourly basis, nor have any of their fees or expenses been paid as would have been required in representation on an hourly basis. Accordingly, this Court will determine the reasonableness of the requested fee using a percentage of the fund approach.

In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig., 2012 WL 5430841, at *2; *see also* Gordon Decl. at ¶ 43 (Class Counsel have a contingent fee agreement with Representative Plaintiff).

Contingency awards in class actions are important to encourage lawyers to take these risks and make these investments, to protect access to justice:

> The contingent fee and the class action are "the poor man's keys to the courthouse." Both vehicles allow the average citizen and taxpayer to have their injuries redressed and their rights protected. Both permit persons of limited resources to obtain competent legal counsel, an essential ingredient in our adversary system of justice....
> If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear ....

Muehler v. Land O'Lakes, Inc., 617 F. Supp. 1370, 1375-76 (D. Minn. 1985) (awarding 35% fee).

Accordingly, as this Court held in *Decohen*, not only Maryland courts but also "the majority of courts in other jurisdictions, use the percentage of recovery method in [a] common fund case." 299 F.R.D. at 481. *See also* Manual for Complex Litigation, Fourth, § 14.121 ("After a period of experimentation " with "the lodestar method ... the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common fund cases.") (citations omitted); *see also* § 5 Newberg on Class Actions § 15:62 n. 3 (5th ed.) (same). As a sister Court in the Fourth Circuit held:

> While the Fourth Circuit has not definitively answered this debate, other districts within this Circuit, and the vast majority of courts in other jurisdictions consistently apply a percentage of the fund method for calculating attorneys' fees in common fund cases.

In re The Mills Corp. Sec. Litig., 265 F.R.D. 246, 260 (E.D. Va. 2009) (*citing Jones v. Dominion Res. Servs.*, 601 F.Supp.2d 756, 758 (S.D.W.Va.2009); *Smith v. Krispy*

*Kreme Doughnut Co*rp., No. 1:05CV00187, 2007 WL 119157 *1 (M.D.N.C. Jan. 10, 2007); *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 787 (E.D. Va. 2001); *Strang et al v. JHM Mortgage Sec. Ltd. P'ship et al.*, 890 F.Supp. 499, 502 (E.D.Va.1995).

Though, as discussed below, this case has demanded an expenditure of many hours by Class Counsel, the time expenditure is of less importance than the size of the common fund:

> Unlike a statutory-fee analysis, where the lodestar is generally determinative, a percentage fee award sometimes gives little weight to the amount of time expended. Attorneys' hours may be one of many factors to consider. ***Indeed, one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation.*** Generally, the factor given the greatest emphasis is the size of the fund created, because a "common fund is itself the measure of success…[and] represents the benchmark from which a reasonable fee will be awarded."

Manual for Complex Litigation, Fourth § 14.121 (quoting 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 14:6 at 547, 550 (4th ed. 2002)) (emphasis added).

The percentage of the fund method is standard in the legal market for class counsel's services in class action cases:

> The percentage method also accords with the overwhelming prevalence of contingency fees in the market for plaintiffs' counsel: when potential clients and lawyers bargain freely for representation, most contracts award the lawyer a percentage (commonly, about one third) of the client's recovery.

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 991 F.Supp.2d 437, 440 (E.D.N.Y. 2014).

The long history of courts approving an award of a percentage of the settlement fund for class counsel's attorneys' fees recognizes that like other contingency-based litigation, a percentage fee in class litigation best aligns the interests of Class Counsel with those of the Class and rewards counsel for undertaking risky, but ultimately successful, cases. As the leading treatise on class actions observes, "in a common fund case, counsel is typically entitled to a percentage of the fund." 4 Newberg and Rubenstein on Class Actions § 13:7 (6th ed.).

C. The Requested Percentage Is Reasonable

This Court has identified seven factors to be considered in determining the reasonableness of a requested award under the percentage-of-recovery method:

> In assessing the reasonableness of an award under the percentage-of-recovery method, a court may consider the following seven factors: "(1) the results obtained for the class; (2) the quality, skill, and efficiency of the attorneys involved; (3) the risk of nonpayment; (4) objections by members of the class to the ... fees requested by counsel; (5) awards in similar cases; (6) the complexity and duration of the case; and (7) public policy." *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 771 (D. Md. 2022) (quoting *Singleton v. Domino's Pizza*, 976 F. Supp. 2d 665, 682 (D. Md. 2013)).

Amaya, 2023 WL 8188628, at *3. Those factors overlap with the general guidelines for determining the reasonableness of attorney's fees under Maryland Rule of Professional Conduct 1.5:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and,
> (8) whether the fee is fixed or contingent.

Maryland Rule of Professional Conduct 1.5(a).

Considering all of these factors, the request for attorney's fees in the amount of one-third of the Common Settlement Fund, plus Class Counsel's out-of-pocket mediation expenses, is both reasonable and appropriate, as discussed below.

1. The Result Obtained Is Superior

The results obtained for the Settlement Class supports the requested fee award. Class Counsel obtained substantial relief for the Settlement Class – a guaranteed, non-

reversionary common settlement fund of $3 million plus the Defendants' agreement to pay an incentive payment of $15,000^{00} to the Representative Plaintiff separate from and in addition to the common fund. *See* ECF No. 106-2, Settlement Agreement.

That result is excellent. The proposed settlement is a substantial recovery and the entire $3 million fund is guaranteed to be disbursed. All Settlement Class Members who confirm that they are "consumers," are entitled to receive a cash recovery from the settlement for each time they were towed during the Class Period. *See* Settlement Agreement at ¶19(f). As discussed above, if statistics hold true in this settlement, Settlement Class members who file a Claim Form could receive between $300 and $850 apiece, or more – substantially more than 100% of the fees they paid.

2. The Quality, Skill and Efficiency of the Lawyers Involved

The quality, skill and efficiency of the lawyers involved supports the requested fee award. Ten years ago, the Hon. William D. Quarles weighed in on the "quality and efficiency" of Class Counsel here:

> class counsel have significant experience in consumer class action litigation and are nationally recognized for excellence. ... Class counsel zealously pursued recovery for the class and litigated efficiently, despite a vigorous defense.

Decohen, 299 F.R.D. at 481–82. In the decade since *Decohen* was decided, Class Counsel's experience in class action litigation has only increased. *See* Gordon Decl. at ¶¶ 2-7 and 8-10.

Class Counsel are also still "nationally recognized for excellence," as Judge Quarles recognized in 2014. *Decohen*, 299 F.R.D. 481. Among other things, lead Class Counsel here – Richard S. Gordon has three times has been chosen by *Best Lawyers* as the "Lawyer of the Year" in Mass Tort Litigation/Class Actions for Baltimore (2016, 2018 and 2020). He was elected a Lifetime Fellow in the American Bar Foundation and the Litigation Counsel of America. He also maintains an AV Preeminent Peer Review Rating by Martindale-Hubbell, was one of the Daily Record's "Leadership in Law" Honorees in 2017, was honored with the Simon K. Walton Civil Justice Award by the

Maryland Association for Justice in 2019, and is named in *SuperLawyers*. *See* Gordon Decl. ¶ 5.

Co-Counsel Benjamin H. Carney was named 2024 "Lawyer of the Year" in Mass Tort Litigation/Class Actions for Baltimore by *Best Lawyers*, maintains an AV Preeminent Peer Review rating from Martindale-Hubbell, was named a "Leader in Law" by the Daily Record in 2019, was named to the Daily Record's "VIP List" in 2017, is a Fellow of both the American Bar Foundation and the Maryland Bar Foundation, and also is named in *SuperLawyers*. *See* Gordon Decl. ¶ 9.[8]

Class Counsel also "zealously pursued recovery for the class and litigated efficiently" here, despite the vigorous defense presented. *Decohen*, 299 F.R.D. at 481–82. Defendants retained a top local law firm – PK Law – for defense. And Defendants utilized the considerable resources of their excellent lawyers. Defendants filed two well researched and written motions to dismiss, fought hard against producing discovery and advanced competent and zealous defenses both in litigation and in settlement negotiations.

Nevertheless, Class Counsel put their experience and reputation to work in this case, achieving a substantial monetary resolution for the Settlement Class despite able and well-funded counsel on the opposing side. Class Counsel's representation of Plaintiff and the Class has been, and will continue to be, a significant undertaking, requiring substantial time and attention. Class Counsel has already devoted many hours to this case – more than 1053 hours to date – and time spent by Class Counsel on this litigation displaced substantial time from other matters. *See* Gordon Decl. ¶ 46. That time investment is not over but is expected to continue for many months. *See id*. The

[8] Among the honors that Messrs. Gordon and Carney have received, their law school *alma mater*, the University of Maryland Francis King Carey School of Law, recently named an endowed Professorship after the law firm that they founded – the "Gordon, Wolf & Carney Professor of Law." Gordon Decl. at ¶ 11. *See also* www.law.umaryland.edu/faculty--research/directory/profile/index.php?id=1061 (last visited May 5, 2025).

nature and complexity of class action litigation, if it is to be handled professionally and effectively, requires a substantial allocation of time, staff, and other resources – and that reflects the experience of Class Counsel in this case.

For all of these reasons, the quality, skill and efficiency of the lawyers involved supports the requested fee.

3. The Risk of Nonpayment Was High

The fact that Class Counsel faced substantial risk of not obtaining any compensation for their time or expenditures also supports the requested fee award. Class Counsel prosecuted this action on behalf of the Class on a fully contingent basis and at considerable risk. *See* Gordon Decl. ¶ 43. If this were non-class action litigation, the customary fee arrangement would be contingent, based upon a percentage of the recovery, typically in the 33⅓ to 40 percent range. *See, e.g.*, *Kirchoff*, 786 F.2d at 323; *see also Richendollar v. Bertini,* 27 F.3d 563 (4th Cir. 1994) (characterizing as "typical" a "contingent fee arrangement" under which the plaintiff's attorney "would collect one-third of the settlement.")

The "risk of receiving little or no recovery is a major factor in awarding attorney's fees" in "complex and multi-year class action cases." *Savani v. URS Professional Solutions, LLC*, 121 F.Supp.3d 564, 572 (D.S.C. 2015) (*citing Phillips v. Crown Cent. Petroleum Corp.,* 426 F.Supp. 1156, 1174 (D.Md.1977)). Often, the risk of non-payment is realized, and contingent-fee attorneys like Class Counsel are paid nothing after years of efforts:

> The risk of no recovery in complex cases of this sort is not merely hypothetical. Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs, yet have lost the case despite their advocacy. *See, e.g. Glover v. Standard Fed. Bank,* 283 F.3d 953 (8th Cir.2002) (reversing class certification); *In re Milk Prods. Antitrust Litig.,* 195 F.3d 430, 437–38 (8th Cir.1999) (affirming dismissal of complaint without leave to replead).

Id.

In this case, the risk of non-payment was very real. One of the factors enhancing the risk of non-payment is the "novel nature of th[e] case." *Kelly*, 2020 WL 434473, at *3 (*citing Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *4 (M.D.N.C. Sept. 29, 2016)).

This case was novel and raised innovative legal claims. Only one other class action lawsuit like this one – *Yang v. G&G Towing* – had ever been filed prior to this one. *See* Gordon Decl. ¶¶ 12-13, 50. As mentioned above, Class Counsel pioneered this type of claim in *Yang v. G&G Towing*.

The Settlement is the result of diligent and efficient efforts by Class Counsel, who have accomplished a great deal in the time that this case has been pending. It is especially beneficial to the Class, considering the real risks Plaintiffs and the Class faced. Plaintiffs and the Class were by no means assured of victory. Had the case proceeded further in litigation, the Defendants would have strenuously opposed the motion for certification of the Class, would have attempted to put on evidence in each Class tow at trial, and would have generally litigated this case in a vigorous manner. Plaintiffs and the Class also would have likely faced summary judgment which could have been dispositive against them.

Throughout the litigation, recognizing the risks, Class Counsel struck a balance between an active and aggressive litigation strategy on behalf of the Class on the one hand, and a responsible approach to negotiations on the other. Class Counsel, for example, both zealously pursued litigation, motions practice and discovery. In addition, Class Counsel conducted extensive research into the applicable law with respect to the issues raised in the Complaint and gathered and reviewed virtually all publicly available documents, and interviewed scores of Class members.

On the settlement front, Class Counsel engaged the Henry's Towing Defendants in lengthy, arduous and intense arm's-length settlement negotiations, over more than a year and a half. These extensive settlement discussions were facilitated by Judge Eyler,

and were ultimately successful, but required substantial commitments of Class Counsel's time and energy.

Furthermore, contingent-fee representation is inherently risky. Percentage fee awards like the one requested here take that risk into account. Here, any recovery for Class Counsel was and is contingent on recovery of money for the claims in this case. *See* Gordon Decl. ¶ 43. Class Counsel pursued relief on behalf of the Class for more than three (3) years on a contingency basis and negotiated a settlement which includes substantial relief for the Class, all prior to obtaining any compensation. Contingent-fee awards recognize the risk Class Counsel faced here, and help keep bad cases out of court. *See Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) ("The contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains. … So long as the percentage is set by category of case (as it should be), rather than case by case, defendants with good cases pay no more than defendants with poor ones. The adjustment for risk takes place not in the judge's chambers but in the private market-under a contingent fee system, potential litigants with poor chances simply cannot find counsel. Weak cases stay out of court.")

The aligned interests of Class Counsel and Plaintiff and the Class, and the contingent nature of the recovery of any fee in this case, weighs in favor of the requested fee. *See, e.g., In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 339 (Bankr. D. Md. 2000) (awarding attorney's fee of $71.2 million, finding that "pure contingency fee of 40% was …within the range of fees customarily charged in Maryland for similar services" even though it was "as much as 20 times a customary hourly rate fee" when "the fee agreement was for a contingency").

The high risk of non-payment is undertaken in a case like this in the expectation that where a case reaches a successful resolution, Class Counsel will be "rewarded for his efforts (if successful) in the form of a significant attorney's fee for results obtained for the benefit of the Class." *Savani*, 121 F.Supp.3d at 572. *See also In re Employee Benefit*

Plans Securities Litigation, 1993 WL 330595 (D. Minn. June 2, 1993). (where settlement class members were advised of one-third fee requested and class counsel worked on contingency, "an award of 33 1/3% of the common fund is reasonable.")

Despite the competent and diligent efforts of counsel, at no time was success guaranteed. Indeed, from the beginning, Class Counsel faced serious risks regarding liability and the ability to establish harm. Those issues were explained in the Settlement Agreement and are discussed above. Suffice it to say that the multitude of legal issues in this case, any one of which (including action by the Maryland General Assembly), if resolved against Plaintiffs and the Class could have been dispositive, made this case risky and recovery uncertain. *See In re Continental Illinois Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992) (fee award remanded to district court for revision, with admonition "that the failure to make any provision for risk of loss may result in systematic undercompensation of [Class] counsel in a Class action case").

Even a victory at trial would not have guaranteed the ultimate success of Representative Plaintiff and the Class, because Defendants no doubt would have pursued appeals. As a result of the settlement, however, Settlement Class members will be able to receive the benefits of the settlement immediately, without uncertainty or delay. Class Counsel's compensation is entirely dependent upon relief to the Settlement Class, which demonstrates the risk faced by Class Counsel and supports the contingent fee requested.

4. Objections by Class Members

The reaction of the Class to the Settlement obtained with the efforts of Class Counsel speaks volumes about the Class' satisfaction with this relationship. In a case which resulted in a remarkable success rate in noticing the Class, to date there are ***no*** objections and ***no*** opt-outs. Notably, the notice posted on the official website advised the Class of the attorney's fee request to be made by Class Counsel.

Settlement Class Members have until May 24, 2025 to file an objection or to opt-out.

5. Awards in Similar Cases

The "market rate" in this District for attorney's fees in similar class action cases is one-third of the common fund. *See Kelly*, 2020 WL 434473, at *3 ("Contingent fees of up to one-third are common in this circuit…In similar ERISA excessive fee cases, and in particular those brought by Class Counsel, district courts have consistently recognized that a one-third fee is the market rate."). In support of that holding, the *Kelly* Court cited, *inter alia*, *Decohen*, 299 F.R.D. at 483 - another consumer class action brought by these Class Counsel, confirming that the one-third rate is customary in a case like this one. *See Kelly*, 2020 WL 434473, at *3.

Indeed, multiple recent decisions of this Court and others have recognized that in the Fourth Circuit, an attorney's fee award of one-third of a common settlement fund in a class action is appropriate:

> "[A] request for one-third of a settlement fund [in attorney's fees] is common in this circuit and generally considered reasonable." *Id*. (*citing Kirkpatrick v. Cardinal Innovations Healthcare Sols*., 352 F. Supp. 3d 499, 505 (M.D.N.C. 2018)); *see also Phillips v. Triad Guar. Inc*., 2016 WL 2636289, at *6 (M.D.N.C. May 9, 2016) (collecting cases on percentage-of-recovery fee awards and finding that, generally, attorneys' fee awards between 25% and 33% are reasonable).

Boger v. Citrix Sys., Inc., No. 19-CV-01234-LKG, 2023 WL 1415625, at *9 (D. Md. Jan. 31, 2023); *see also Earls v. Forga Contracting, Inc*., No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921, at *4 (W.D.N.C. June 9, 2020) ("Within the Fourth Circuit, contingent fees of roughly 33% are common.") (*citing Kirkpatrick v. Cardinal Innovations Healthcare Sols.,* 352 F. Supp. 3d 499, 505 (M.D.N.C. 2018) (33.39%); *Kirven v. Cent. States Health & Life Co. of Omaha*, No. CA 3:11-2149-MBS, 2015 WL 1314086, at *13 (D.S.C. Mar. 23, 2015) (33%); *Reynolds v. Fid. Investments Institutional Operations Co., Inc*., No. 1:18-CV-423, 2020 WL 92092, at *3 (M.D.N.C. Jan. 8, 2020) (33%)). This Court has applied the one-third of a common fund attorney fee award even in the "mega-fund" context with a common fund in excess of $100 million. *See, e.g., In re Titanium Dioxide Antitrust Litig*., No. 10-CV-00318 RDB, 2013

WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding attorney's fee of $54.5 million, one-third of the $163.5 million common fund).

The same is true in many courts outside the Fourth Circuit as well – an attorney's fee of one-third of the common fund is "the normal rate of compensation." *George v. Kraft Foods Global, Inc.*, No. 1:08-cv-3799, 2012 WL 13089487, at *2 (N.D. Ill. Jun. 26, 2012)("[t]he normal rate of compensation in the market [is] 33.33% of the common fund recovered' because the class action market commands contingency fee agreements and the class counsel accepts a substantial risk of nonpayment."); *see also Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017) (affirming award of one-third of $60 million common fund in addition to reimbursement of counsel's out-of-pocket expenses in a consumer class action); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (affirming award of one-third of $25.75 million common fund in a consumer class action); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App'x 880, 885 (3d Cir. 2016) (affirming award of one-third of $625,000 common fund in addition to reimbursement of counsel's out-of-pocket expenses in a consumer class action); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of one-third of settlement of $40 million); *Martinez v. Medicredit, Inc.*, 2018 WL 2223681, at *5 (E.D. Mo. May 15, 2018) (awarding attorney's fees of one-third of $5,000,000.00 common fund plus expenses in consumer class action); *Goldsmith v. Tech. Solutions Co.*, 1995 WL 17009594, at *7-8 (N.D. Ill. Oct. 10, 1995) ("where the percentage method is utilized, courts in this District commonly award attorneys' fees equal to approximately one-third or more of the recovery"); *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293, at *5 (S.D. Cal. 2013) ("Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent...."); *Woods v. Club Cabaret, Inc.*, 2017 WL 4054523, at *10 (C.D. Ill. May 17, 2017) ("In Illinois, '[c]ourts routinely hold that one-third of a common fund is an appropriate attorneys' fees award in class action settlement'"); *Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291, 310 (S.D. Miss. 2014)

("numerous decisions have found that a one-third recovery [from a common fund] is well within the range of a customary fee."); *Simpson v. Citizens Bank*, 2014 WL 12738263, at *6 (E.D. Mich. Jan. 31, 2014) ("Class Counsel's request for 33% of the common fund created by their efforts is well within the benchmark range and in line with what is often awarded in this Circuit."); *McNeely v. Nat'l Mobile Health Care, LLC*, No. CIV-07-933-M, 2008 WL 4816510, at *15 (W.D. Okla. Oct. 27, 2008) ("Fees in the range of at least one-third of the common fund are frequently awarded in class action cases of this general variety."); *Shaw v. Toshiba America Information Systems, Inc.* 91 F.Supp.2d 942, 972 (E.D.Tex.2000) ("[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, 75 Cal. Rptr. 3d 413, 434 (2008) (same). *See also* Alba Conte *et al., Newberg on Class Actions* § 14.6 (4th ed. 2002) ("[F]ee awards in class actions average around one-third of the recovery[.]")).

In sum, an attorney's fee award in class action litigation of one-third of the common fund is customary and appropriate in Maryland, the Fourth Circuit, and elsewhere. The fee requested here, is in line with the customary one-third.

Past attorney's fee awards to specific counsel are also relevant in analyzing the "market rate" and reasonableness of a requested attorney's fee. *See Kelly*, 2020 WL 434473, at *3 ("In similar … cases, and in particular those brought by Class Counsel, district courts have consistently recognized that a one-third fee is the market rate."); *see also Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 251 (4th Cir. 2004) ("[e]vidence of fee awards in comparable cases is generally sufficient to establish the 'prevailing market rates' in 'the relevant community.") (*quoting Spell v. McDaniel*, 824 F.2d 1380, 1402 (4th Cir.1987)).

Courts considering settlements achieved by Class Counsel here have repeatedly approved fee awards of one-third of the common fund. This Court, for example, has many times awarded one-third of the common fund to the same Class Counsel in similar

consumer class action litigation. *See*, *e.g.*, *Decohen*, 299 F.R.D. at 480-83 (awarding Class Counsel attorney's fees of one-third of common fund in consumer class action, in addition to reimbursement of out-of-pocket expenses in a consumer class action); *see also Sullivan v. YES Energy Management, Inc..,* Civil Action No. 8:22-cv-418-TDC (D.Md. Jan. 31, 2025) (ECF No. 81); *Edge v. Stillman Law Office, LLC*, 8:21-cv-02813-TDC (D.Md. June 2, 2023) (ECF No. 87 at ¶ 13) (same); *Thomas v. Cameron Mericle, P.A.*, Case No. 8:18-cv-03645-CBD (D.Md. Dec. 4, 2020) (ECF No. 82 at ¶ 10) (same); *Smith v. Ace Motor Acceptance Corp.*, Case No. 1:12-cv-02149-JKS (D. Md. Oct. 7, 2013) (ECF No. 37 at ¶ 10) (same); *Benway v. Resource Real Estate Services, LLC, et al.*, Civil Action No. 1:05-cv-3250-WMN (D. Md. Oct. 12, 2011) (ECF No. 191 at ¶ 11) (same); *Robinson v. Fountainhead Title Group Corp.*, Civil Action No. 03-cv-03106-WMN (D. Md. Oct. 7, 2010) (ECF No. 198 at ¶ 9) (same); *Brittingham v. Prosperity Mortgage Company*, Case No. 1:09-cv-00826-WMN (D. Md. Apr. 14, 2010) (ECF No. 74 at ¶ 10) (same); *Watts v. Capital One Auto Finance, Inc.*, Civil No. 1:07-cv-03477-CCB (D. Md. Jan 15, 2010) (ECF No. 67 at ¶ 9) (same); *Shelton v. Crescent Bank & Trust*, Case No. 1:08-cv-01799-RDB (D.Md. May 28, 2009) (ECF No. 39 at ¶ 9) (same).

Numerous Maryland state Circuit Court decisions, as well, have awarded Class Counsel one-third of the common fund in attorneys' fees, including the Montgomery County Circuit Court in the *G&G Towing* case. *See Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2019) (Rubin, J.) (same) (**Exhibit 3**); *Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2018) (Rubin, J.) (same) (**Exhibit 4**).

As the one third fee award requested in this case is the same as awards approved by other courts, time and time again, in Maryland and nationwide, including to Class Counsel here, it should be approved as reasonable.

6. The Complexity and Duration of the Case and Lodestar Cross-Check

This class action case was complex and has taken years to litigate and resolve. As noted above, this matter required a significant dedication of time on the part of Class

Counsel. Counsel spent more than a thousand hours, over more than three (3) years, litigating this case – investigating the case, crafting legal theories, drafting pleadings, conducting informal and formal discovery, briefing motions, reviewing records, fighting legislation, preparing and participating in mediation and settlement negotiations and addressing other issues necessary to effect settlement. *See e.g.*, Gordon Decl. ¶¶ 19-20.

Furthermore, this case is novel, as discussed above. "The case is more complex when the applicable laws are new, changing, or unclear." *Decohen*, 299 F.R.D. at 482 (citations omitted). And "[i]n the settlement context, courts consider whether negotiations were 'hard fought,' 'complex,' or 'arduous.'" *Id.* (citations omitted). The settlement negotiations here fit that description. *See, e.g.*, Gordon Decl. ¶¶ 26-27.

This case also had a multi-year long duration, and was time-consuming. The time expended by Class Counsel in this litigation – more than 1053 hours to date – translates into a "lodestar" (or hours multiplied by billing rate) of $721,890$\underline{00}$. *See id.* ¶¶ 45-46. And that lodestar number will only go up from here. Class Counsel is investing substantial additional time in this case on an ongoing basis, which will include communicating with Settlement Class members about the proposed settlement, preparing documents in support of the settlement, and engaging in additional tasks in administering the settlement. *See id.* Accordingly, the eventual lodestar in this case will be higher than it stands today.

Yet even today, Class Counsel's lodestar firmly supports the fee requested. As Judge Quarles held in *Decohen*:

> When the lodestar method is used only as a cross-check, the "exhaustive scrutiny" normally required by that method is not necessary. ...the Court may accept as reasonable class counsel's estimate of the hours they have spent working on the case. ... Class counsel aver that they have spent 650 hours litigating this case, and each attorney bills between $400 and $550 per hour. *See* ECF No. 87–4 at 7. Using the lower billing rate of $400, class counsel's requested award [of one-third of the $3 million common fund] is 3.9 times the lodestar rate. "Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorney's fee." ...Accordingly, the lodestar cross-check confirms that the requested fee

> award is reasonable. The Court will award class counsel the requested fee award of one-third of the common fund.

299 F.R.D. at 483 (citations omitted). Here, the requested award – one-third (33⅓%) of the Common Fund– is significantly less than the 3.9 multiplier that was approved in *Decohen*. Using the lodestar as of the time this memorandum is filed, the present multiplier is only **1.39** ($1,000,000 / $721,890 = 1.385). That multiplier will only decrease as Class Counsel devotes additional hours to this settlement in the future.

The Lodestar calculated here as a cross-check only, is based upon a rate for Mr. Gordon of $700/hour and $600/hour for Mr. Carney. **Exhibit 2**, Gordon Decl. at ¶ 45. While Counsel recognize that these rates are slightly higher than the current rates set forth in Appendix B, Rules and Guidelines for Determining Attorneys' Fees in Certain Cases ("Guidelines") – which, as attorneys who each have more than 20 years of experience, would look to a top rate of $475/hour – the Guidelines recognize that the rates should be adjusted in the appropriate circumstances. Indeed, "[o]ne factor that would support an adjustment to the applicable range is an increase in the cost of legal services since the adoption of the Guidelines." *See* Guidelines.[9] The adoption of the hourly rates listed in the Guidelines occurred in 2014, more than a decade ago, and, to date, have not adjusted. *See, e.g., U.S. v. Efploia Ship. Co.*, No. MJG-11-0652, 2016 WL 4275982 at *7 (D. Md. July 22, 2016), *report and recommendation adopted sub nom. U.S. v. Efploia Ship. Co., S.A.*, No. CR MJG-11-0652, 2016 WL 4286040 (D. Md. Aug. 15, 2016).

Recognizing the concerns that arise from adherence to the Guidance's hourly rate matrix, the Fourth Circuit *last month* openly questioned whether the Guidelines have any current relevance. In *De Paredes v. Zen Nails Studio LLC*, --- F.4th ---- , 2025 WL 1107398 (4th Cir. April 15, 2025), the Court, reversing the District Court strict adherence to the Guidelines holding that "district courts … may not treat court-

[9] The Guidelines also state that "The Court recognizes that there are attorneys for whom, and cases for which, the market rate differs from these guideline rates." *Id.*

produced fee matrices as setting a baseline from which departures are disfavored and require special justification." *Id.* at *3. And because the Guidelines were more than a decade old, and did not include any inflation-updates, the Fourth Circuit observed:

> [T]he longer a matrix goes without an update, the odds that it has much to say about today's prevailing market rates decrease and the chances that its use—even properly weighted—will constitute an abuse of discretion increase. Given that this matrix has remained unchanged for more than a decade, we urge the district court to give this matter its prompt attention.

Id.

This Court, as well, has bypassed the Guidelines when calculating an awardable lodestar. *See Goodlaxson v. Mayor and City Council of Baltimore,* No. 21-cv-1454-JKB, 2025 WL 961651 at *9 (D.Md. Mar. 31, 2025) (approving requested lodestar rate of $550 to $775 for partners, managing attorneys, and supervising attorneys); *Wojcik v. Omega Healthcare Investors, Inc.*, Civ. No. JKB-20-3491, 2024 WL 3743081,at *7 (D. Md. Aug. 8, 2024) (approving rates ranging from $750 to $975 for partners and $375 to $625 for law clerks).

For purposes of this case, though, the question of the applicable rate is more of an academic exercise. **First**, as noted in *DeCohen*, because the "lodestar method is used only as a cross-check, the 'exhaustive scrutiny' normally required by that method is not necessary." 299 F.R.D. at 483. And **second**, even applying the Guideline's albeit outdated top rate of $475/hour, applicable to highly skilled attorneys with more than 20 years of experience – such as Class Counsel in this case – the multiplier still is less than 2.0.[10] This multiplier, under any calculation, is below the range endorsed by *DeCohen*.

Accordingly, the complexity and duration of the litigation supports the award requested.

[10] 1,053 hours x $475/hour = a lodestar of $500,175. Thus, the multiplier is less than 2.0 – $1,000,000 / $500,175 = **1.999**.

7. Public Policy

Public policy supports the requested fee award. To begin with, "public policy favors the proposed attorney's fee award to incentivize counsel to take on such cases." *Amaya*, 2023 WL 8188628, at *3. And, public policy supports the award of a fee which is "in-line with those awarded in consumer class actions involving a similar degree of complexity and risk to counsel." *Decohen*, 299 F.R.D. at 482 (citations omitted). As discussed above, the requested fee is one-third (33⅓%) of the Common Fund, so it is firmly "in-line" with fee awards in similar class actions. *Id.* Furthermore, public policy supports honoring the expectations inherent to contingent-fee representation. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 546 (S.D.Fla.1988), *aff'd*, 899 F.2d 21 (11th Cir.1990). Class Counsel have invested substantial time and resources in this case, in the expectation of the award of a percentage fee in line with the market rate. *See Savani*, 121 F.Supp.3d at 572.

The public policy expressed by the Maryland Legislature also supports the requested fee. Class Counsel's efforts here sought to enforce the important public policy of the Maryland Tow Act, which the Legislature enacted to protect Maryland consumers when their vehicles are trespass towed. Furthermore, to Class Counsel's knowledge, to date, Maryland regulators have taken no action against Henry's Towing. Accordingly, "[w]ithout the efforts of Plaintiffs' Counsel," Settlement Class members "would not have obtained any relief at all." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). That supports the award requested here.

For all the reasons discussed above, Class Counsel respectfully requests that the Court award the requested attorneys' fee of one-third (33⅓%) of the common settlement fund in this case.

IV. The Requested Expenses Are Reasonable

Under *Fed.R.Civ.P.* 23(h), the Court is authorized to award costs that are reasonable in nature. *See id.* ("In a certified class action, the court may award

reasonable… untaxable costs that are authorized by law or by the parties' agreement."). "Reasonable costs 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.'" *Amaya*, 2023 WL 8188628, at *3 (citations omitted). "Generally, courts permit recovery of costs advanced for litigation expenses, including … mediation costs." *Robinson v. Carolina First Bank NA*, No. 7:18-CV-02927-JDA, 2019 WL 2591153, at *17 (D.S.C. June 21, 2019); *see also McClaran v. Carolina Ale House Operating Co., LLC*, No. 3:14-CV-03884-MBS, 2015 WL 5037836, at *5 (D.S.C. Aug. 26, 2015) (same).

Accordingly, Class Counsel respectfully requests that the Court approve payment of $10,494[63] in costs from the Common Fund, which represents the amount paid by Class Counsel for filing fees, mediation and depositions. *See* Gordon Decl. ¶¶ 48-49.

V. Conclusion

For the reasons set forth above, Representative Plaintiff respectfully requests that the Court approve payment to Class Counsel of one-third (33⅓%) of the common fund as attorney's fees, plus $10,494[63] in litigation costs. The attached proposed Final Order Approving Settlement and Certifying Settlement Class resolves, *inter alia*, this Attorney's Fee Motion.

Respectfully submitted,

/s/ Richard S. Gordon

Richard S. Gordon (Fed. Bar No. 06882)
Benjamin H. Carney (Fed. Bar No. 27984)
GORDON, WOLF & CARNEY, CHTD.
11350 McCormick Rd.
Executive Plaza 1, Suite 1000
Hunt Valley, Maryland 21031
Tel. (410) 825-2300
Fax. (410) 825-0066
bcarney@GWCfirm.com
rgordon@GWCfirm.com

Attorneys for Representative Plaintiff and the Settlement Class