

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

WALTER BLACK III, KEITH BARR, WAYNE
BEST, and DAVID FANT SR., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

USAA GENERAL INDEMNITY COMPANY,
GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY, UNITED SERVICES
AUTOMOBILE ASSOCIATION, USAA
CASUALTY INSURANCE COMPANY,

Defendants.

Case No. 8:21-CV-01581-LKG

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS**

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I. INTRODUCTION

For nearly five years, Plaintiffs Walter Black III, Keith Barr, Wayne Best, and David Fant Sr. (collectively, “Plaintiffs”), vigorously litigated this fiercely-contested class action against Defendants USAA General Indemnity Company, Garrison Property and Casualty Insurance Company, United States Automobile Association, and USAA Casualty Insurance Company (collectively, “Defendants”) regarding Defendants’ allegedly unlawful decade-long retention of accrued interest and gains on Late Fees¹ that it collected from policyholders in violation of the Maryland Insurance Code. Plaintiffs’ and Class Counsel’s efforts ultimately resulted in a non-reversionary \$5 million common fund class action settlement (the “Settlement”) that offers substantial relief to the approximately 127,000 Class Members who were charged unlawful Late Fees by Defendants between June 27, 2011, and September 30, 2019, and never paid interest or gains on those held funds. The common fund will benefit Class Members by providing Settlement Class Members their respective Settlement Class Member Payments as well as cover any and all attorneys’ fees and costs awarded to Class Counsel and, any Service Awards to the Class Representatives. The cost of the administration of the Settlement will be paid separately by Defendants outside of the Settlement Fund, estimated to cost Defendants approximately \$125,000.

Absent Class Counsel’s willingness to pursue this case on a contingency basis with no guarantee of payment or recovery of expenses, Settlement Class Members would not have obtained these significant benefits. Class Counsel knew that pursuing this case would require an enormous outlay of both time and money, which it ultimately did. Indeed, Class Counsel have logged more

¹ Unless otherwise defined, all capitalized terms used herein shall have the same meaning as ascribed to them in the Memorandum in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 110) and the Settlement Agreement dated September 15, 2025 attached as Exhibit A thereto, and reattached as Exhibit 1 to Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement, filed concurrently herewith (the “Final Approval Motion”).

than 4,127.4 hours of attorney and paralegal time, and have spent more than \$84,019.06 out-of-pocket, to secure this result for the Settlement Class. More specifically, for instance, Class Counsel defeated two rounds of motion practice on Defendants' multiple motions to dismiss, conducted substantial discovery, engaged in detailed expert analyses, and negotiated this comprehensive Settlement.

The Class Representatives have likewise spent considerable time representing the Class with dedication and thoughtfulness, including sitting for interviews with counsel, providing information for the complaints, producing documents, reviewing and approval drafts of pleadings and briefs, attending hearings, monitoring the progress of the litigation, and considering and approving the terms of the Settlement.

Accordingly, Class Counsel respectfully requests that the Court award \$1,897,980.94, which is approximately 37% of the total settlement value (and a negative lodestar multiplier) and \$84,019.06 in costs. Plaintiffs also seek a \$7,500 service award for Plaintiff Black who has been involved with this lawsuit for nearly five years, and \$3,500 service awards for Plaintiffs Barr, Best, and Fant Sr. *See* Settlement Agreement at ¶ 114.

As set forth below, Class Counsel's considerable experience and skill, and national reputation in class action litigation and the excellent results achieved for the Class support these requests. The monetary recovery that Class Counsel achieved is significant as it represents a significant percentage—69.44%—of Plaintiffs' most likely best-case recovery at trial. This is an excellent result and well above the percentage recoveries in many other highly contested complex class actions. Class Counsel's requested fee award is reasonable, represents a negative lodestar multiplier of .52381 to .7386 depending on which rates are used, and is in line with comparable settlements approved within this District. Likewise, the requested Service Awards are well within

the range of reasonableness. In support of the Motion and this Memorandum in Support, Plaintiffs submit the Declarations of Class Counsel—Andrea R. Gold of Tycko & Zavareei LLP (“Gold Decl.”), Keith T. Vernon of Timoney Knox LLP (“Vernon Decl.”), and Jonathan Kagan of Kagan Stern Marinello & Beard, LLC (“Kagan Decl.”)—as well as the declarations of additional Plaintiffs’ counsel Karen Kohn of the Kohn Law Group (“Kohn Decl.”) and Jonathan Shub of Shub Johns & Holbrook LLP (“Shub Decl.”).

II. OVERVIEW OF THE HISTORY OF THE LITIGATION

The factual background of this lawsuit is set forth in detail in the Memorandum in Support of Plaintiffs’ Unopposed Motion for Final Approval (filed contemporaneously herewith) and the Plaintiffs’ Motion for Preliminary Approval (ECF No. 110) (the “Preliminary Approval Motion”). By way of brief introduction, this lawsuit arose from Defendants’ unlawful retention of gains and/or interest on Late Fees it wrongly assessed, in violation of the Maryland Insurance Code, against over 127,000 policyholders between June 27, 2011 and September 30, 2019. The Maryland Insurance Administration (“MIA”) became aware of these violations in 2018 following its investigation into an unrelated complaint. During the investigation by the MIA, Defendants refunded policyholders \$7.35 million dollars relating to the principal Late Fee amount, but did not include any interest, profits, or gains that accrued from those amounts. Plaintiffs in this Action sought a refund of such interest, profits, or other gains that Defendants acquired from the unlawfully assessed Late Fees.

A. Counsel’s Investigation and Filing of the Original Complaint

Prior to the filing of the Complaint, Class Counsel spent many hours investigating Defendants’ potential liability. Gold Decl. ¶ 15; Vernon Decl. ¶ 13; Kagan Decl. ¶ 11; Kohn Decl. ¶¶ 9-10; Shub Decl. ¶ 12. Class Counsel interviewed numerous policyholders of Defendants to gather information about Defendants’ alleged conduct and its impact on policyholders. *Id.* Class

Counsel also conducted legal and factual research as to the Late Fees at issue and the administrative proceedings related thereto. For instance, Class Counsel reviewed and obtained substantial documents and information regarding the MIA investigation as well as similar administrative proceedings in other matters. Class Counsel also studied Defendants' communications, or lack thereof, to its policyholders regarding the Late Fees, the MIA investigation and resulting Consent Order, and any withheld gains on the illegally assessed Fees. This information was essential to Class Counsel's ability to understand the nature of Defendants' alleged conduct, the nature of the MIA investigation and outcome (including the language of the Consent Order), the policies and other documents at issue, and potential remedies. In sum, Class Counsel expended significant resources to research and develop the claims in the pre-filing portion of this matter.

On June 25, 2021, Plaintiff Black filed the original Complaint to challenge Defendants' retention of the profits or gains it made on the Late Fees under three theories: money had and received, breach of contract, and unjust enrichment.

B. Counsel Defeats Several Motions to Dismiss over the Course of Three Years

On October 25, 2021, Defendants moved to dismiss that Complaint for lack of subject matter jurisdiction and for failure to state a claim. *See* ECF No. 39. Defendants argued, among other things, that the MIA had exclusive jurisdiction over Plaintiff Black's claims and that the MIA had already decided Defendants' "voluntary" repayment of illegal fees rendered it unnecessary for Defendants to disgorge themselves of the realized benefit of having used its members' money for nearly a decade. Defendants likewise argued that the claims were not timely filed, that Plaintiff could not maintain quasi-contractual claims where there was a binding contract, and that Plaintiff could not maintain claims against Defendants USAA, USAA-GIC, and Garrison because he was not in contractual privity with those Defendants and that Plaintiff Black was only in contractual privity with Defendant USAA-CIC. On November 12, 2021, pursuant to Judge

Grimm's procedures, Plaintiff Black sent a letter regarding his intent to file a Motion to Strike, or in the Alternative, a Motion for Limited Jurisdictional Discovery. ECF No. 40. The Parties engaged in letter briefing regarding this request *See* ECF Nos. 42-43. Before Judge Grimm ruled, the case was re-assigned to Judge Peter J. Messitte on October 11, 2022.

On October 19, 2022, before Plaintiff Black was able to oppose Defendants' original motion to dismiss, the Court *sua sponte* issued a Letter Order concluding that the MIA only had primary jurisdiction over Plaintiff's claims and rejected Defendants' argument that the MIA had exclusive jurisdiction. ECF No. 47. The Court stayed the matter pending administrative exhaustion. *Id.* In response, although it was always Plaintiff's position that the District Court had jurisdiction over the matter, Plaintiff Black (and Class Counsel) were required to prepare and file an administrative complaint on behalf of Plaintiff Black and others similarly situated before the MIA on January 11, 2023.

On March 25, 2023, the MIA responded to Plaintiff's administrative complaint with a brief letter that it "considers the issues addressed by the market conduct investigation and the resulting Consent Order to be closed at this time." *See* ECF No. 57, Ex. A. To ensure that there was no question that the MIA had concluded its jurisdiction over the matter, counsel for Plaintiff responded by letter on April 14, 2023, requesting an administrative hearing pursuant to the Maryland Code of Regulations ("COMAR") section 31.02.01.03(D) and the MIA. *Id.* at Exhibit B. The MIA's Associate Commissioner responded on May 3, 2023, declining to hear anything relating to the administrative complaint and making clear it had rendered a final decision. *Id.* at Exhibit B. Following this conclusive confirmation from the MIA that its administrative jurisdiction had been exhausted, the Parties jointly moved the Court to lift the administrative stay and went back to this Court. *Id.*

On July 10, 2023, Defendants again moved to dismiss Plaintiff Black's complaint for lack of subject matter jurisdiction and failure to state a claim under Rule 12(b)(6). ECF No. 59. Defendants again raised their arguments regarding the MIA's purportedly exclusive jurisdiction over the subject matter, that Plaintiff Black could not maintain claims against the entities with whom he is not in privity, and that Plaintiff could not maintain his unjust enrichment and money had and received claims where he was bound by the terms of a contract. Following full briefing on Defendant's motion to dismiss and oral argument before Judge Messitte, the Court issued an Order and Opinion largely in Plaintiff's favor. ECF No. 74 ("MTD Decision"). Judge Messitte rejected Defendants' bid to dismiss the money had and received and unjust enrichment claims, but granted the motion to dismiss breach of contract claim, and further ruled that the Court did have subject matter jurisdiction over the claims. Judge Messitte concluded his order by stating the Court was ready to receive class certification briefing. *Id.*

On January 24, 2025, the Action was reassigned to Judge Lydia Kay Griggs following the unfortunate passing of Judge Messitte.

After several weeks of vetting and interviewing individuals to serve as additional named Plaintiffs, on March 24, 2025, Plaintiff Black timely amended the Complaint to add Plaintiffs Barr, Best, and Fant, who are insured by Defendants USAA, Garrison, and GIC, respectively. Class Counsel undertook this step in anticipation of arguments Defendants raised at the pleadings stage and were likely to again raise at class certification regarding Plaintiff Black's ability to maintain claims against every Defendant-insuring entity, including those with whom he did not have a legal relationship. Defendants subsequently moved, for the third time, to dismiss Plaintiffs' First Amended Complaint on April 7, 2025 (ECF No. 98). In this motion, Defendants argued that Plaintiff Black could not maintain claims against the Defendants for whom he was not in

contractual privity, and that the new Plaintiffs' claims were time barred. *Id.* Plaintiffs again opposed Defendants' motion, and the motion was fully briefed by May 5, 2025.

C. Class Counsel Participated in Extensive Discovery

Following Defendants' unsuccessful 2024 Motion to Dismiss, on July 18, 2024, the Parties conferred and jointly moved the Court to set an agreed upon discovery and trial schedule. *See* ECF No. 78. The Parties likewise agreed upon a protective order. From July 18, 2024, through June 3, 2025, the Parties engaged in substantial discovery efforts, including the exchange of interrogatories and requests for production, and substantial document discovery necessitating hours of document review and analysis. In light of the amount of material needed, and the Parties' preparation for mediation as described below, on November 15, 2024, the Parties jointly requested that the Court extend the case schedule by 60 days so the Parties could complete discovery while also working toward a potential resolution of the claims. During this time period, Class Counsel took the depositions of several of Defendants' corporate witnesses including Yolanda Rodriguez, Eileen Ziemke, and Brett Shudak.

D. Class Counsel Meaningfully Engaged in the Mediation Process

The Parties also engaged the mediation services of the Honorable Benson E. Legg (Ret.) beginning in September 2024. Class Counsel drafted a comprehensive mediation statement including expert calculations and analyses, and Class Counsel had to work closely with their expert witness in preparing the statement. Class Counsel also reviewed and analyzed, including with their experts, the detailed mediation submission and analysis of Defendants. On November 7, 2024, Judge Legg held the mediation. While the Parties were unable to resolve their claims at the November 7, 2024, mediation, the Parties continued communicating with Judge Legg to work toward resolution, including by presenting supplemental briefings and written materials. With discovery and additional pleading and briefing ongoing, the Parties continued to discuss the

prospect of settlement, communicating at times directly and through Judge Legg. The Parties ultimately agreed to the mediator's proposal on key settlement terms on June 3, 2025. Thus, before the Court ruled on Defendants' third Motion to Dismiss but after the Parties engaged in significant fact discovery and expert analysis, the Parties reached an agreement on key class action settlement terms and filed a Notice of Settlement on June 4, 2025, asking the Court to stay all deadlines pending the filing of the full Agreement.

E. Class Counsel Successfully Negotiates a Classwide Settlement

Once the key terms of the settlement were agreed on, Class Counsel also took the laboring oar in drafting the Settlement Agreement and exhibits thereto, including the form and content of the Notices. Class Counsel responded to comments and revisions from Defendants and negotiated the contents of these documents until the Parties could reach agreement. Class Counsel likewise prepared the unopposed Preliminary Approval Motion and its exhibits and accompany declarations, including working and corresponding with the Settlement Administrator to provide a declaration in support of Preliminary Approval. Class Counsel prepared for and presented argument to this Court in support of preliminary approval on November 19, 2025, during a status conference. *See* ECF Nos. 111-112. After the Court entered its Order granting the Preliminary Approval Motion (ECF No. 113), Class Counsel worked closely with the Settlement Administrator to finalize the Notices, compile applicable deadlines, and ensure that notice was provided to the Settlement Class in accordance with the deadlines set by the Court. Notice was mailed to the Class on January 20, 2026. In addition to continued attention to the notice process, and keeping Plaintiffs informed, Class Counsel has also prepared this Motion and accompanying declarations, the Motion for Final Approval and its accompanying declarations, and will continue responding to Settlement Class Member inquiries, correspondence from the Settlement Administrator, and prepare for the final approval hearing set for April 28, 2026.

III. THE REQUESTED FEE AWARD IS FAIR AND REASONABLE

A. The Percentage of Recovery Method with a Lodestar Cross-Check is Appropriate for Evaluating an Attorneys' Fees Request in this Case

Federal Rule of Civil Procedure 23(h) provides that in a certified class action, the Court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or the parties' agreement. Here, the requested fee award was authorized by the Parties' agreement. Settlement Agreement ¶ 114.

In a case such as this one where a common fund has been created, courts within this Circuit “generally use a percentage of recovery method and supplement it with the lodestar method as a cross-check.” *Boger v. Citrix Sys., Inc.*, No. 19-cv-01234-LKG, 2023 WL 3763974 at *6 (D. Md. June 1, 2023) (quoting *Donaldson v. Primary Residential Mortg., Inc.*, No. ELH-19-1175, 2021 WL 2187013, at *8 (D. Md. May 28, 2021)) (cleaned up); *see also, Jernigan v. Protas, Spivok & Collins, LLC*, No. CV ELH-16-03058, 2017 WL 4176217, at *7 (D. Md. Sept. 20, 2017) (applying percentage of the recovery with a lodestar cross check and determining that an award of 40% was reasonable). For example, in *McAdams v. Robinson*, the Fourth Circuit upheld a fee award that was approximately 43% of the gross settlement amount, noting that after checking the lodestar that the award actually represented a negative multiplier. 26 F.4th 149, 162 (4th Cir. 2022). This method of calculating a fee award is seen as attractive because it “ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys.” *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 681 (D. Md. 2014) (citing *Jones v. Dominion Res. Servs.*, 601 F.Supp.2d 756, 759 (S.D.W.Va. 2009)) (cleaned up).

Courts within this District analyze the following seven factors to determine the reasonableness of a percentage-of-recovery fee request:

- (1) The results obtained for the class;
- (2) the quality, skill, and efficiency of the attorneys involved;
- (3) the risk of nonpayment;
- (4) objections by members of the

class to the settlement terms and/or fees requested by counsel; (5) awards in similar cases; (6) the complexity and duration of the case; and (7) public policy[.]

Boger, 2023 WL 3763974, at *7 (collecting cases). Importantly, courts need not formulaically apply the factors and can weigh them as appropriate for a particular case. *Id.* (citation omitted).

B. Class Counsel’s Fee Request is Supported by Each Applicable Factor

1. Class Counsel obtained excellent results for the Settlement Class.

The degree of success obtained is often considered “the most critical factor in calculating a reasonable fee award.” *McKnight v. Circuit City Stores, Inc.*, 14 Fed. Appx. 147, 149 (4th Cir. 2001) (citation and punctuation omitted). The non-reversionary common fund Settlement in this matter provides excellent relief for the Settlement Class.

Under the terms of the Settlement, a \$5,000,000 common fund was created to pay Settlement Class Members and further pay any service awards, attorneys’ fees or costs ordered by the Court. Each Settlement Class Member is entitled to their share of the Net Settlement Fund, and will receive a payment of at least \$5, and the remaining funds will be allocated proportionally by the amount of gains the Settlement Class Member would have received on March 20, 2020, had simple interest been included in the late fee refund, using an 8% per annum calculation. Settlement Agreement ¶ 103. The amount of this fund is remarkable—by Class Counsel’s estimation, the most likely best case recovery scenario would have been approximately \$7,200,000.00 based on Defendants’ profit margins during that time. Gold Decl. ¶ 30. Using that figure, this Settlement represents 69.4% of the most likely best case recovery and avoids the expenses of litigating class certification, continued expert discovery and *Daubert* motions, summary judgment, pretrial, trial, and post-trial appeals. Further, Defendants unlawfully charged and refunded \$8,163,969 in Late Fees, so a common fund of \$5,000,000 represents over 62% of the amount collected. In a case that recently settled in this district, the class representatives challenged the collection of unlawful

convenience fees—which were not refunded—under theories including unjust enrichment and money had and received, and the court noted that the common fund there supported a finding of great value to the settlement class where the amount was 26% of the convenience fees collected. *See Birks v. Small Cmty. Specialists, L.L.C.*, No. 8:23-cv-00837-BAH 2024 WL 5344437, at *1 (D. Md. Dec. 10, 2024). The *Birks* court likewise focused on the fact that the settlement class members did not need to opt in to the settlement, as is the same here. *See id.* And unlike the common fund in *Birks*, the Settlement Fund here is not being used to pay administration costs, further maximizing the impact of the common fund for Settlement Class Members. Should any Net Settlement Funds remain for nine months, they will be donated in equal parts to two organizations that prioritize veterans, Wounded Warrior Project and Face the Fight rather than revert to Defendants. Settlement Agreement ¶ 108.

Settlement Class Members’ satisfaction with this result is apparent from the fact that no objections have been received to date, and no valid opt-out requests have been received.

2. The involved attorneys are highly qualified, skilled, and efficient.

The quality, skill, and efficiency of Class Counsel also supports the requested fee award. Class Counsel are among the most experienced and successful attorneys in class actions and in litigation against financial institutions. *See generally*, Joint Decl. ISO Preliminary Approval ¶¶ 12-38; *see also*, Gold Decl. ¶¶ 5-12; Vernon Decl. ¶ 9-10, 24; Kagan Decl. ¶¶ 4-8.

Ms. Gold has over 19 years of practice as a plaintiffs’ class action lawyer, where she has litigated dozens of complex and national class actions cases throughout the country, resulting in hundreds of millions of dollars in recovery for consumers. She is a Partner at Tycko & Zavareei LLP, a nationally recognized class action firm. Ms. Gold and her law firm have significant experience and has achieved remarkable results in class action cases. *See* ECF No. 110-2 Joint Declaration of Proposed Settlement Class Counsel in Support of Preliminary Approval (“Joint

Decl.”), ¶¶ 17, 21 (collecting cases). For example, Ms. Gold achieved a \$24.5 million nationwide settlement in a case challenging the country’s largest credit union’s fee assessment practices. *Lloyd v. Navy Fed. Credit Union*, No. 3:17-cv-01280-BAS-RBB, 2019 WL 2269958 (S.D. Cal. May 28, 2019). In another lawsuit challenging an insurance company’s pricing practices, she secured a \$15 million settlement after years of contested litigation. *Harris v. Farmers Insurance Exchange*, No. BC579498 (Cal. Sup. Ct.). Ms. Gold has resolved another similar case against insurer Allstate Insurance Co. for \$25 million. *Stevenson v. Allstate Insurance Co. et al*, No. 4:15-cv-04788-YGR (N.D. Cal.). Ms. Gold likewise achieved a \$35 million settlement against Apple, Inc. that received final approval, *Tabak v. Apple, Inc.*, No. 19-cv-02455-JST (N.D. Cal.), and a settlement valued up by \$114 million by an expert in *Hamm, et al. v. Sharp Electronics Corp.*, No. 5:19-cv-00488-JSM-PRK (M.D. Fla. Jan 7, 2021).

Mr. Vernon has nearly three decades of legal experience during which he has been committed to protecting the rights of consumers and individuals in suits including class actions and mass tort actions. Mr. Vernon is a partner in the Washington, D.C. office of Timoney Knox, LLP. Mr. Vernon and his law firm have significant experience and have achieved strong results in class actions cases. *See* Joint Decl. ¶¶ 27, 31 (collecting cases).

Mr. Kagan has over thirty-two years of experience handling complex litigation matters, especially in Maryland state, district, and appellate courts. Mr. Kagan is the managing partner of Kagan Stern Marinello & Beard, LLC. Mr. Kagan’s extensive experience includes lawsuits involving financial institutions and insurance companies, and Mr. Kagan has taken over 100 cases to trial. *See* Joint Decl. ¶¶ 36-37.

While Class Counsel have vigorously litigated this case, they have also been efficient despite the case’s lengthy duration primarily stemming from Defendants’ vigorous defenses in

multiple forums. Class Counsel coordinated their efforts to avoid duplicating work. *See* Gold Decl. ¶ 13-14; 51; Vernon Decl. ¶ 11-12;25, 29; Kagan Decl. ¶ 9-10; 25. After an extensive period of litigation, and rather than engaging in further protracted and risky litigation, the Parties engaged the services of a mediator and likewise engaged an expert to help them identify potential recovery scenarios in this case. After multiple mediation briefings including expert analysis from both Parties, the mediator proposed a settlement that took the strength and weaknesses of each Parties' positions into account. Indeed, the substantial benefits provided to the Settlement Class in this Settlement have the advantage of being certain and immediate, and avoid continued costs. That Class Counsel and other Plaintiffs' counsel expended 4,127.4 hours in litigating this action over the past four and half years and achieved this result is remarkable. This factor likewise weighs toward granting Class Counsel's fee request.

3. The risk of nonpayment was substantial.

In evaluating risk in the context of reasonableness, "courts consider the relative risk involved in litigating the specific matter compared to the general risks incurred by attorneys taking on class actions on a contingency basis." *Fangman v. Genuine Title, LLC*, No. CV RDB-14-0081, 2017 WL 2591525, at *5 (D. Md. June 15, 2017) (citations omitted and cleaned up). For example, litigating on a contingent fee basis and covering litigation costs where the case is vigorously contested by opposing counsel demonstrates a "relatively high risk of nonpayment." *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 482 (D. Md. 2014). Here, Class Counsel and Plaintiffs' counsel litigated this case on a contingency basis for over four years, and advanced \$84,019.06 in costs, and assumed considerable risk in doing so. Defendants were represented by competent counsel who was prepared to litigate this action through trial and appeal, and who filed three motions to dismiss Plaintiffs' complaints during the four-year pendency of this action prior to settlement. In particular, Defendants focused on the fact that the MIA did not explicitly require any refund or

payment of gains or interest on Defendants' unlawfully collected Late Fees, which could not be resolved through continued litigation. Likewise, during discovery and mediation, Defendants pointed out the difficulty of conclusively tracing any gains accrued on the Late Fees in particular.

As set forth in more detail *infra* §I II.B.6, the factual, legal, and procedural issues in this case are complicated and there are very few, if any, exemplars of plaintiffs like those here prevailing on theories of unjust enrichment and money had and received on a classwide basis for interest and gains accrued on unlawful, but refunded fees. This district has acknowledged that a lack of tried cases under similar factual and legal theories demonstrates a substantial risk of non-payment. *See Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at *5 (D. Md. Jan. 28, 2020). The lack of precedent, combined with the very real possibility that the jury could decide that no further payments were warranted to putative class members beyond the already-refunded amount of the Late Fee principal amount thus posed a significant risk of continued litigation, especially when balanced against the additional costs that would be incurred on behalf of the Class in doing so. This factor supports the requested fee.

4. The lack of objections by Class Members to the Settlement Terms, proposed fees and costs for Class Counsel, and proposed Service Awards demonstrates the reasonableness of Class Counsel's request.

The deadline for Settlement Class Members to object to the proposed Settlement (including any objection to Plaintiffs' requested fee and costs award which was included prominently in the Notices) is forthcoming on March 30, 2026. However, as of the date of filing, no objections have been received, which supports approval of the attorneys' fees and expenses sought here. *See Singleton*, 976 F. Supp.2d at 684 ("The lack of objections tends to show that at least from the class members' perspective, the requested fee is reasonable for the services provided and the benefits achieved by class counsel."); *Feinberg v. T. Towe Price Grp., Inc.*, 610 F. Supp. 3d 758, 769 (D.

Md. 2022) (the fact that no class members objected supported the court's finding that the settlement was adequate); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014) (same).

5. Similar awards are in line with Class Counsel's fee request.

Class Counsel's fee request is in line with awards from similar lawsuits. In this District, for settlements under \$100 million, the acceptable percentage of recovery includes recovery up to 40% of the common fund for fees. *Fangman*, 2017 WL 2591525, at *5. Past fee awards for class counsel in lawsuits against large insurance companies and financial institutions, mortgage companies, or involving suits challenging the assessment of fees—especially those involving years of litigation—are comparable to the request here. *See McAdams*, 26 F.4th at 162 (affirming fee award based on lodestar but representing 43% of the settlement value in class action against nationwide mortgage company that was litigated for five years); *Birks*, 2024 WL 5344437, at *6 (D. Md. Dec. 10, 2024) (awarding 39.35% of common fund for fees in lawsuit challenging defendants' collection of convenience fees in violation of Maryland law); *Dickman v. Banner Life Ins. Co.*, No. 1:16-cv-00192-RDB, 2020 WL 13094954, at *5 (D. Md. May 20, 2020) (court awards fees representing 39.5% of the common fund, which combined with the costs amounts to 44.7% of the common fund in insurance class action litigated for approximately three years before settling); *Comer v. Life Ins. Co. of Alabama*, No. 08-cv-228-JFA 2011 WL 13196297, at *5 (D.S.C. Mar. 31, 2011) (awarding fees representing 36% of settlement value, which combined with costs amounted to 41.7% of the settlement value in class action lawsuit against insurance company that was litigated for two years before settling). Plaintiffs' request of \$1,897,980.94 or approximately 37% of the total settlement value in fees (and a negative lodestar multiplier ranging from .52381 to .7386 depending on rates used) and \$84,019.06 in costs comports with the Settlement Agreement's terms and applicable precedent.

Indeed, as will be set forth *infra* § III.C, courts generally hold that “lodestar multipliers falling between 2 and 4.5 demonstrate reasonable attorneys’ fee[s]” and the lodestar cross-check likewise shows that the fee request here is in line with what is normally found to be reasonable. *See Jernigan*, 2017 WL 417627, at *3; *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 439 (D. Md. 1998). This is especially true, as is the case here, where the award requested represents a negative multiplier.

6. This Action involved complicated issues and was litigated for almost five years.

In analyzing the complexity and duration of a litigation, courts look at the time between filing the complaint and reaching settlement and the amount of motions practice prior to settlement, and the extent of discovery, as well as whether settlement negotiations were hard fought and complicated. *See Singleton*, 976 F. Supp. 2d at 686; *Boyd*, 299 F.R.D. at 465-66.

Here, this case reached settlement nearly four years following the filing of the original case. During that time, there were three rounds of motion to dismiss briefing which were strongly contested, the case was stayed per the Court’s Order that Plaintiff Black exhaust any possible administrative remedies before the MIA, and then re-opened once the MIA confirmed it had exhausted its jurisdiction, and the case was returned to this Court for adjudication. The original Complaint was amended to add new putative class representatives to address Defendants’ arguments regarding Plaintiff Black’s inability to maintain claims against Defendants with whom he was not in contractual privity. The motions to dismiss involved complicated factual and jurisdictional issues that would persist throughout the lawsuit. Indeed, Plaintiffs’ remaining claims of money had and received and unjust enrichment are uncommon as standalone claims in challenging unlawful fee practices, especially when the principal amount of the illegal fees were ultimately refunded. And the question of what, if any, deference the jury would have to or might

afford to the MIA's decision to not include interest on the fee refunds that were originally ordered likewise results in complication.

Because the factual issues that would need to be proven were fairly complicated, the discovery in this case was likewise complicated, and required review of extensive financial records and expert analysis to create potential damages models based on these novel circumstances. Plaintiffs likewise would have needed to engage in costly forensic discovery to determine where the unlawfully collected monies went within each organization, a task which Defendants argued would not be possible. The mediation and settlement process was likewise complicated and lasted approximately four and a half months following the failed in-person mediation with Judge Legg. The complexity and duration of this action thus weigh in favor of approval of the requested fee award.

7. Public policy concerns are not frustrated by the fee award.

In considering whether public policy concerns render a fee award unreasonable, courts must balance the important public policy aim of attorneys litigating class action cases that “vindicate rights that might otherwise go unprotected” against concerns of potential overcompensation of the involved attorneys. *See Jernigan v. Protas, Spivok & Collins, LLC*, 2017 WL 4176217, at *3 (D. Md. Sept. 20, 2017) (citation omitted and cleaned up). Indeed, “[w]ithout a fee that reflects the risk and effort involved in this litigation, future plaintiffs’ attorneys might hesitate to be similarly aggressive and persistent[.]” *In re Tyco, Int’l Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007) (citing *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005)). Here, of course, and unlike in *Jernigan*, Plaintiffs’ Counsel are not obtaining a windfall or anything close to it: the lodestar multiplier in this case is negative, ameliorating any concerns of excessive compensation.

For example, in approving an award of 40% of the common fund, the *Jernigan* court noted the difficulty of obtaining counsel when “the potential [individual] monetary recovery is relatively small[] [and] [b]y agreeing to pursue this case, Class Counsel has obtained relief for a class that, in all likelihood, would have had no recourse in the absence of a class action.” *Jernigan*, 2017 WL 4176217, at *8. Here, where each assessed Late Fee was \$10, the amount of recovery per class member (based on the gains Defendants earned on this improperly held Fee) would have been small and would have made it difficult to find counsel.

C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees

While a percentage of the fund method for awarding fees does not require courts to perform a lodestar crosscheck, courts in this district frequently do so by “determining the hours reasonably expended and then multiplying that amount by the reasonable hourly rate.” *Kelly*, 2020 WL 434473, at *6; *Singleton*, 976 F. Supp. 2d at 688 (citation omitted); *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066 at *4 (M.D.N.C. Jan. 10, 2007) (“Given that courts in the Fourth Circuit approve of the percentage-of-fund method for awarding fees in common fund cases, it is not necessary for the Court to conduct a lodestar analysis[.]”) (cleaned up and citation omitted). When the lodestar method is used only as a cross-check, a court may rely on summaries and need not “exhaustively scrutinize[]” the hours documented by counsel. *See Kelly*, 2020 WL 434473, at *6.

To determine whether a lodestar rate is reasonable, courts reference “evidence of what attorneys earn from paying clients for similar services in similar circumstances.” *See Depaoli v. Vacation Sales Assocs., L.L.C.*, 489 F. 3d 615, 622 (4th Cir. 2007). This District’s Local Rules further reference the Fitzpatrick Matrix as providing a useful guideline for reasonable rates. L.R., App’x B § 3. Tycko & Zavareei, LLP ordinarily uses the Adjusted Laffey Matrix (available at <https://www.laffeymatrix.com/see.html>) to calculate their lodestar, and indeed courts across the

country have endorsed these rates. Gold Decl. ¶¶ 45-45 (collecting cases). While use of the Adjusted Laffey Matrix would result in a significantly higher lodestar than the Fitzpatrick Matrix, Tycko & Zavareei is using the Fitzpatrick Matrix for purposes of calculating its lodestar in this case. Gold Decl. ¶ 45. Timoney Knox utilized its firm market-based rates to calculate their lodestar, and courts have endorsed those rates. Vernon Decl. ¶¶ 23-24; 26. Timoney Knox is seeking its lodestar in connection with its ordinary rates, which is a lower lodestar than the Fitzpatrick Matrix. *Id.* Kagan Stern Marinello & Beard does not have ordinary rates for contingent class action matters, and when taking individual matters on a contingency basis, Kagan Stern seeks between 33.33-40% of any individual recovery. Kagan Decl. ¶ 21. In business litigation matters that are not class actions with contingent fees, Kagan Stern charges certain hourly rates. *Id.* Kagan Stern offers its lodestar using the Fitzpatrick Matrix for purposes of this case. *Id.* Shub Johns & Holbrook LLP ordinarily uses market-based rates to calculate their lodestar, and courts across the country have endorsed these rates. Shub Decl. ¶ 16 (collecting cases). While use of their ordinary rates would result in a higher lodestar than the Fitzpatrick Matrix, Shub Johns & Holbrook LLP is using the Fitzpatrick Matrix for purposes of calculating its lodestar in this case. Shub Decl. ¶ 16, 18 n.1. The Kohn Law Group does not have ordinary rates for contingent class action matters and primarily tries individual cases on a contingency basis, where rates of 40% of any recovery are sought for filed cases. Kohn Decl. ¶ 22. The Kohn Law Group offers its lodestar using the Fitzpatrick Matrix for purposes of this case. Kohn Decl. ¶ 22.

Regardless of whether the ordinary rates of Plaintiffs' Counsel or the Fitzpatrick Matrix rates are used, the lodestar cross-check here shows that Plaintiffs' percentage of the common fund request is reasonable as it represents a significantly negative multiplier. To date, Class Counsel

and Plaintiffs' Counsel have spent a total of 4,127.4 hours developing and prosecuting the case as set forth in the table below:

Firm	Hours	Ordinary Lodestar	Fitzpatrick Matrix Lodestar	Ordinary Multiplier	Fitzpatrick Multiplier
Tycko & Zavareei LLP	1,084.10	\$858,657.90	\$754,857.30		
Timoney Knox LLP	2,744.2	\$1,556,583.50	\$2,250,264.30		
Kagan Stern Marinello & Beard LLC	161.1	\$73,992.50 ²	\$130,253.80		
The Kohn Law Group	86.5	\$79,926.00 ³	\$79,926.00		
Shub Johns & Holbrook LLP	51.5	\$59,225.00	\$48,049.50		
Total	4127.4	\$2,628,384.90	\$3,623,350.90	.7221	.52381

See Gold Decl. ¶ 48; Vernon Decl. ¶ 26; Kagan Decl. ¶ 21; Kohn Decl. ¶ 24; Shub Decl. ¶ 18.

Using the lodestar rates suggested by Plaintiffs' counsel (Fitzpatrick Matrix for Tycko & Zavareei LLP, Shub Johns & Holbrook LLP, Kagan Stern Marinello & Beard LLC and the Kohn Law Group and ordinary rates for Timoney Knox LLP amounting to \$2,569,670.10) would result in a negative lodestar multiplier of .7386. Class Counsel are aware of the Local Rules' general requirement that time records be broken down by "litigation phase" but since courts can award a percentage of the

² Kagan Stern Marinello & Beard does not have ordinary rates for contingent class action lawsuits, its hourly rates listed under Ordinary Lodestar are the rates it uses in its business litigation matters. Kagan Decl. ¶ 21.

³ Kohn Law Group does not have hourly rates for contingent class action lawsuits, the Fitzpatrick Matrix is used here. Kohn Decl. ¶ 24.

settlement rather than a lodestar amount, and the lodestar is thus only being used as a cross-check, the exception in the first footnote of the Local Rules applies. *See* L.R. at App’x B §1(b). Class Counsel and Plaintiffs’ Counsel’s declarations nonetheless set forth each of their respective firm’s timekeeper’s hours by litigation phase.⁴ *See* Gold Decl. ¶ 49, Exhibit B; Vernon Decl. ¶ 27; Kagan Decl. ¶ 23, Exhibit 1; Kohn Decl. ¶ 25; Shub Decl. ¶ 19. Class Counsel and Plaintiffs’ Counsel maintained contemporaneous time records of all hours worked. Likewise, using the most current guideline rates rather than the rates of each year the work was performed is appropriate given the deferred and contingent nature of counsel’s compensation. “Using current . . . rates” rather than the rates in effect at the time the services were performed, “to calculate the lodestar may counterbalance the delay in payment as well as simplify the task of the district court.” *Daly v. Hill*, 790 F.2d 1071, 1081 (4th Cir. 1986). Lodestar for timekeepers no longer at their respective firm has been calculated using their rate on the date of their last entry billed to this matter.

The lodestar cross-check demonstrates the reasonableness of Plaintiffs’ fee request, as it is a **negative** multiplier regardless of what rates are used. In contrast, for large and complicated class actions, courts in this district routinely authorize positive multipliers between 2 and 4.5 *See Jernigan*, 2017 WL 4176217, at *3 (citing *Singleton*, 976 F. Supp. 2d at 689) (further authority omitted); *see also, Decohen*, 299 F.R.D. at 483 (lodestar cross-check demonstrating 3.9x multiplier supported fee award); *Dickman*, 2020 WL 13094954, at *5 (approving fee award where lodestar cross check demonstrated 1.41 multiplier). Indeed, a negative lodestar multiplier is generally recognized as per se reasonable. *See, e.g., In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, No. 1:15-md-2627, 2020 WL 5757504, at *6 (E.D. Va. Sept. 4, 2020); *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 578 (E.D. Va.

⁴ For time entries for which more than one “litigation phase” category could be included, efforts were made to assign the most applicable category to the time entry.

2016) (noting that a negative multiplier “is comfortably below the range of multipliers other courts have found to be reasonable”); *Payne v. Sprint Commc’ns Co. L.P.*, No. 1:11-cv-3434-CCB, 2012 WL 13006270, at *3 (D. Md. Nov. 30, 2012). Finally, this lodestar cross check is necessarily underinclusive as Class Counsel will continue to incur additional fees (and potentially costs) to prepare for and argue final approval and to continue to work to administer the Settlement and ensure the Settlement Class obtains all negotiated relief. *See Jernigan*, 2017 WL 4176217 at *7 (court noting counsel’s preparation for and attendance at the final approval hearing which was not factored into the lodestar cross-check helped render the lodestar cross check reasonable where the request represented a positive multiplier). The lodestar cross check likewise underscores the reasonableness of Class Counsel’s fee request.

IV. CLASS COUNSEL’S EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Federal Rule of Civil Procedure 23(h) likewise permits a trial court to award costs to Class Counsel as authorized by law or the parties’ agreement. Here, reimbursement of reasonable costs is expressly permitted by the Parties’ Agreement. Settlement Agreement ¶ 114.

“It is well-established that plaintiffs who are entitled to recovery attorneys’ fees are also entitled to recover reasonable litigation-related expenses as part of their overall reward.” *Singleton*, 976 F.Supp. at 690 (quoting *Kabore v. Anchor Staffing, Inc.*, No. L-10-3204, 2012 WL 5077636, at *10 (D. Md. Oct. 17, 2012) (cleaned up)). Such reimbursable expenses include “court costs, transcripts, travel, contractual personnel, document duplication, expert witness fees, photocopying, long distance telephone charges, postal fees, and expert witness fees.” *Kelly*, 2020 WL 434473, at *7 (citation omitted).

As summarized in the table below, Class Counsel request reimbursement of \$84,019.06 in costs and expenses incurred in connection with the litigation over a period of many years. *See Gold*

Decl. ¶ 50; Vernon Decl. ¶ 28; Kagan Decl. ¶ 24. The submitted expenses were all reasonable, necessary, and directly related to the prosecution of this action and include standard litigation-related costs and expenses such as costs for Plaintiffs' expert, mediation, legal research, document review, filing, postage, and travel. *Id. see also*, Gold Decl. ¶ 51; Vernon Decl. ¶ 29; Kagan Decl. ¶ 25. A summary of the total expenses by category for the Class Counsel firms is presented in the following table:

Expense Category	Tycko & Zavareei Costs	Timoney Knox Costs	Kagan, Stern, Marinello & Beard Costs	Total
Copying/ Printing	\$11.25			\$11.25
Court Fees and PACER (Filing fees, pro hac vice applications)	\$100.70	\$143.83	\$962.00	
Legal Research	\$2,144.04		\$512.12	
Postage/Courier	\$44.87	\$5.54	\$187.75	
Depositions	\$7,320.65	\$7,320.65		
Travel	\$41.99	\$487.06	\$21.95	
Expert and Consultant Fees	\$4,862.50	\$46,131.80		
Mediation	\$3,958.30	\$4,661.04		
Misc.		\$243.89		
Total	\$18,383.60	\$63,993.81	\$1,641.65	\$84,019.06

See Gold Decl. ¶ 50; Vernon Decl. ¶ 29; Kagan Decl. ¶ 24.

Here, Class Counsel were motivated to, and in fact, kept expenditures low because there was a risk they would not be reimbursed because Class Counsel was working on a contingent basis and advancing all fees. Class Counsel's request for reimbursement of expenses should be granted.

V. PLAINTIFFS' REQUEST FOR SERVICE AWARDS IS REASONABLE

Following the successful conclusion of a class action lawsuit, courts commonly award special compensation to the class representatives to recognize the time and effort they invested on behalf of the settlement class. *See Boger*, 2023 WL 376974 at *11; *Kelly*, 2020 WL 434474, at *7;

Decohen, 299 F.R.D. at 483. In so deciding, courts consider whether the class representative took actions to protect the class, the degree to which the class benefitted, and the amount of time and effort spent by the named plaintiff pursuing the litigation. *Boger*, 2023 WL 3763974 at *11. Here, Class Counsel seeks a \$7,500 service award for Plaintiff Black, and \$3,500 service awards for Plaintiffs Barr, Best, and Fant as contemplated by the Settlement Agreement.

Plaintiff Black was originally the only Plaintiff and has thus been involved with the case for nearly five years. Plaintiff Black made the difficult decision to put his name on a lawsuit against his insurer, Defendant USAA-CIC, and has actively been involved in the litigation from inception through settlement. He has been interviewed by Plaintiffs' Counsel multiple times, regularly participated in conference calls with counsel to understand litigation status and provide feedback, provided documents to Class Counsel, and responded to written discovery requests. He likewise attended the motion to dismiss hearing held before Judge Messitte. Plaintiff Black took his duties as a class representative seriously, and insisted on settling in a way that would benefit the Settlement Class. *See* Gold Decl. ¶ 52; Vernon Decl. ¶ 30; Kagan Decl. ¶ 26.

Following Judge Messitte's decision on Defendants' motion to dismiss, Plaintiffs Barr, Best, and Fant joined the lawsuit and likewise made the challenging decision to publicly proceed as representatives against their insurers Defendants USAA, Garrison, and USAA-GIC respectively. Plaintiffs Barr, Best, and Fant provided detailed information regarding the circumstances of Defendants' conduct, remained in regular contact with Class Counsel, and were prepared to participate in discovery should the case proceed. Plaintiffs Barr, Best, and Fant took their duties as class representatives seriously, and stayed aware of developments in the lawsuit, and were prepared to respond to pending written discovery requests served on them prior to

settling. Plaintiffs likewise insisted on settling in a way that would benefit the Settlement Class. *See* Gold Decl. ¶ 53; Vernon Decl. ¶ 31; Kagan Decl. ¶ 27.

The requested amounts for the Class Representatives are in line with or less than the amounts that this Court has approved to recognize the contributions of class representatives. *Boger*, 2023 WL 3763974 at *7 (approving \$10,000 service award to the class representative for service over the course of four years); *Decohen*, 299 F.R.D. at 483 (approving \$10,000 service award to the class representative for service over the course of three and a half years); *Birks*, 2024 WL 5344437, at *6 (awarding service award of \$5,000 to class representatives in lawsuit litigated for over a year); *Dickman v. Banner Life Ins. Co.*, 2020 WL 5752447 (D. Md. Jan. 22, 2020) (seeking different awards for class representatives based on degree of involvement), *award granted at Dickman*, 2020 WL 1309454.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and enter the proposed Combined Order Granting Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Costs and Service Awards.

Dated: March 16, 2026

Respectfully submitted,

/s/ Jonathan P. Kagan

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**Admitted Pro Hac Vice*

Class Counsel for Plaintiffs and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2026, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/Jonathan P. Kagan

Jonathan P. Kagan