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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Taylor Doyle, on behalf of herself and all others similarly situated,

Plaintiff,

v.

Pekin Insurance Company,

Defendant.

Case No. 2:22-cv-00638-JJT

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, EXPENSES AND SERVICE AWARD

(Assigned to Honorable John J. Tuchi)

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I. INTRODUCTION

In the face of determined opposition from the insurance industry and complex challenges engineering claims that could be adjudicated on a classwide basis under Federal Rule of Civil Procedure 23, Class Counsel undertook this litigation to enforce statutory rights for those seriously injured or killed in auto accidents by uninsured (UM) and underinsured (UIM) tortfeasors. All the Settlement Class Members had exhausted the single (unstacked) limits of UM/UIM coverage under their insurance policies, but none of them received additional benefits Plaintiff contended they were entitled to under the UM/UIM coverage of other vehicles on their policies. Focusing on the data-driven expected payouts of ***contract*** benefits, rather than the predicted values of the underlying personal injury tort claims, Class Counsel developed a model for calculating classwide damages based on reliable and established statistical methods for calculating the aggregate value of insurance settlements for the Settlement Class up to the proper stacked policy limits.

After prevailing at the Arizona Supreme Court on a contested issue of Arizona insurance law that goes to the crux of this case, Class Counsel has negotiated a settlement that will provide a $12,450,000.00 common fund for the Settlement Class. The common fund provides each Class Member approximately 143% of the benefits they would have received had their claims been adjusted under the stacked policy limits.[1] Put simply, even before factoring in the risks, delays, and costs associated with litigation, the recovery secured for Class members exceeds what they would have reasonably expected to receive had the breach never occurred, making this settlement exceptional. This settlement is part of Class Counsel's broader litigation efforts to ensure that Arizona insureds receive the full benefits owed under the contract and reforming the way insurers handle and pay UM/UIM claims.

[1] Even after reducing the award to the Class by the amount of counsel's fee request, the Class will receive over 100% of the benefits they would have received had their claims been adjusted under the stacked policy limits at the time of their losses. Dkt. 102 at 15.

Because of the substantial risks and cost of litigating statutory and insurance issues, the need to navigate class certification issues, and the excellent recovery for the Settlement Class, Plaintiff respectfully requests from the common fund: (1) an award of attorney's fees in the amount of 30% of the monetary benefits conferred upon the Class, which equals $3,735,000; (2) expenses fronted by Class Counsel in litigating this matter of $18,886.74; and (3) service awards for Plaintiff of $7,500 based on her contributions and efforts.

The fees requested are warranted under the percentage-of-the-fund methodology, which is the preferred methodology of the Ninth Circuit in cases such as this one where there is a common fund created for the class, the parties settled after conducting critical discovery but before class certification, and the case is part of a broader litigation campaign. Most importantly, the 30% requested is less than the standard contingency fee rates for plaintiff attorneys who represent insureds on far less contentious insurance issues (33.33% to 40%). This Motion is supported by the Declaration of Robert B. Carey ("Carey Decl."), attached hereto.

II. THE WORK UNDERTAKEN BY PLAINTIFF

A. Plaintiff's Counsel went to and prevailed at the Arizona Supreme Court in related litigation to establish the rights insureds rely on in this case.

In October 2021, Judge Susan Bolton ruled in favor of the insured plaintiff in *Heaton v. Metropolitan Group Property & Casualty Co.*, holding that Arizona law required stacking of UM and UIM motorist coverages within a multi-vehicle policy under A.R.S. § 20-259.01(H), where the insurer did not provide the insured an opportunity to elect which vehicle's coverage was applicable to the claim. *Heaton v. Metro. Grp. Prop. & Cas. Ins. Co.*, No. CV-21-00442-PHX-SRB, 2021 WL 6805629, at *8 (D. Ariz. Oct. 19, 2021). Under that ruling, an insured could collect up to the policy limits on each insured vehicle covered by the policy if they were not provided the opportunity to elect the applicable vehicle's coverage. *Id.* The *Heaton* case was later settled and there was no

appeal of Judge Bolton's decision. Evan Goldstein, a member of Plaintiff's counsel here, was attorney of record in the landmark *Heaton* case. *See generally id.*

In April 2022, Class Counsel Hagens Berman filed *Franklin v. CSAA General Insurance Co.*, No. CV-22-00540-PHX-JJT, alleging the same theory against CSAA. *Franklin* was one of over twelve cases filed by Hagens Berman and/or its co-counsel here, the Slavicek Law Firm, during the 2022–2023 timeframe alleging the same theory of liability, including cases against Allstate, Liberty Mutual, Safeco, Travelers, American Family, Amica, Pekin Insurance, and Farmers Insurance Group entities. Dkt. 102 at 8-9 n.2.[2]

This case against Defendant is one of those suits. Proposed Class Counsel spent significant time and resources investigating *Franklin* and these related cases with the intention of coordinating litigation efforts across the cases. Dkt. 102-2 ¶ 3.

Because of Class Counsel's effort in litigating these cases, and ultimate success in *Franklin*, *Franklin* became a standard-bearer for the parallel cases because it begat an Arizona Supreme Court ruling affecting all others. Citing the multiplicity of pending suits that presented the same UM/UIM stacking question, this Court certified two questions to the Arizona Supreme Court in *Franklin*:

> (1) Does A.R.S. § 20-259.01 mandate that a single policy insuring multiple vehicles provides different underinsured motorist (UIM) coverages for each vehicle, or a single UIM coverage that applies to multiple vehicles?
>
> (2) Does A.R.S. § 20-259.01(B) bar an insured from receiving UIM coverage from the policy in an amount greater than the bodily injury liability limits of the policy?

Franklin v. CSAA Gen. Ins. Co., No. CV-22-00540-PHX-JJT, 2022 WL 16631090, at *1, 2–3 (D. Ariz. Nov. 2, 2022).

[2] While the Slavicek Law Firm initially operated independently in filing several cases, it later agreed to coordinate litigation efforts with Hagens Berman and its co-counsel to ensure the focus was on achieving the best result for Arizona insureds, rather than disputes among the firms prosecuting the cases.

On February 21, 2023, Class Counsel filed Franklin's Supplemental Brief Regarding Certified Questions with the Arizona Supreme Court. Dkt. 102-2 ¶ 4. The defendant in *Franklin* similarly filed a supplemental brief that same day. *Id.* ¶ 5. In response to that briefing, four insurance companies and two insurance groups filed a total of five amicus briefs in support of CSAA, totaling seventy-four pages of briefing. *Id.* ¶ 6. Hagens Berman filed a combined response to all five amicus briefs, which consisted of thirty-eight pages of additional briefing. *Id.* ¶ 7. The Slavicek Law Firm, co-counsel in this case, filed a separate amicus brief. *Id.* ¶ 8. The Arizona Supreme Court held oral argument on the certified questions on April 18, 2023. *Id.* ¶ 9. John DeStefano of Hagens Berman argued those certified questions before the court. *Id.* ¶ 10.

On July 28, 2023, the Arizona Supreme Court answered the certified questions in favor of plaintiff:

> We hold that *§ 20-259.01* mandates that a single policy insuring multiple vehicles provides different UIM coverages for each vehicle. Notwithstanding creative policy drafting intended to evade statutory requirements—including technical definitions of coverages and extensive limitation of liability clauses—insurers seeking to prevent insureds from stacking UIM coverages under a single, multi-vehicle policy must employ subsection (H)'s sole prescribed method for limiting stacking. We also hold that *§ 20-259.01(B),* by its plain language and non-stacking function, does not bar an insured from receiving UIM coverage from the policy in an amount greater than the bodily injury or death liability limits of the policy.

Franklin v. CSAA Gen. Ins. Co., 255 Ariz. 409, 532 P.3d 1145, 1146–47 (2023). The court explained that although the text of A.R.S. § 20-259.01 is "ambiguous, . . . the statute's history and purpose clearly indicate that multi-vehicle policies provide separate UIM coverages for each vehicle." *Id.* at 1148. The court found that subsection (H) provides "the sole means by which insurers may limit UIM/UM stacking" and "to limit stacking under subsection (H), insurers must (1) expressly and plainly limit stacking in the policy and (2) satisfy the notice requirement informing the insured of their 'right to

select one policy or coverage' either in the policy itself or in writing to the insured within thirty days after the insurer is notified of the accident." *Id.* at 1148, 1151 (quoting A.R.S. § 20-259.01(H)). The court concluded:

> In answering the certified questions, we hold that (1) § 20-259.01's text, history, and purpose provide that an insured covered by a multi-vehicle policy has necessarily "purchased" multiple UIM coverages for each vehicle under subsection (H); thus, rather than employing singular definitions of "coverage" in their policies, insurers must comply with the statute's requirements to prevent insureds from intra-policy stacking; and (2) § 20-259.01(B) does not limit UIM coverage.

Id. at 1153.

B. Class Counsel started this case when its success was uncertain.

While *Franklin* was pending but before this Court certified questions to the Arizona Supreme Court—Plaintiff filed her action before this court. Like the plaintiff in *Franklin*, the Plaintiff's claims relate to stacking UM and UIM coverage.

In the operative Complaint, Plaintiff alleges that she was injured in a collision on September 27, 2020, that her injuries led to medical expenses in excess of $223,000, and that the non-party at fault was underinsured. Dkt. 12 ¶¶ 20-35. At the time of the collision, Plaintiff was an insured under a Pekin Insurance Company policy insuring two vehicles, with UIM coverage of $100,000 per person and an aggregate limit of $300,000 per collision. *Id.* ¶ 34. On August 27, 2021, Plaintiff submitted a claim to Pekin for UIM benefits on the Pekin policy. *Id.* ¶ 37. Pekin paid Doyle $100,000—the policy limits on one of the vehicles—but did not pay any claims for coverage on the other vehicle. *Id.* ¶¶ 39-40.

In this suit, Plaintiff brought claims for breach of contract and breach of the implied covenant of good faith and fair dealing, seeking declaratory relief, direct and consequential damages, and punitive damages. *Id.* at 16-19. Plaintiff sought to certify a class nearly identical to the Settlement Class as follows:

> All insured persons under one or more Pekin Policies covering multiple vehicles who, from the earliest allowable time to the date judgment enters, received UM/UIM benefits in an amount less than the full stacked amount of the UM/UIM coverages under the applicable policy or policies and were not notified in writing by Pekin within thirty days after it received notice of the accident of the insured's right to select one policy or coverage.

Id. ¶ 72.

The parties engaged in significant discovery. After the Arizona Supreme Court's decision was issued in *Franklin*, Class Counsel issued forty-nine requests for production, twenty-one interrogatories, and nine requests for admission. Dkt. 102-2 ¶ 11. In response to this discovery, Pekin produced hundreds of documents including policy forms, claims handling practices and procedures, internal correspondence regarding compliance, and claim file documents—which Plaintiff has reviewed. *Id.* ¶ 12. Plaintiff also issued a Rule 30(b)(6) deposition notice and deposed two corporate witnesses for Pekin on topics ranging across Pekin's claims handling practices, its policy language, its understanding of the duties of insurers in Arizona, and the structure and availability of insurance claim-related data maintained by Pekin in the ordinary course of its insurance business. *Id.* ¶ 13. Plaintiff also deposed Pekin's claim adjuster, who handled the evaluation and payment for Plaintiff's UM/UIM claim. *Id.* ¶ 14. Class Counsel have developed extensive statistical evidence and other proof confirming that the settlement amount is fair, reasonable, and adequate in relation to the projected value of the insurance claims themselves. *Id.* ¶ 21. Plaintiff's counsel worked with statistical experts to estimate counterfactuals to ensure the Class receives a fair settlement. *Id.* ¶ 22.

On September 12, 2024, Plaintiff and Pekin participated in settlement discussions with the assistance of respected mediator Mike Ungar. *Id.* ¶ 17. The parties negotiated over the amount of a common fund and on September 23, 2024, the parties were able to agree on the key terms of a settlement. *Id.* ¶ 18. The parties filed a Notice of Settlement that day. Dkt. 95. The parties then entered into the final Settlement Agreement on

October 31, 2024. Dkt. 102-1. Plaintiff then moved for preliminary approval of the settlement, which the Court granted on April 24, 2025. Dkts. 102, 103.

III. ARGUMENT

Plaintiff respectfully requests an award of $3,735,000 in attorney's fees—equal to 30% of the $12.45 million common fund, in line with the fee award granted to Class Counsel in the parallel *Miller v. Trumbull Ins. Co.* litigation by this Court. *Miller*, No. 2:22-cv-01545 ECF No. 75 ¶ 13 (D. Ariz. May 8, 2025). Class Counsel's fee request falls within the usual range recognized in the Ninth Circuit in common fund cases. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) ("in most common fund cases, the award exceeds [the 25%] benchmark" and are generally around 30% (citing cases)). Class Counsel's requested fee is justified primarily because of prevailing market fees for these services, the high degree of risk born by Class Counsel, the significant efforts expended by Class Counsel in this litigation, and the time spent on the issues and hurdles generically that could not be attributed to solely one case but most definitely helped achieve the exceptional relief in this case[3] Carey Decl. ¶ 9.

Plaintiff also requests additional reimbursement of expenses incurred in connection with this litigation of $18,886.74. Finally, Plaintiff requests that this Court grant a service award of $7,500 to Plaintiff Taylor Doyle.

A. Class Counsel's eligibility and entitlement to fees.

The Supreme Court has explained that "a litigant or 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); *see also Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003) (same). "The doctrine rests on the perception that persons who obtain the benefit of a lawsuit

[3] Class Counsel recently had a final fairness hearing in another stacking case, *Dale v. Travelers Property Casualty Insurance Co.*, Case No. CV-22-01659-PHX-SPL. There a class member attended the final fairness hearing and let Class Counsel know how pleased he was with the settlement and the fee request, noting that he was assessed a fee of over 40% by his lawyer that handled the original case, who only obtained coverage for only one of five insured vehicles. Carey Decl. ¶ 10.

without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Boeing*, 444 U.S. at 478 (citation omitted). As described above, this case was brought under Federal Rule of Civil Procedure 23 as a class action. The parties settled the case for a common fund of $12.45 million, which the Court preliminarily approved. Dkt. 103. As ordered by the Court, Class Counsel is entitled to recover fees.

B. The Court can and should adopt alternative procedures to Local Rule 54.2.

While this Motion complies with LRCiv 54.2, not all the procedures in that rule are applicable, and Class Counsel requests that the Court modify the requirements (as permitted in the face of the rule) for this common fund resolution, so that the interests of the class and its attorneys are aligned and recognized by the Court. *Cf.* Brian T. Fitzpatrick, *The Conservative Case for Class Actions* at 93 (2019) (finding the lodestar method in class cases incentivizes lawyers "to be indifferent as to how much the class recovery and to want to drag cases out more to build up more lodestar"). Local Rule 54.2(a) provides that "the procedures set forth in this Local Rule apply" "if the court does not establish other procedures for determining such fees." To recognize the uniqueness of this common fund recovery in a coordinated, broad-based (and contingent) effort, Class Counsel requests the Court slightly modify the procedures here to embrace the Ninth Circuit's preference for the percentage-of-recovery method of awarding fees in such cases. Specifically, Class Counsel requests that the Court recognize an itemized statement under Local Rule 54.2(e) is not necessary. Plaintiff has included—so that the Court may consider the extent of the efforts for this specific Defendant—the total and projected fees to date but requests leave not to submit an itemized statement of fees. The purpose of the percentage-of-the-fund method is to reduce "the burden on the courts that a complex lodestar calculation requires," and instead allows courts "to focus on showing that a fund conferring benefits on a class was created through the efforts of plaintiffs' counsel." *In re*

Apple Inc. Device Performance Litig., No. 5:18-MD-02827-EJD, 2021 WL 1022866, at *2 (N.D. Cal. Mar. 17, 2021) (citations omitted). If the Court deems it necessary to perform an itemized cross-check, Class Counsel requests leave to supplement this Motion. Carey Decl. ¶ 33.

Other requirements of LRCiv 54.2 are similarly inapplicable here. For example, LRCiv 54.2(d)(1) requires a statement of consultation that "the parties have been unable to satisfactorily resolve all disputed issues related to the attorneys' fees." But fees awarded in a class case are not a fee shift, but a requirement that the class pay its attorneys for the time they spent working on their behalf. *See* 5 Newberg and Rubenstein on Class Actions § 15:53 (6th ed.) ("Under the "common fund" doctrine, a lawyer responsible for creating a common fund that benefits a group of litigants is entitled to a fee from the fund." A common fund is often mischaracterized "as an exception to the American Rule that prevailing litigants are responsible for paying their own attorney's fees. But that is not an entirely accurate portrayal because in common fund cases the prevailing litigants are, indeed, paying their own attorney's fees—that is, the beneficiaries of the fund pay fees out of the fund that they received."). Only a court can determine what that fee should be—the defendant and class representative cannot reach an agreement about what that fee should be. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.").

Last, another judge in this District recently found in another stacking settlement that the requirements of LRCiv 54.2 are mandatory—specifically the requirement of attaching all billing records—citing two cases. *Dale v. Travelers Property Casualty Insurance Co.*, Case No. CV-22-01659-PHX-SPL, Order, Apr. 2, 2025. Plaintiff respectfully disagrees that they are mandatory as the text of the Rule allows the Court to adopt different procedures. As shown above, not all the requirements of the Rule are applicable to class cases or common funds. In addition, neither of the cited cases were

common funds but cases where one party was requesting a fee shift, which necessitates the requirement for the billing records. Here, Plaintiff provides the aggregate lodestar, which supports the requested percentage-of-the-fund recovery. Carey Decl. ¶ 14.

Additionally, Plaintiff respectfully points out that the cases cited by the court in *Dale* are different from the instant case. For example, in *Aviva USA Corp. v. Vazirani*, No. CV 11-0369-PHX-JAT, 2013 WL 4430921, at *1 (D. Ariz. Aug. 16, 2013), aff'd, 632 F. App'x 885 (9th Cir. 2015), defendants were seeking permissive attorneys' fees under the Lanham Act. There, the court found that some defendants did not "adequately describe the services rendered so that 'the reasonableness of the charge can be evaluated.'" *Id.* at 7. Other defendants failed to include a statement of consultation, a memorandum in support of the motion, and an insufficient itemized fee statement. *Id.* at *7. Citing *Societe Civile Succession Richard Guino v. Beseder Inc.*, No. CV 0301310–PHX–MHM, 2007 WL 3238703, at *7 (D. Ariz. Oct. 31, 2007), the court found the requirements of LRCiv 54.2 were mandatory, not advisory. *Id.* In *Societe Civile*, the plaintiff sought permissive fees under the Copyright Act. *Societe Civile Succession Richard Guino*, 2007 WL 3238703, at *7. One of the biggest concerns the court had was the plaintiff's failure to file a statement of consultation, finding "[t]hese requirements are not advisory, but are mandatory to support an award of attorneys' fees and non-taxable costs." *Id.* at *7–8. Where one party is seeking fees from another party, it makes sense that consultation or an itemized fee statement would be mandatory. Particularly since the other party needs to assess the reasonableness of the request and to ensure that the request is targeted to claims that allow a fee shift. None of those concerns are present in a class case. Here, consultation is not possible, and the reasonableness of the award is not based on the lodestar but what percentage of the fund represents a reasonable fee and should be awarded to Class Counsel. The lodestar is at best a cross-check, which as described below, can be done without an itemized fee statement using the aggregate amount. Class Counsel requests that the Court slightly modify the requirements of LRCiv 54.2.

C. Class Counsel's fee request is reasonable.

An award of reasonable attorneys' fees from the common fund compensates Class Counsel for vigorously litigating this action on behalf of Arizona insureds who did not receive their promised contractual benefits.

1. The percentage of the fund method is the favored method for determining Class Counsel's fee award.

"Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The percentage of the common fund method "is most used 'where the defendants provide monetary compensation to the plaintiffs' and class benefit is easy to quantify." *Saliba v. KS Statebank Corp.*, No. CV-20-00503-PHX-JAT, 2021 WL 4775105, at *5 (D. Ariz. Oct. 13, 2021) (quoting *In re Hyundai*, 926 F.3d 539, 570 (9th Cir. 2019)); *see also Sample v. CenturyLink Commc'ns LLC*, No. CV-16-00624-TUC-NVW, 2019 WL 13252618, at *2 (D. Ariz. Mar. 18, 2019) ("The percentage-of-recovery method is favored in common-fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure." (citation omitted)); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *5 (N.D. Cal. Aug. 17, 2018) ("By tying the award to the recovery of the Class, Class Counsel's interests are aligned with the Class, and Class Counsel are incentivized to achieve the best possible result."); Theodore Eisenberg et al., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 963 (2017) ("EMG Study") (finding in an empirical study of attorneys' fees in class action settlements that from 2009–2013, the lodestar method was rarely used, but courts frequently used the percentage method with a lodestar check); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 832 (2010) (finding that the lodestar method is used only in 12% of class actions, usually where fees are paid pursuant to a fee-shifting statute, or the relief is injunctive). *Cf. Kim v. Allison*, 8 F.4th 1170, 1181 (9th

Cir. 2021) (lodestar method "is especially appropriate in class actions where the relief sought—and obtained—is ... primarily injunctive." (citation omitted)). The percentage-of-the fund method is the most beneficial to Class Members because it aligns the interests of the class with those of class counsel. Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U. Pa. L. Rev. 2043, 2052 (2010). In other words, under the percentage-of-the-fund method, counsel is incentivized to negotiate a larger recovery for the class. *Id.* And there is no incentive for attorneys to "drag cases on," as there is with the lodestar method. *Id.*

Other courts in this circuit have found that applying the lodestar method to common fund cases does not achieve proportionality, predictability, or protection of the class. *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989). The lodestar method is also problematic because it "encourages abuses such as unjustified work and protracting the litigation." *Id.* And the lodestar method "adds to the work load [sic] of already overworked district courts." *Id.*

While courts in the Ninth Circuit can utilize a lodestar cross-check against a percentage-of-the-recovery award, *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015), they are not required to do so. *Farrell v. Bank of Am. Corp., N.A.*, 827 F. App'x 628, 631 (9th Cir. 2020). And courts in the Ninth Circuit have declined to perform a lodestar cross-check under circumstances that require such a departure, such as this case. *See, e.g.*, *In re College Athlete NIL Litigation*, Case No. 20-cv-03919 CW, Dkt. 1001 at 2, n. 2. (N.D. Cal. July 11, 2025) (declining to conduct a lode-star cross check where the court confirmed the reasonableness of fees by considering "the results that class Counsel achieved for settlement class members and the risks and costs of continued litigation."); *Benson*, 2023 WL 3761929, at *2 (not requiring a cross check where counsel "prosecuted a line of several class actions against well-funded corporations, and pursued an entirely novel legal theory").

Rather than incentivizing attorneys to forgo a collective recovery to push just a fraction of the individual cases—where they can reap much higher negotiated fees—

courts should award a low-end market percentage (here, 30%) to encourage aggregate litigation that ensures all class members recover benefits at a reasonable cost, especially when only the attorneys are aware of the underpayment of benefits. If the award is substantially lower than the 40% that would be charged for a case of this complexity, these types of settlements will not happen.

2. A 30% award is reasonable under a percentage-of-the-fund analysis.

When awarding a reasonable common fund fee award in the Ninth Circuit, courts generally start with the 25% benchmark and adjust upward or downward depending on six factors:

(1) The extent to which class counsel achieved exceptional results for the class;

(2) Whether the case was risky for class counsel;

(3) Whether counsel's performance generated benefits beyond the cash fund;

(4) The market rate for the particular field of law (in some circumstances);

(5) The burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work); and

(6) Whether the case was handled on a contingency basis.

In re Online DVD-Rental Antitrust Litig., 779 F.3d at 949, 954–55. Additionally, courts may take into account class counsel's efforts across multiple related cases where they are all part of a broader litigation campaign when considering whether to apply the percentage-of-the-fund method. *See Benson v. DoubleDown Interactive, LLC*, No. 18-CV-0525-RSL, 2023 WL 3761929, at *2 (W.D. Wash. June 1, 2023) (prosecuting a line of several class actions against well-funded corporations). Class Counsel's efforts against multiple insurance companies for the same conduct resulted in extreme efficiency, justifying a higher award. Each factor supports Class Counsel's request for a total fee award of 30% of the common fund. *See In re Activision*, 723 F. Supp. at 1378 (finding that "absent extraordinary circumstances" attorneys should be compensated 30% of the award in common fund class actions).

a. Class Counsel achieved excellent results for the Class.

"The touchstone for determining the reasonableness of attorneys' fees in a class action is the benefit to the class." *Lowery v. Rhapsody Int'l, Inc.*, 75 F.4th 985, 988 (9th Cir. 2023). In a common fund case in which class counsel seek an award as a percentage of the fund, "this task is fairly effortless. The district court can assess the relative value of the attorneys' fees and the class relief simply by comparing the amount of cash paid to the attorneys with the amount of cash paid to the class. The more valuable the class recovery, the greater the fees award." *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1178 (9th Cir. 2013).

Here, recovery of $12.45 million for the class exceeds amounts other courts in the Ninth Circuit have deemed "excellent." *In re Lithium Ion Batteries Antitrust Litig.*, No. 13MD02420YGRDMR, 2020 WL 7264559, at *20 (N.D. Cal. Dec. 10, 2020) (describing a recovery of 11.7% of actual damages as an "excellent" result and awarding class counsel approximately 30% of the settlement fund); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 3648478, at *7 & n.19 (N.D. Cal. July 7, 2016) (approving fees requested where the class received a weighted mean recovery of 19% of actual damages). Class Counsel worked with a highly qualified economist and statistician to project the value of the UM/UIM insurance benefits owed to the Settlement Class. Dkt. 102-2 ¶¶ 19-34. As described below in section III(B)(1)(c), this calculation was developed based on Class Counsel's extensive experience with insurance litigation to address the risks usually associated with certifying damages classes involving personal injuries by highlighting that the damages in this case are a function of a limited range of ***contract*** benefits that can be modeled based on historical settlement amounts.

Plaintiff's expert valued the benefits at $8.679 million, based upon feedback from Kaplan–Meier statistical techniques, two variations of Weibull data, log-rank analysis, curve analysis and maximum likelihood estimation of censored claim data. *Id.* ¶ 22. With Plaintiff's threat of interest and punitive damages awards, the parties settled for $12.45 million, giving the Class 143% of their projected benefits. The result Class Counsel has

achieved on behalf of the class, 143% of estimated actual damages, supports awarding the amount requested. *In re Lithium Ion Batteries Antitrust Litig.*, 2020 WL 7264559, at *20.

The exceptional nature of the recovery is further confirmed by comparing the potential payout for the claims against the recovery. For instance, adjusting the compensatory damages ($8.679 million) to take into account statistically probable punitive damages amounts and interest, the expected recovery may be as high as $14 million. That upper bound, however, must be adjusted for deficiencies in some Class members' claims (SOL and release issues), litigation risk adjustments (50-65% reductions in cases such as this one), reduced to account for the time value of money, and litigation costs. This results in an expected payout of well under $4 million. Put another way, the recovery here is likely three times what one would expect to achieve based on the risks and costs associated with these facts and this type of case.

b. Class Counsel's performance generated benefits beyond the Settlement fund.

Plaintiff's efforts will help these same insureds and others going forward. Defendant changed how it processes UM/UIM claims because of this lawsuit. It has changed its policy language, provide their insureds with the proper notice, and allow their insureds to select which coverage will apply to their UM/UIM claims, which can lead to financial advantages. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002) (litigation caused defendant to change its employee benefit practices); *Larsen v. Trader Joe's Co.*, No. 11-CV-05188-WHO, 2014 WL 3404531, at *9 (N.D. Cal. July 11, 2014) (Trader Joe's stopped using the label at issue because of the litigation). The economic value of this case to consumers goes far beyond the amount paid into the common fund itself. For example, this case established the right to stacked benefits for the length of any existing policies, providing significant benefits for certain claims. And this case enhances the value of each Class Member's policy. This is a rare result as only 25% of class action settlements include non-monetary benefits like those achieved here.

Fitzpatrick, *Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. at 824. This factor weighs in favor of Class Counsel's requested award.

c. This case posed significant risks and challenges.

Class Counsel initiated and litigated this case before there was any certainty by an Arizona state court that Plaintiff's interpretation of A.R.S. § 20-259.01 was correct or that insurers in Arizona were processing their UM/UIM claims incorrectly. Indeed, Subsection H has been in place since 1997, yet Class Counsel was the first to challenge Arizona insurers on this scale. Before filing their first stacking case in this broader litigation campaign, Class Counsel spent hundreds of hours investigating policy language and forms, reviewing the legislative history of the statute, and refining their complaint. Those efforts are apparent on the face of the complaint, which sets forth Arizona's extensive caselaw wrestling with the meaning of the statute and Subsection H. Dkt. 1-3 ¶¶ 33-36.

Multiple insurance companies and groups opposed Class Counsel's efforts to recover stacked coverage for insureds in Arizona. Class Counsel responded to all of those groups in a highly contested argument in front of the Arizona Supreme Court and prevailed. Additionally, Defendant in this case was represented by highly respected and competent counsel. While Plaintiff maintains that Arizona law on the present stacking question was clearly foreshadowed by existing precedent and the plain text of the statute, Defendant was expected to fiercely oppose any recovery of interest and punitive damages beyond what the policy itself provided. And even as to the recovery of insurance benefits themselves, the course of discovery and briefing would hinge on many aspects of Court discretion and the inherent uncertainties involved with the testimony of witnesses, the availability of documentary evidence, and the complexities of the factfinding process including any jury trial and any resulting appeal on the merits.

Moreover, counsel's risks in litigating a class action of this magnitude are significant. The jury trial process is inherently risky, and Plaintiff would face aggressive

factual and legal opposition to her claims of bad faith on the part of Defendant and the amount of damages appropriate in the case. Even assuming complete victory on the merits—which is never a guarantee—Class Counsel would face aggressive opposition to the certification of any class, let alone a multimillion-dollar damages class. Defendant would be expected to assert challenges to class certification based on limitations periods and the fact that some Class Members signed releases. *E.g.* Dkt. 63 at 17. In addition, this case involves claims arising from tortious personal injury situations, giving rise to the perception that these contract claims cannot be certified as a class due to the individualized factors the antecedent tort claims must take into account. Defendant in this case has generally contended that individualized issues regarding the UM/UIM claims of the class would predominate over common issues and that damages cannot be modeled on a classwide basis. Carey Decl. ¶ 11; *see also* Dkt. 63 at 17-18. Defendant has also opposed certification of any declaration or injunction-only class on similar grounds. *Id.*

Class Counsel's extensive experience with first-party insurance class claims enabled them to show the insurers that these claims were based on contract obligations (and tortious bad faith under the contract), where liability was based on undisputed actions that did not implicate the valuation of the tort claim, using an aggregate statistical estimate of settlement data that showed what the insurer would have settled the claims for the class for under the proper stacked policy limits. Class Counsel developed a damages model based on expert testimony using reliable statistical tools. Due to the delay after the insurer's various breaches, insureds had no way to go back in time to develop evidence of what they could have produced to justify their claims. Yet, settlement data from the insurers, together with common statistical tools for this very type of data gap, can produce a reliable, reasonable estimate of what the insurer would have paid to class members in the aggregate had proper limits been applied. Accordingly, Plaintiff believes that classwide proof of liability and a classwide damages model can be presented that readily meet the requirements of Rule 23, but even upon such a finding Defendant would

be expected to seek a lengthy and costly appeal under Rule 23(f), delaying the recovery of benefits for the class by many months if not years.

d. Class Counsel's litigation on a contingency basis supports the fee request.

The Ninth Circuit has held that a fair fee award must include consideration of the contingent nature of the fee. *Online DVD*, 779 F.3d at 954-55 & n.14; *Vizcaino*, 290 F.3d at 1050. And it is well-established that attorneys who take on the risk of a contingency case should be compensated for the risk they assume "of not being paid at all." *Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 782 n.2 (9th Cir. 2007); *see also Vizcaino*, 290 F.3d at 1051; *Ching v. Siemens Indus.*, No. 11-CV-04838-MEJ, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014) ("the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work.").

Here, the contingent nature of Class Counsel's engagement—in a case that was extremely risky given its complexity and magnitude, as described above—incentivized counsel to achieve excellent results for the Settlement Class. Class Counsel did absolutely everything it could to maximize the Settlement Class's recovery and settled once it had an Arizona Supreme Court decision that supported their position.

e. The market rate for class action lawyers with the experience of Class Counsel supports the 30% fee request.

"Where evidence exists, such as here, about the percentage fee to which some plaintiffs agreed *ex ante*, that evidence may be probative of the fee award's reasonableness." *Vizcaino*, 290 F.3d at 1050. The "prosecution and management of a . . . class action requires unique legal skills and abilities." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (citations omitted). "The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee." *Id.* Many of the insureds here were previously represented by counsel but those attorneys did not secure their

clients the full UM/UIM benefits. It is well known that private counsel entering into a contingent fee agreement for these types of cases (particularly insurance bad faith in the context of an automobile injury) routinely request and receive a fee of 40% of the gross recovery. Carey Decl. ¶ 9; *see Jenson v. First Tr. Corp.*, No. CV 05–3124 ABC (CTX), 2008 WL 11338161, at *13 n.15 (C.D. Cal. June 9, 2008) ("If this were non-representative litigation, the customary fee arrangement would likely be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery"); *In re M.D.C. Holdings Sec. Litig.*, No. CV89-0090 E (M), 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) ("In private contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total recovery."). Class Members here are receiving elite representation with a 10% discount from market without having to expend the time and effort to investigate and retain an attorney who is familiar with the basis for this claim. Courts in this District and the Ninth Circuit routinely award class counsel fees ranging between 28–33%. *Vizcaino*, 290 F.3d at1046, 1050 (approving award of 28% of $96 million common fund); *Andrews v. Plains All Am. Pipeline L.P.*, No. CV154113PSGJEMX, 2022 WL 4453864, at *4 (C.D. Cal. Sept. 20, 2022) (approving 32% fee award); *In re Syngenta AG MIR 162 Corn*, 357 F. Supp. 3d at 1115 (awarding a 33.333% fee award); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (awarding 33% of the $12 million common fund); *Saliba*, 2021 WL 4775105, at *7 (awarding attorneys' fees totaling 28% of the common fund); *Avila v. LifeLock Inc.*, No. 2:15-CV-01398-SRB, 2020 WL 4362394, at *1 (D. Ariz. July 27, 2020) (awarding 30% of the settlement fund); *In re Activision Sec. Litig.*, 723 F. Supp. at 1378 (attorneys should be compensated 30% of the award in common fund class actions).

f. The burdens Class Counsel faced support the fee request.

Class Counsel has and will continue to devote substantial time to this litigation—spending over 900 hours on this case alone for a lodestar of $673,206.00—foregoing significant amounts of other work to litigate this case. Carey Decl. ¶¶ 14, 35. And Class Counsel spent almost 1,000 hours billing to Hagens Berman's general stacking matter,

for a lodestar of over $600,000, on work which benefited all related cases. *Id.* ¶¶ 17–18. Class Counsel also anticipates spending another 600 plus hours and $370,000 to finalize this case as described below. *Id.* ¶ 15. In launching this litigation, Class Counsel engaged in extensive efforts to research Arizona law, conform theories of liability to the requisites of Rule 23, understand the relevant intersections with state-law regulations, develop a damages model that will support a classwide award, manage relationships and obligations with Plaintiff, hire experts, obtain and analyze relevant damages data, and pursue a protracted, months'-long mediation process to its conclusion. Class Counsel expended this time with no guarantee of success, prepared to pursue this case without payment through trial and appeal if necessary.

Moreover, Class Counsel's efforts here were part of a broader litigation campaign challenging the previously common practice of failing to pay stacked benefits when they are owed under Arizona law. Class Counsel spent hundreds of hours developing their theory before even filing their first complaint in this litigation campaign. And they used their knowledge of available and necessary discovery in other cases to inform and refine their discovery efforts here. This ensured that Plaintiff received the information necessary to succeed at class certification and on the merits in the most efficient and streamlined manner. Class Counsel's work on more than thirteen related actions, which made each litigation more efficient, should be considered favorably here. *See Benson*, 2023 WL 3761929, at *2. Plaintiff's counsel has also incurred and advanced substantial costs associated with experts and the mediation process, costs which were necessarily at risk given the contingent nature of any cost recovery in this litigation.

3. While a lodestar cross-check is not necessary, such a cross-check confirms the reasonableness of the requested fees.

A lodestar cross-check is not required in the Ninth Circuit, especially in a case such as this one, where the settlement was achieved quickly, and the case was part of a broader litigation campaign. *See Farrell v. Bank of America Corp., N.A.*, 827 F. App'x 628, 630 (9th Cir. 2020) (observing that the Ninth Circuit has found the lodestar

crosscheck to be "inapplicable or unhelpful in certain specific situations"); *Benson*, 2023 WL 3761929, at *2 (not applying cross check where counsel litigated a line of cases). In situations such as this one, Courts in this Circuit have emphasized work performed in related cases where that work benefited the instant class action, forgoing a strict lodestar approach. *See, e.g.*, *Thomas v. Dun & Bradstreet Credibility Corp.*, No. CV1503194BROGJSX, 2017 WL 11633508, at *22 (C.D. Cal. Mar. 22, 2017). Additionally, District courts in the Ninth Circuit often forgo the lodestar cross-check "where plaintiff's counsel achieves a significant result through an early settlement." *Rankin v. Am. Greetings, Inc.*, 2011 WL 13239039, at *2 (E.D. Cal. July 6, 2011); *accord Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *15 (N.D. Cal. Jan. 26, 2007) (forgoing cross-check where case was settled early and provided the class a "significant benefit"), *aff'd*, 331 F. App'x 452 (9th Cir. 2009). The settlement here was achieved less than two years after the Arizona Supreme Court's favorable decision in *Franklin*. The lodestar crosscheck carries with it all the problems of the pure lodestar method. Namely, it incentivizes lawyers "to be indifferent as to how much the class recovery and to want to drag cases out more to build up more lodestar." Brian T. Fitzpatrick, *The Conservative Case for Class Actions* at 93 (2019). A consumer in the marketplace who was unable to monitor their attorney would never elect to compensate an attorney using the lodestar method. *Id.* at 92 (citing Steven Shavell, *Foundations of Economic Analysis of Law* 402-03 (2014)). Thus, if the Court wishes to act as a rational absent class member would, it should not engage in the cross-check. *Id.*; Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Fordham L. Rev. 1151, 1167 (2021).

But even if the Court does perform a lodestar cross-check, it would show the requested fee is reasonable, particularly when viewed in the context of the work Class Counsel has done to benefit class members in interrelated cases, in particular through their efforts in *Franklin*, which, in conjunction with *Heaton*, paved the way for class recovery. And Class Counsel has billed thousands of hours to both the *Franklin* matter,

which led to the settlement in this case, and a general billing number for all stacking cases that would not be strictly billed to any one case, but that benefited all stacking matters brought by Class Counsel.

Class Counsel's current lodestar on this case is $673,206.00 (for a total of 983.4 billable hours). Carey Decl. ¶ 14. In addition, Class Counsel anticipates spending an additional $370,000 (or approximately 600 hours of work across attorneys, paralegals, and law clerks) to finish the briefing in this case, reach out to the Class Members as needed and respond to Class Member inquiries, help negotiate and resolve Medicare liens,[4] draft any additional pleadings, including the motion for final approval, prepare for and attend the final approval hearing, and assist with final distribution. Carey Decl. ¶ 15. This will bring the total lodestar for this case to $1,043,206.00. *Id.* With the additional anticipated fees of $370,000, the multiplier for this matter will be 3.58. *Id.* Class Counsel also anticipates spending up to an additional $300,000 if they need to litigate the disposition of any unclaimed funds and defend the Settlement on appeal. *Id.* ¶ 16. If such work has to be done, it could increase the fees to $1,343,206.00 and reduce the multiplier to 2.78. *Id.*

More importantly, Class Counsel's current and anticipated lodestar does not reflect all the work that was done to obtain the settlement in this case, which would reduce the multiplier further if considered. As Class Counsel has brought multiple related actions, Class Counsel also billed 969 hours to their general stacking matter number, totaling $627,455.50, which includes time spent researching and developing the legal theories for this case, developing a damages model, and responding to the multitude of amicus briefs filed in the *Franklin* matter at the Arizona Supreme Court—work which directly benefited this Settlement Class. Carey Decl. ¶ 17. Again, before even filing their first case in this campaign, Class Counsel spent nearly a thousand hours reviewing the

[4] To resolve the Medicare liens, Class Counsel will need to obtain additional information from each of the Class members and will need to get permission from the Class members who have liens to negotiate with Medicare. They will also need to work extensively with the Settlement Administrator to resolve the liens.

legislative history and Arizona caselaw on Subsection H, refining their legal arguments and developing their theories; these efforts are reflected in the 969 hours of general time. *Id.* Even if the Court only credits Class Counsel with 25% of Class Counsel's general fund, that would increase the total fees to a range between $830.069.00 (the current lodestar plus 25% of the general stacking time). *Id.* ¶ 18. The total lodestar in this case could be as high as $1,500,069.00, which includes the time billed to date, 25% of the general fund, projected time to finish the case, and projected time if there are unclaimed funds and/or an appeal, which would result in a multiplier of 2.49. *Id.* ¶ 19. Multipliers between 2.00 and 4.00 are well within or even below the range of similar settlements. *E.g.*, *Vizcaino*, 2901 F.3d at 1051 (approving fee request that resulted in a 3.65 multiplier); *Zwicky v. Diamond Resorts Inc.*, No. CV-20-02322-PHX-DJH, 2024 WL 1717553, at *6 (D. Ariz. Apr. 22, 2024) (approved "lodestar multiplier of less than 3.88" and finding "courts in this Circuit have found that '[m]ultipliers in the 3–4 range are common in lodestar awards for lengthy and complex class action litigation'" (citations omitted)); *Perez v. Rash Curtis & Assocs.*, No. 4:16-CV-03396-YGR, 2021 WL 4503314, at *5 (N.D. Cal. Oct. 1, 2021) (approving a 4.8 multiplier); *Steinfeld v. Discover Fin. Servs.*, No. C 12-01118 JSW, 2014 WL 1309692, at *2 (N.D. Cal. Mar. 31, 2014) (approving fee that resulted in a 3.5 multiplier).

Class Counsel's rates are also within "the prevailing market rates in the relevant community." *Van Skike v. Dir., Off. of Workers' Comp. Programs*, 557 F.3d 1041, 1046 (9th Cir. 2009) (citation omitted). Hagens Berman's Class Counsel's rates mostly range from $575 to $850 an hour, with the sole exception of Robert Carey being billed out at $1,250 an hour. Carey Decl. ¶¶ 20–26. Hagens Berman's paralegal rates are $275–$350 an hour, billing $350 an hour for two highly skilled senior paralegals with decades of experience. *Id.* ¶¶ 20, 27. Hagens Berman is a leading class action firm with significant experience in litigating and settling class actions, including consumer class actions against insurance companies, further justifying the requested award. *Id.* ¶¶ 4–8. Robert Carey and John DeStefano have significant experience in litigating insurance class

actions in particular, and they were the driving force behind this case, including drafting the complaint, developing the theories, conducting discovery, and negotiating a settlement. *Id.* ¶¶ 4-8, 22-24. In addition to Robert Carey's class action experience, he acted as the chairman of the State Bar's Class Actions and Derivative Suits Committee and is one of only two Arizona attorneys recognized among the 2024 and 2025 Lawdragon 500 Leading Lawyers in America. *Id.* ¶ 22. Mr. Carey taught the class actions class at Sandra Day O'Connor College of Law for ten years, and Mr. DeStefano has taught that same class as a full adjunct professor for two years. *Id.* ¶¶ 22, 24. Michella Kras has significant class action experience, and she specifically played a key role in drafting settlement documents and approval papers. *Id.* ¶ 25. Tory Beardsley also has significant experience litigating class actions, is a part of the firm's insurance group, and provided support in this case at all stages of the litigation, including researching the legislative history of the key statute, discovery, and mediation. *Id.* ¶ 26.

Co-counsel at the Slavicek Law Firm are personal injury lawyers with extensive experience litigating UM/UIM claims. *Id.* ¶ 28. Justin Henry has been practicing in this area for fifteen years and worked alongside Hagens Berman to develop and litigate these stacking cases at all stages, including researching the actions, drafting complaints, assisting with discovery, and mediation. *Id.* ¶ 29. The Slavicek Law Firm bills its attorneys out at $700 to $900 an hour and bills its paralegals at $150 per hour. *Id.* ¶ 30.

Similarly, co-counsel at Goldstein Woods are among the most experienced and skilled practitioners in the complex field of insurance litigation. Goldstein Woods is a preeminent firm litigating insurance claims in Arizona. *Id.*¶ 31. Evan Goldstein was lead counsel in the seminal case *Heaton v. Metro. Grp. Prop. & Cas. Ins. Co.*, No. CV-21-00442-PHX-SRB, 2021 WL 6805629, at *5 (D. Ariz. Oct. 19, 2021), where Judge Susan Bolton first interpreted how UM/UIM claims should be paid under A.R.S.§20-259.01(H). *Heaton* was the precursor for the Arizona Supreme Court's ruling on stacking in *Franklin*, 255 Ariz. at 412-23. *Id.* Goldstein Woods bills its partners out at $750 an hour and bills its paralegals out at $250 an hour. *Id.* ¶ 32.

Co-counsel at Guidant Law PLC, represents clients across a broad spectrum of litigation including in consumer and personal injury issues. *Id.* ¶ 33. Guidant Law's Samuel Saks is a partner at the firm and has more than 20 years of experience in personal injury litigation and bills out at $425 per hour. Meanwhile, JoAnn Falgout is a senior attorney with extensive experience serving a wide variety of clients and bills out at $325 per hour. *Id*. Finally Guidant's paralegal bills out at $185 per hour. *Id.*

Courts in this District have found Hagens Berman's rates, which are established by the firm annually after a market review, to be within the prevailing market rates and have approved similar rates in other class cases. *E.g.*, *In re Banner Health Data Breach Litig.*, No. 2:16-CV-02696-SRB, 2020 WL 12574227, at *6 (D. Ariz. Apr. 21, 2020) (finding "that Class Counsel's hourly rates are reasonable and in line with the prevailing rates in the community for complex class action litigation," including Hagens Berman); *In re Lifelock, Inc. Mktg. & Sales Pracs. Litig.*, No. MDL 08-1977-MHM, 2010 WL 3715138, at *9 (D. Ariz. Aug. 31, 2010) ("In the instant case, the Court finds that Class Counsel's rates are the competitive hourly rates in their respective legal communities for litigating cases of this sort—complex consumer class action."). As recently as February 2024, this District has approved Hagens Berman's rates as reasonable. Carey Decl. ¶ 39 (approving fee award in *In re Theranos, Inc. Litigation*, including Hagens Berman and Mr. Carey's fees). And in common fund cases, "[t]he Ninth Circuit has instructed that because the amount of fees is often open to dispute and because the parties [have] compromise[ed] to avoid further disputes, the district court need not inquire into the reasonableness of fees with the same level of scrutiny as when the amount of fees is litigated." *Zwicky*, 2024 WL 1717553, at *5 (quoting *Wood v. Ionatron, Inc.*, 2009 WL 10673479, at *5 (D. Ariz. Sept. 28, 2009)).

4. Class Counsel's fee request is reasonable applying the factors outlined in the Local Rules.

The Local Rules of this District require that in addressing the reasonableness of a fee award, Class Counsel address the following factors:

(A) The time and labor required by counsel;

(B) The novelty and difficulty of the questions presented;

(C) The skill requisite to perform the legal service properly;

(D) The preclusion of other employment by counsel because of the acceptance of the action;

(E) The customary fee charged in matters of the type involved;

(F) Whether the fee contracted between the attorney and the client is fixed or contingent;

(G) Any time limitations imposed by the client or the circumstances;

(H) The amount of money, or the value of the rights, involved, and the results obtained;

(I) The experience, reputation and ability of counsel;

(J) The "undesirability" of the case;

(K) The nature and length of the professional relationship between the attorney and the client;

(L) Awards in similar actions; and

(M) Any other matters deemed appropriate under the circumstances.

LR 54.2(c)(3).

While not all the factors in LR 54.2(c) apply to common funds—and Plaintiff has already addressed most of these factors—Plaintiff will address each factor briefly.

The time and labor required by Class Counsel is included in the lodestar cross-check in Section III(B)(3) above, and describes the time and labor required by Class Counsel. The novelty and difficulty of the questions are addressed in Section III(B)(1)(c) and (f)—Class Counsel brought a case involving complex issues of insurance law and class certification and succeeded in recovering for the class. The skill requisite to perform

the work is similarly addressed throughout this motion: This case required knowledge of both consumer class action and insurance law, which Class Counsel has. Additionally, it required sophisticated appellate work by an experienced appellate attorney on Class Counsel's team. Carey Decl. ¶ 24.

As addressed above, Class Counsel had to forgo other work to bring this case (and the related cases). *Id.* ¶ 36. The customary fee charged in these types of cases is only partially relevant. Class cases do not charge a set fee, but an award of 25-33% of a common fund case is typical in this district. And a fee agreement in breach of contract/insurance bad faith case would typically be a contingent fee of 40%. Carey Decl. ¶ 9. The fee contract is inherently contingent—Plaintiff entered into a Rights and Responsibilities Agreement that leaves the fee award to the Court, as it is the Court that determines what the Settlement Class should pay to Class Counsel out of the recovery. *Id.* ¶ 40. Here there is no time limitation imposed by the client or the circumstances. As described above, the amount of money in this case is significant and each Class Member will receive a large recovery. And Class Counsel obtained excellent results for the Settlement Class and are highly experienced and reputable counsel. The undesirability of the case is touched on above: Other Arizona lawyers had not taken up this issue. Class Counsel took an issue that had not been decided and obtained an Arizona Supreme Court decision in the insureds' favor. The length and nature of the attorney-client relationship is not relevant in a common fund case where the attorneys represent the class as a whole. Last, Class Counsel has already addressed what courts award in similar cases in Section III(B)(1)(e) above. The requested fees are reasonable.

D. Class Counsel requests reimbursement of reasonable out-of-pocket expenses incidental and necessary to the effective representation of the Class.

Plaintiff requests reimbursement of out-of-pocket expenses of $18,886.74. Carey Decl. ¶ 35. Courts reimburse attorneys prosecuting class claims on a contingent basis for "reasonable expenses that would typically be billed to paying clients in non-contingency matters, i.e., costs incidental and necessary to the effective representation of the Class."

In re Capacitors Antitrust Litig., No. 3:14-CV-03264-JD, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) (citations omitted, cleaned up). "Under the common fund doctrine, plaintiffs' counsel should receive reimbursement of all reasonable out-of-pocket expenses and costs in prosecution of the claims and in obtaining a settlement." *Id.* (citing cases and listing expenses).

The total expenses for which Plaintiff seeks reimbursement are broken down by category in the supporting declaration. Carey Decl. ¶ 35. Class Counsel funded all litigation expenses. *Id*. The largest categories of expenses were the mediation at $6,060.30, and depositions costs of $8,041.30. *Id*. The requested costs are necessary and reasonable to prosecute this case and were made for the benefit of the Settlement Class. *Id.*

E. Plaintiff requests that she be awarded a reasonable service award to compensate her for her time and dedication to this case.

Plaintiff requests a service award in the amount of $7,500. Service "*awards* are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). In the Ninth Circuit, service awards "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Id.* at 958–59. Courts may approve service awards based on the risk to the class representative, the time and effort spent, the duration, and the personal benefit (or lack thereof) as a result of the litigation. *E.g.*, *Van Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). "In the Ninth Circuit, an incentive award of $5,000 is 'presumptively reasonable,'" and may be adjusted up or down depending on effort. *Sonoma Sol LLLP v. Truck Ins. Exch.*, No. CV-20-00069-PHX-DJH, 2021 WL 5238711, at *6 (D. Ariz. Nov. 9, 2021) (citations omitted). Here, a slightly higher award is reasonable. Plaintiff has been actively involved in this litigation and without her willingness to come forward and prosecute the action, the Settlement Class Members would have received nothing for their injuries. Plaintiff spent significant time assisting

Class Counsel in investigating and prosecuting this action. Carey Decl. ¶ 37. Plaintiff assisted with drafting her factual allegations in the Complaint and was involved in the settlement process. *Id.* Plaintiff also gave up what she could have recovered in individual action, which could have been higher had she proceeded to verdict, to litigate this case and reach a settlement that benefits others like her. *Id.* ¶ 38. Given Plaintiff's efforts and the significant amount the Class Members will receive, an award of $7,500 is reasonable. *See Miller*, No. 22-cv-01545-JTT Dkt. 75 ¶ 14 (granting plaintiff an incentive award of $7,500); *Julian v. Swift Transportation Co. Inc.*, No. CV-16-00576-PHX-ROS, 2020 WL 6063293, at *3 (D. Ariz. Oct. 14, 2020) (finding award of $15,000 reasonable where plaintiff traveled to Phoenix for his deposition and considering amounts other class members would receive).

F. The Class received adequate notice of Class Counsel's fee application.

Class Counsel has provided the Class sufficient notice of the requested fees and the opportunity to review and evaluate this fee request before the deadline for objections. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010). The class notice advised Settlement Class Members that Class Counsel will ask the Court for attorneys' fees based on their services in this litigation, not to exceed 30% of the Settlement Fund, reimbursement of costs, and up to $7,500 as a service award for the Plaintiff serving as Class Representative. Dkt. 102-3 at 6. This Motion is being provided on the settlement website thirty days before the deadline for requests for exclusion or objections to the settlement. Dkt. 103 ¶ 11.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests an award of $3,735,000.00 in attorneys' fees, reimbursement of expenses incurred totaling $18,886.74, and a service award to Plaintiff Taylor Doyle of $7,500.00.

Dated: July 14, 2025

Respectfully submitted by,

HAGENS BERMAN SOBOL SHAPIRO LLP

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Robert B. Carey
John M. DeStefano

GOLDSTEIN WOODS

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