Honorable Richard A. Jones

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRETT DURANT, On Behalf of Himself and all other similarly situated,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign automobile insurance company,

Defendant.

CASE NO. 2-15-CV-01710-RAJ

PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF ATTORNEY'S FEES, COSTS, AND INCENTIVE AWARD FOR CLASS REPRESENTATIVE

NOTE ON MOTION CALENDAR: June 10, 2019 @ 1:30 p.m.

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I. INTRODUCTION

Class Counsel achieved the primary goals of this litigation by (1) obtaining a 9-0 Washington State Supreme Court decision holding unlawful the use of the Maximum Medical Improvement (MMI) standard in Personal Injury Protection (PIP) claims; and (2) obtaining an $18,500,000.00 class settlement providing compensation to all class members for medical bills denied since April 9, 2008 together with some amount of interest. Class Counsel respectfully requests a 25 percent benchmark award of attorneys' fees in the amount of $4,625,000, and an award of litigation costs in the amount of $48,239.00, and an award of administrative expenses in the amount of $41,970.00 paid to Rust Consulting, and an incentive award for Class Representative Brett Durant in the amount of $10,000.

II. FACTUAL SUMMARY

The results obtained by Class Counsel in this case are the product of five years of effort and litigation in state court, federal court, the Ninth Circuit Court of Appeals, and the Washington State Supreme Court. Class Counsel has advanced thousands of hours in attorney and paralegal time and thousands of dollars in costs and administrative expenses. After five years of litigation, the matter waits for final approval of a significant settlement. The proposed settlement, even after the requested attorneys' fees, costs, incentive award, and administrative expenses will yield a median recovery of 120%,[1] and provide for 100%[2] participation by class members, which the Plaintiff respectfully submits is an "exceptional result."

[1] The figure 100% here represents all of the bills not paid pursuant to the 3 reasons codes for each class member. Amounts in excess of 100% represent interest calculated based on the date of denial. *Firkins Decl. at 13.*

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III. ARGUMENT

A. The Fees Requested by Plaintiff's Counsel are Fair and Reasonable

1. The Court should use the Percentage of Common Fund Method to determine the attorney's fees in this case.

Because Washington law governs all of the claims in this case, attorneys' fees should be awarded in accordance with Washington law. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). "Under Washington law, the percentage-of-recovery approach is used in calculating fees in common fund cases." *Id.* (citing *Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993)). "In common fund cases, the size of recovery constitutes a suitable measure of the attorney's performance." *Bowles*, 121 Wn.2d at 72. And the percentage-approach makes sense: "When attorney fees are available to prevailing class action plaintiffs, plaintiffs will have less difficulty obtaining counsel and greater access to the judicial system. Little good comes from a system where justice is available only to those who can afford its price." *Bowles*, 121 Wn.2d at 71; *compare Vizcaino*, 290 F.3d at 1050 n.5 (noting perverse incentives created by lodestar method).

The Common fund doctrine permits the burden of the attorney's fees in the case to be shared among those who are benefited by class counsel's efforts, i.e. the class. *Paul, Johnson, Alston Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). It is an equitable doctrine to prevent unjust enrichment of a person who benefited from the lawsuit. *Id.*

The district court has the discretion to award attorneys' fees as either a percentage of the common fund or by using the lodestar method, depending on the circumstances. *In re Wash.*

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[2] To date, Class Counsel has received no exclusions. The figure 100% is accurate insofar as the settlement provides all class members an opportunity to receive payment by taking no action

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Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1295 (9th Cir. 1994). Under both Washington and Ninth Circuit law, 25% is the benchmark percentage for common fund recovery cases; it should only be adjusted or replaced by the lodestar calculation when special circumstances indicate that the benchmark would be too high or too low in light of the hours devoted to the case or other relevant factors. *Rinky Dink, Inc. v. World Bus. Lenders, LLC*, No. C14-0268-JCC, 2016 WL 3087073, at *7 (W.D. Wash. May. 31, 2016) (citing *Bowles v. Dep't of Ret. Sys.*, 121 Wash.2d 52, 847 P.2d 440, 450–51 (1993)). If the court departs from the 25% benchmark award, it must provide adequate explanation in the record of the special circumstances justifying the departure. *Jones v. GN Netcom, Inc.*, 654 F.3d 935, 942 (9th Cir. 2011) (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.1990).

By contrast, courts typically apply the lodestar method only when the class-wide recovery is difficult to quantify. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (courts use the lodestar method when the relief is "primarily injunctive in nature and thus not easily monetized"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (the lodestar method is appropriate when "there is no way to gauge the net value of the settlement or any percentage thereof."). Here, the benefit to the Class is easily quantified: it is the $18,500,000.00 common fund.[3] Thus, the percentage-of-the-fund method is the appropriate method for determining a reasonable fee in this case.

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whatsoever. *Firkins Decl. at 13*

[3] Nor will the settlement fund be reduced if class members opt out; rather, class members will receive a larger share.

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2. The Court Should Choose a Benchmark 25% Award

Class Counsel respectfully submits that the size of the recovery and the quality of the result justifies a benchmark 25% of the common fund award in the amount of $4,625,000. In determining the percentage to be awarded, the court must consider all of the circumstances of the particular case. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1297. Factors considered by courts in determining the fairness of attorney fee awards varies from case to case, but may include: 1) The size of the recovery in light of the particular case; 2) the quality of the results obtained for the class; 3) whether the litigation created incidental or non-monetary benefits to the public beyond the recovery for the class; 4) whether the case was pursued in the absence of supporting precedents; 5) whether the litigation developed new law; 6) length of the litigation; 7) the risk counsel faced of losing the case; 8) whether the results were exceptional; 9) the complexity of the issues; 10) a loadstar crosscheck on the reasonableness of the fee. Consideration of the foregoing factors supports that a benchmark award of 25% is an appropriate, reasonable, and fair award in this case. *Id.*

a. Size of recovery and quality of results obtained.

The reasonableness of the requested fee is supported by the exceptional result obtained. First, the proposed settlement expands the certified class beyond what was originally certified by the Court. The class now includes, not only those insureds who had medical bills denied using the reason SF546 and SF537, but also adds insureds who had medical bills denied under reason code SF536. This brings into the settlement claimants who had medical bills denied based on the results of a records review. These claimants were not included in the initial motion for certification because the Plaintiff did not yet have adequate data on this reason code. However,

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Class Counsel persuaded State Farm in mediation to expand the class to include these claimants. *Nauheim Decl.*

Second, the Settlement Agreement also provides for the highest level of participation that can be obtained in class actions. Rather than a "claims made" process, Class Counsel negotiated an "opt out" process. This means that over 4,000 Washington consumers will participate in the recovery. Only those class members who voluntarily and specifically opt out of the settlement will not participate.

Third, the settlement is large enough that even after deduction of the requested amount of attorney's fees and costs, class members will receive a median payment of 120% of the actual denied claims. *Firkins Decl. at 13.* Further, each class member is assured under the formula that they will receive at a minimum 100% of their actual improperly denied claims. *Id.* Few class actions achieve nearly 100% participation and at least 100% compensation. And this is true in this case even after the requested fees, costs, and administrative expenses are deducted. This justifies a finding by the Court that the results obtained are "exceptional."

b. Class Counsel pursued the case in the absence of supporting precedents, made new law, and created incidental non-monetary benefits to the public in general.

The results obtained by Class Counsel go beyond the monetary recovery. After over two-decades, State Farm has ended its practice of adjusting PIP claims using the MMI standard. This means that State Farm insureds now have coverage for reasonable and necessary palliative treatment under their PIP policies even if such treatment is not essential to achieving maximum medical improvement. *Firkins Decl.at 13-14.*

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Further, *Durant v. State Farm* will govern the conduct of *all* auto insurers in the state of Washington, which will be required to cover PIP benefits for reasonable and necessary treatment that is palliative, or needed to maintain function, regardless of whether the treatment is "curative." Insurers are changing their PIP claims practices in light of the Supreme Court decision obtained by plaintiff's counsel. *Nauheim Decl.; Firkins Decl. at 14 and Cochran Decl.at 2*. Other lawyers are using Class Counsel's work in copycat class actions to vindicate the rights of still more consumers whose PIP benefits were denied based on MMI. *See Mikeshia Morrison v. Esurance Insurance Co.* (Case No. 2:18-cv-01316-TSZ); *Merle Nichols v. Geico General Insurance Co.* (Case No. 2:18-cv-1253 RAJ); and *Joel Stedman v. Progressive Direct Insurance Co.* (Case No. C18-1254 RSL).

Additionally, plaintiffs' injury attorneys in Washington are using *Durant v. State Farm* in third party personal injury cases to obtain full compensation for their injuries, to include recovery for accident-related medical services that are palliative, or necessary only to maintain function. The decision is already being cited in secondary sources including Couch on Insurance and Washington Practice. It is expected that it will also be cited in foreign jurisdictions. *Nauheim Decl.* For these reasons, a fee award of 25% is warranted not only by the monetary benefits to the class, but also by the non-monetary benefits to the public in general.

c. Length of the litigation, risk involved, and complexity of the case.

The 25% fee is also warranted by the length of the litigation and the risk and complexity of the case. Class Counsels' efforts have spanned more than six years. A great amount of time was invested even before filing suit in laying the groundwork, performing due diligence on the

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viability of the case, developing legal arguments and strategy, and drafting pleadings, motions and discovery. *Nauheim Decl.*

The case was filed on April 9, 2014 and was aggressively defended by State Farm. The legal theory of the case, that the MMI standard was unlawful, was a novel one, with no supporting precedent in the state of Washington and precious little from other jurisdictions.

Class Counsel faced an adversary with substantial resources and an incentive to use them. State Farm employed at least five attorneys from two law firms, including Sheppard Mullin, a global law firm with 850 attorneys which boasts that their litigators are "leaders in the class action defense bar." https://www.sheppardmullin.com/class-action-defense. *Firkins Decl. at 15.*

State Farm consistently and aggressively defended the case at every juncture, including the filing of a motion to dismiss before it even answered the complaint. Class Counsel was inundated with motions and discovery demands, while at the same time attempting to obtain pre-certification discovery. Each of the Defendant's motions, legal theories, and discovery demands required timely and detailed response. The quality of the legal work performed by the two defense law firms was very high, requiring an equally high level of skill to continue the litigation. *Firkins Decl. at 6; Nauheim Decl.*

The underlying legal issues, involving insurance bad faith, is an arcane and complex area of the law, which was combined with the equally complex elements of class action litigation. Class Counsel was compelled to use multiple experts and complex theories of proof to establish the class's claims. Additionally, Class Counsel had to contend with Electronically Stored Information (ESI) issues, as much of the evidence for the case was stored by the Defendant on a

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proprietary "Enterprise" database and there were disputes over what information the Defendant could, or could not, obtain via query of that database.

That the case ranged from Superior Court, to U.S. District Court, the Ninth Circuit Court of Appeals, and eventually the Washington State Supreme Court also speaks to the complexity of the case. The Plaintiff faced potentially fatal rulings in each of the courts. Class Counsel risked not only losing the case on the central legal theory, but also the possibility of having class certification denied by this Court, which was a discretionary decision. Even if the Plaintiff won on these issues in the District Court, the Plaintiff faced possible reversal by the Ninth Circuit. Class Counsel had to prevail on the central issue certified to the Washington State Supreme Court. Class Counsel therefore needed to demonstrate exceptional trial court level skills but also appellate skills; all of which involved the arcane issue of insurance bad faith and class action litigation. *Firkins Decl. at14.*

Class Counsel also had to advance significant resources to employ multiple experts and to obtain and manage significant amounts of discovery. These expenses have been on the books and carried as advances for the benefit of the class for years now. *Firkins Decl. at 15.*

Class Counsel was also unable to manage additional significant cases due to the time and expense involved in properly representing the class. Therefore, the Class Counsel was exposed to the risk of not taking additional new cases at times, while also facing the prospect of obtaining no fee or reimbursement of costs advanced. *Firkins Decl. at 15; Nauheim Decl.* In light of the complexity of the case, the risk involved, the length of the litigation, State Farm's aggressive defense, the extent of the work required, and the results obtained, the Court should

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find that class counsel obtained an "exceptional result" in this case and that a 25% benchmark award is well justified.

d. A lodestar crosscheck, although not required, supports the reasonableness of the fee request.

When a court selects the percentage-of-the fund method to calculate a reasonable fee, the court may use the lodestar method as a "crosscheck" to ensure that the amount awarded is reasonable. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002). The Ninth Circuit does not require a lodestar cross-check, but it may be helpful compare the lodestar and the 25% benchmark to determine if the 25% benchmark results in an inappropriately high or low fee. *Id.*; *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. Feb. 27, 2015); *see also Glass v. UBS Fin. Servs.*, No. C-16-4068MMC, 2007 U.S. Dist. LEXIS 8476, at *46 (N.D. Cal. Jan. 26, 2007) (citing *Vizcaino*, 290 F.3d at 1050–51) ("The Ninth Circuit has held that the Court may, *but is not required to,* compare the lodestar and the 25% benchmark to determine if the 25% benchmark results in an inappropriately high or low fee." (emphasis added)). When the lodestar is only being used to cross-check, the court's analysis "can be performed with [a] less exhaustive cataloging and review of counsel's hours." *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM (SHX), 2008 WL 8150856, at *9 n.35 (C.D. Cal. July 21, 2008). The "primary basis of the fee award remains the percentage method." *Vizcaino*, 290 F.3d at 1047, 1050–51; *see also In re Bluetooth*, 654 F.3d at 942 (discussing the benefits of the percentage method "in lieu of the often more time-consuming task of calculating the lodestar"); *Glass v. UBS Fin. Servs.*, 331 F. Appx. 452, 456–57 (9th Cir. 2008) (affirming a 25% common fund fee award after an "informal" lodestar crosscheck and despite "the relatively low time-commitment by plaintiff's counsel" because "the district court did not abuse its

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discretion in giving weight to other factors, such as the results achieved for the class and the favorable timing of the settlement"). Class Counsel's lodestar information in this case confirms that the requested fee is reasonable.

1. *Class Counsel's rates are consistent with rates in the community for similar work performed by professionals with comparable skill, experience, and reputation.*

When utilizing a lodestar crosscheck to assess a percentage fee of a common fund, the Ninth Circuit instructs District Courts to apply reasonable hourly rates for the region. *In re Online DVD-Rental*, 779 F.3d at 949. "Generally, the relevant community is the forum in which the district court sits." *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997).

In determining the reasonable hourly rate, courts consider declarations from counsel describing the experience and skill of the attorneys and staff members who worked on the case and declarations of other attorneys regarding the prevailing market rate. *Widrig v. Apfel,* 140 F.3d 1207, 1209 (9th Cir. 1998).

Class Counsel have set their rates for attorneys and paralegals based on a variety of factors including each professional's experience, ability, skill, education, and reputation in the legal community. *Firkins Decl.; Nauheim Decl.* These rates are consistent with the prevailing market rate in the Seattle area. *See, e.g., Firkins Decl.; Nauheim Decl.; Cochran Decl.; Roe Decl.; Hansen Decl.* They are also consistent with those approved by the Western District of Washington. *E.g., Harris v. Mundel*, No. 2:17-cv-01107-RAJ, 2019 WL 1282012, at *2 (W.D. Wash. Mar. 20, 2019) (approving $445 and $460 for attorneys with over ten years' experience); *Reetz v. Hartford Life & Accident Ins. Co.*, No. C17-0084JLR, 2018 WL 1702381, at *2 (W.D. Wash. Apr. 5, 2018); *Flaaen v. Principal Life Ins. Co.*, No. C15-5899 BHS, 2017 WL 6527144,

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at *8 (W.D. Wash. Dec. 21, 2017) (approving $500 per hour for attorneys with over two decades of experience). Class Counsel's rates are reasonable, particularly given their expertise and the risk inherent in this case.

2. *Class Counsel expended a reasonable number of hours litigating the case.*

Hours are generally "reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client." *Hensley v. Eckerhart*, 461 U.S. 424, 431, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). Class Counsel have provided a narrative description of their work on this case as well as their detailed billing records describing the work performed by each attorney and paralegal. *Firkins Decl., Ex. A; Nauheim Decl., Ex. B.*

To date, Class Counsel has billed a total of 3,926.15 hours preparing, researching, litigating, settling, and administering this case. *Firkins Decl at 5 and Ex A,; Nauheim Decl., Ex. B.* Class Counsel's total lodestar is $1,683.435.00.

Knowing it was possible they would never be paid for their work, Class Counsel had no incentive to act in a manner that was anything but economical. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

3. *The implied multiplier is reasonable and appropriate.*

The primary purpose of a multiplier is to "incentivize attorneys to take high-risk contingency fee cases, which might otherwise go unprosecuted." *Parkinson v. Freedom Fid. Mgmt., Inc.*, No. 10-CV-0345-TOR, 2012 WL 5194955, at *6 (E.D. Wash. Oct. 19, 2012). Multipliers are commonplace in attorneys' fees awards in class actions, particularly where the lodestar method is used to cross-check a percentage-of-the-fund-fee. *See* Richard A. Posner,

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Economic Analysis of the Law 783 (8th Ed. 2011). "[I]n common fund cases, courts that employ a pure lodestar method are not bound by the Supreme Court's rulings that limit multiplied lodestars in the fee-shifting context." *Id.*; *see also Vizcaino*, 290 F.3d at 1051 ("The bar against risk multipliers in statutory fee cases does not apply to common fund cases" and "courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases.").

Class Counsel requests only the benchmark rate of 25% of the common fund, which when compared to the lodestar results in an implied multiplier of 2.75. In the Ninth Circuit, multipliers can "range from 1.2 to 4 or even higher." *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1170 (C.D. Cal. Sep. 14, 2010); *Vizcaino*, 293 F.3d at 1051 n.6 (finding multipliers ranging from 0.6–19.6). In *Vizcaino*, the Ninth Circuit found no abuse of discretion in a 3.65 implied multiplier. *Id.* at 1051.

This implied multiplier here trends towards the lower range of traditional implied multiplier when compared to other cases. *See, e.g.*, *Steiner v. Am. Broad. Co.*, 248 Fed. Appx. 780 (9th Cir. 2007) (holding that the 6.85 implied multiplier was "well within the range of multipliers that courts have allowed"); *Craft v. City of San Bernardino*, 624 F. Supp.2d 1113, 1125 (C.D. Cal. 2008) (explaining that 5.2 is a "high end multiplier" but "there is ample authority for such awards resulting in this range or higher"); *Wenzel v. Colvin*, No. EDCV 11-0338JEM, 2014 U.S. Dist. LEXIS 105823, at *10 (C.D. Cal. Aug. 1, 2014) (approving a 6.06 implied multiplier in light of class counsel's quick settlement of the case); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C07-15923WHA, 2015 U.S. Dist. LEXIS 67298, at *23 (N.D. Cal. May 21, 2015) (awarding a 5.5 implied multiplier).

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Class Counsel's implied multiplier in this case is also well below the range approved by other circuits in cases cited favorably by the Ninth Circuit District Courts. *See, e.g.*, *Craft*, 624 F. Supp. 2d at 1125 (citing favorably *In re Merry-Go-Round Enterprise, Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000) (implied multiplier of 19.6), *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 U.S. Dist. LEXIS 9705 (E.D. Pa. 2005) (implied multiplier of 15.6), *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001) (implied multiplier of 7), and *In re Rite Aid Corp. Secs. Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005) (multiplier of 6.96)); *see also Buccellato v. AT&T Operations, Inc.*, No. C10-00463LHK, 2011 U.S. Dist. LEXIS 85699, at *5 (N.D. Cal. Jun. 30, 2011) (citing favorably *Weiss v. Mercedez-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1304 (D. N.J. 1995) (9.3 implied multiplier)), and *Roberts v. Texaco*, 979 F. Supp. 185 (S.D. N.Y. 1997) (5.5 implied multiplier).

4. *The implied multiplier is reasonable under the circumstances.*

Courts often consider the following factors when assessing the reasonableness of a multiplier: "(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases." *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). The foremost consideration "is the benefit obtained for the class." *In re Bluetooth*, 654 F.3d 941–42.

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Application of these factors confirms that an implied multiplier of 2.75 is both reasonable and appropriate in this case. Class Counsel took this case on a 33% contingent fee and to the preclusion of other work. *Firkins Decl. at 15*. They took this case despite the risk of protracted litigation or early dismissal. They were confronted with two experienced and well-resourced litigation teams and were able to marshal their skill and experience to obtain an exceptional result for the class. *Id.,* They obtained a very favorable class settlement but only after years of litigation.

Class Counsel have a substantial amount of work yet to do as well, including filing their motion for final approval, administering the settlement, addressing any objections and appeals, and responding to class members through final approval and distribution of the settlement funds. *Kangas v. Volkswagen Grp. Of America, Inc.*, No. 17-176279, 2018 U.S. App. LEXIS 20420, at *8 (9th Cir. Jul. 23, 2018) (Court can include "projected time in its lodestar cross-check"). In light of the circumstances in this case, the implied multiplier demonstrates that Class Counsel's request for only the benchmark 25% of the common fund is both reasonable and appropriate.

B. Plaintiff requests a service award of $10,000.

Service awards are intended to compensate class representatives for work undertaken on behalf of a class and are fairly typical in class action cases. *Rodriguez v. W. Publishing*, 563 F.3d 948, 958–59 (9th Cir. 2009). Such awards recognize the effort class representatives expend and the financial or reputational risk they undertake in bringing the case, and to recognize their willingness to act as private attorneys general. *Id.* at 958–59.

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Brett Durant requests a $10,000 service award—well under .001% of the total common fund. Mr. Durant and his wife dedicated countless hours to this litigation, responding promptly to requests from counsel, producing documents and drafting discovery responses, preparing for and testifying in deposition, reviewing and correcting his transcript, and staying abreast of strategic and settlement discussions. Mr. Durant regularly communicated with Class Counsel. Firkins Decl. Moreover, Mr. Durant committed to serving as the face of this litigation—publicly facing potential disclosure of his private medical history. *Nauheim Decl.* Mr. Durant's request is both reasonable and consistent with awards in other courts. *See, e.g.*, *Rinky Dink, Inc. v. World Bus. Lenders, LLC*, No. C14-0268-JCC, 2016 U.S. Dist. LEXIS 70858, at *18 (W.D. Wash. May. 31, 2016) (awarding $10,000 each to two of three named plaintiffs); *Lehman v. Nelson*, No. C13-1835RSM, 2015 U.S. Dist. LEXIS 180785, at *18 (W.D. Wash. Aug. 4, 2015) (awarding $10,000 to named plaintiff); *Pelletz v. Weyerhauser Co.*, 592 F. Supp.2d 1322, 1330, n.9 (W.D. Wash. 2009) (approving $7,500 awards and collecting cases granting incentive awards ranging from $5,000 to $40,000).

IV. CONCLUSION

Class Counsel in this case achieved exceptional results for the class and other consumers in the state of Washington. Not only did Class Counsel create a settlement framework that ensure nearly, if not actual, 100% participation of class members, they also obtained compensation levels that exceeded 100% of the actual denied claims under their theory of the case even *after* accounting for the requested award. Such exceptional work should be incentivized by this Court by recognizing the quality of the work, and awarding nothing more

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than the standard benchmark common fund award. The Court should also recognize Mr. Durant's work in bringing about this exceptional result.

DATED this the 5th day of April, 2019.

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