IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

THOMAS SILVER, an individual, and all those similarly situated, Plaintiff, vs. RUDEEN MANAGEMENT COMPANY, INC., a Washington corporation, Defendant.	Case No.: 17-2-03103-2 **MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS, AND SERVICE AWARD**

I. INTRODUCTION

Class Plaintiff Representative, Thomas Silver, on behalf of himself and all others similarly situated, commenced this lawsuit (the "Action") against Defendant Rudeen Management Company, Inc. ("Rudeen") on August 10, 2017, alleging violations of the Washington Residential Landlord Tenant Act, RCW 59.18, *et seq.*, ("RLTA"). (Sub Number "SN" 1). The alleged violations arose from Rudeen's alleged practice of failing to comply with RCW 59.18.280's requirements for sending full and specific deposit disposition statements and/or refunds due to former tenants within the statutorily required time limits. (SN 1, SN 8).

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On June 26, 2018, the originally assigned judge dismissed the case based on an erroneous application of RCW 4.16*, et seq.*, and awarded Rudeen $15,193.00 in costs and attorney fees. (SN 35). Division III Court of Appeals affirmed the trial court, erroneously finding that Mr. Silver's action was subject to a two-year statute of limitations, rather than three-years for "taking, detaining, or injuring personal property, including an action for the specific recovery thereof." RCW 4.16.080. Ultimately, the Washington Supreme Court, in a unanimous decision, reversed the lower courts on the issue of statute of limitations, while also emphasizing the importance of class action litigation in this case and all others like it. *Silver v. Rudeen Mgmt. Co., Inc.*, 197 Wn.2d 535 (2021) (stating that the availability of collective class litigation, double damages, and shifting attorneys' fees are important in these types of cases "to hold landlords accountable to respecting tenants' rights" at 548).

After a significant discovery period and unexpected delays by Rudeen, this Court certified this matter as a class action on June 9, 2023. (SN 95). In the Court's Certification Order it appointed Thomas Silver as Class Representative and Shayne J. Sutherland of Cameron Sutherland, PLLC, and Kirk D. Miller of Kirk D. Miller, P.S., as class counsel. (SN 95).

Thereafter, due to Rudeen's multiple failures to comply with discovery orders, the Court entered an Agreed Order of Default on August 18, 2023. (SN 112). On November 30, 2023, Rudeen filed a notice of withdrawal and substitution of counsel, wherein Piskel Yahne Kovarik, PLLC substituted for attorney Timothy Durkop. (SN 117). Over the next two years multiple unsuccessful motions and two appeals followed by Rudeen to overturn its liability and limit the number of class members. (*See e.g.*, SN 136, 143, 144, 161, 210, 245, 246, 259, 295). In the interim, on July 22, 2024, this Court approved Plaintiff's Motion to Substitute Christopher M.

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Hogue as additional Class Counsel for Kirk D. Miller,[1] finding Mr. Hogue qualified given his prior class action experience and expertise. (SN 206).

With the identities of class members finally determined and class notice on the verge of dissemination, the parties agreed to participate in mediation before Honorable Maryann Moreno (Ret.) on December 17, 2025. (SN 302, ¶ 5). The parties, through that all-day mediation session, were able to come to settlement terms to resolve this matter fully and finally with the payment of substantial relief to all of the approximate 7,825 members of the class. (SN 302, ¶¶ 5, Ex. 1, 6, 7).

This Court preliminarily approved the parties' Class Settlement Agreement as fair and reasonable on March 3, 2026. (SN 303). Consistent with the Settlement Agreement, Class Representative Thomas Silver requests this Court award combined attorneys' fees and costs of $966,667, litigation costs of $2,907.82, and a combined statutory damages and class representative service award of $20,000. (SN 302, ¶ 5, Ex. 1, ¶¶ 12, 13; Sutherland Dec. ISO Unopposed Mot. for Atty Fees and Costs, and Service Award "Sutherland Dec.," Mencke Smith Dec. ISO Kirk Miller Fee and Expense Application "Mencke Smith Dec.," ¶ 8). Rudeen does not contest that these amounts should be awarded to Class Counsel and Mr. Silver, in accordance with the parties' Settlement Agreement. (SN 302, ¶ 5, Ex. 1, ¶¶ 12, 13).

The attorneys' fees and service award requests are in-line with applicable law and are on par with those approved in similar cases. The requests are supported by the specific facts of this case, including the quality of the result achieved and contributions of Class Counsel and Mr. Silver to accomplish that result. The $2.9 million all-cash, non-reversionary settlement is an

[1] Former Class Counsel, Mr. Miller, passed away during the litigation of this matter in December of 2023. (SN 174).

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excellent outcome for Settlement Class Members, as they need not even submit a claim form to receive a payment. (SN 302, ¶ 7).

To achieve this exemplary result for the Class Members, Mr. Silver and Class Counsel vigorously litigated this case for over eight and one half (8 and ½) years. Class Counsel assumed the financial risk associated with contingent fee litigation and demonstrated their expertise and skill in this specialized area of practice by effectively litigating and ultimately resolving this case. Class Counsel and Mr. Silver devoted a substantial number of hours to the prosecution of this case. (SN 302, ¶ 4; Sutherland Dec., ¶ 14, Ex. A, ¶ 19; Cameron Dec. Re: Atty Fees "Cameron Dec.," ¶ 4, Ex. A, ¶ 16; Hogue Dec. ISO of Atty Fees "Hogue Dec.," ¶ 13, Ex. A). The significant benefits for the Settlement Class would not have been obtained without Class Counsel's time and efforts, and Mr. Silver's dedication to the action and the Settlement Class. Accordingly, Mr. Silver respectfully requests the Court grant his motion.

II. ARGUMENT AND AUTHORITY

A. Class Counsel and Mr. Silver vigorously litigated on behalf of the Class and negotiated an excellent settlement for Class Members.

After this case was commenced nearly eight and one half (8 and ½) years ago, Class Counsel and Mr. Silver investigated Rudeen's business practices, litigated several motions, including but not limited to a motions for class certification, to stay proceedings, to set aside and vacate default judgment, to modify and decertify the class action, participated in multiple successful appeals, and reviewed and analyzed thousands of pages of documents to ascertain appropriate class members to ascertain appropriate class members. (SN 302, ¶ 4). To finally resolve this matter, Class Counsel and Mr. Silver engaged in mediated negotiations with Rudeen and its counsel with Judge Maryann Moreno (*Ret.*). (SN 302, ¶ 5). In addition, in order

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to bring this matter to a final conclusion, Class Counsel will continue to dedicate substantial time representing this matter by assisting in class administration and presenting several necessary pleadings to the Court so this matter may be approved. (Sutherland Dec., ¶ 17).

The parties' class-wide Settlement Agreement requires Rudeen to establish a settlement fund in the amount of $2,900,000, which will pay Class Members, class administration costs, a class representative service award, and attorneys' fees and costs. (SN 302, ¶ 5, Ex. 1, ¶ 7). If the Court finally approves the Settlement Agreement, $1,850,000 will be divided amongst approximately 7,825 Class Members, resulting in a monetary payment that roughly equals 80% of each tenancy's original deposit. (SN 302, ¶ 7). Each Class Member who does not affirmatively opt-out will receive an equal share of the original deposit. (SN 302, ¶ 7). Given the limited amount of case law on RCW 59.18.280, its two-sided fee-shifting, and the fact that many Class Members already received portions of their deposits back from Rudeen, this result is exceptional. (SN 302, ¶ 7).

As part of the Settlement Agreement, Rudeen affirmed that it does not oppose an attorneys' fees award of $966,667, litigation costs of 2,907.82, and a combined statutory damage and service award of $20,000 to Mr. Silver. (SN 302, ¶¶ 12, 13; Sutherland Dec, ¶ 16; Mencke Smith Dec., ¶ 8). Rudeen also agreed to pay all class administration costs which are expected to be approximately $45,000. (SN 302, ¶ 10).

B. <u>Mr. Silver requests a reasonable award of attorneys' fees and costs.</u>

"Attorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether they are 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co*., 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)). "The plain text of [Fed. R. Civ. P. 23(h)] requires

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that any class member be allowed an opportunity to object to the fee 'motion' itself." *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-994 (9th Cir. 2010). Class Counsel have submitted their fee motion in advance of final approval, as required by *In re Mercury Interactive Corp.*, and will address any objections from Class Members (if any) in Mr. Silver's Motion for Final Approval.

1. The percentage-of-recovery method is the proper method for determining a reasonable attorneys' fee in this case.

As this case concerns a Washington state statute, Washington state law governs the award of fees in this case. *See Ginzkey v. Nat'l Sec. Corp*., 2022 U.S. Dist. LEXIS 202753, *2 (W.D. Wash. Nov. 3, 2022) (citing *Vizcaino v. Microsoft*, 290 F.3d 1043, 1047 (9th Cir. 2002)). Under Washington law (absent special circumstances), the percentage-of-recovery method is generally used to calculate fees in class actions where a common fund is created. *Id.; Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 73 (1993) (Supreme Court rejected the defendant's arguments regarding application of Lodestar where there is a common benefit, stating: "We reject these arguments. This being a common fund case, we apply the percentage of recovery approach. The Department's arguments relate only to the lodestar approach.")

The *Bowles* Court explained that under this approach, "[t]he attorneys are to be compensated according to the size of the judgment recovered, not the actual hours expended." *Id*. at 75. The rationale for applying the percentage method is explained in the *Manual for Complex Litigation* as follows:

> Indeed, one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus insuring that competent counsel continues to be willing to undertake risky, complex, and novel litigation. Generally, the factor given the greatest emphasis is the size of the fund created, because a common fund is itself the measure of

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> success and represents the benchmark from which a reasonable fee will be awarded.

See MCL 4th § 14.121 at 193; *see also Bowles*, 122 Wn.2d at 72 ("In common fund cases, the size of the recovery constitutes a suitable measure of the attorneys' performance.").

In *Vizcaino*, the court noted the following:

> The bar against risk multipliers in statutory fee cases does not apply to common fund cases. Indeed, courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases. This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases. In common fund cases attorneys whose compensation depends on their winning the case[ ] must make up in compensation in the cases they win for the lack of compensation in the cases they lose.
>
> 290 F.3d at 1051 (internal citation and quotation omitted).

The advantage of using the percentage-of-recovery method is also addressed in the well-recognized class action treatise, *Newberg on Class Actions*. There, the author points out that under the percentage of recovery method, the more the attorney succeeds in benefitting the client, with the fewest number of legal hours expended to reach that result, the higher the dollar amount of fees the lawyer earns.

> One of the primary advantages of the POR [percentage of recovery] method is that it is thought to equate the interests of class counsel with those of the class members and encourage class counsel to prosecute the case in an efficient manner.
>
> Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* 14:06, at 566-67 (4th ed. 2002).

Washington authority provides a range of 25 to 40 percent of the total common fund as a reasonable attorneys' fees award**.** *See, e.g., Ginzkey,* 2022 U.S. Dist. LEXIS 202753, *3-4 (W.D. Wash. Nov. 3, 2022) (approving 40 percent of the $1.86 million common fund as attorneys' fee award); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 460, 463 (9th Cir.

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2000) (affirming 33.33 percent of the total recovery as attorneys' fees award); *In re Pac. Enters. Secs. Litig*., 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33 percent of common fund at attorneys' fees award); *see also Bowles*, 121 Wn.2d at 72 (attorneys' fee awards in the range of 20 to 30 percent of the fund are common); *and see In re Ampicillin Antitrust Litig*., 526 F. Supp. 494, 500 (D.D.C. 1981) (awarding 45 percent of $7.3 million settlement fund as attorneys' fees).

2. Class Counsel litigated the case on a contingency basis and assumed a significant risk of no recovery.

Mr. Silver's attorneys' fee request reflects the risks presented by this case and Class Counsel's wholly contingent representation of the matter. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015); *Vizcaino*, 290 F.3d at 1048; *see also Jenson v. First Trust Corp.*, No. CV 05–3124, 2008 WL 11338161, at *12 (C.D. Cal. June 9, 2008) ("Uncertainty that *any* recovery ultimately would be obtained is a highly relevant consideration. Indeed, the risks assumed by Counsel, particularly the risk of non-payment or reimbursement of expenses, is important to determining a proper fee award." (internal citation omitted)).

Class Counsel represented Mr. Silver and the Settlement Class entirely on a contingent basis, investing more than 1479 hours and thousands of dollars in costs over the course of nearly nine (9) years. (Sutherland Dec., ¶ 14, Ex. A, ¶ 18; Cameron Dec., ¶ 4, Ex. A; Hogue Dec., ¶ 13, Ex. A; Mencke Smith Dec., ¶ 8). Courts recognize that "contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless of whether they win or lose." *In re Wash. Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

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Given the limited availability of case law concerning RCW 59.18.280, recovery was uncertain from the start of this case. In fact, after initiating this action, it appeared likely at certain litigation stages that Mr. Silver's claim would fail as he had to survive two appeals, and an adverse judgment against him, before the Supreme Court ruled in his favor on the statute of limitation applicable .280. Furthermore, after remand, successful recovery on a class-wide basis was still largely in doubt given the availability of defenses available to Rudeen and the previously mentioned lack of pertinent case law concerning RCW 59.18.280.

Due to this risk, Class Counsel also faced the very real possibility they would not recover any fees or be reimbursed any costs throughout this litigation. *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1046–47 (N.D. Cal. 2008) ("The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees."). This factor weighs in favor of approving Class Counsel's fee request.

Here, Mr. Silver requests, and Rudeen does not contest and agrees to pay Class Counsel's request for 33.33 percent of the total common fund as an award of attorneys' fees, and $2,907.82 in direct litigation costs. That percentage is well within the range of acceptable percentage-of-the-recovery case law in Washington and should be approved.

3. Applying the lodestar method as a crosscheck demonstrates that the request for attorneys' fees is reasonable.

Because Class Counsel's fee request is reasonable under the percentage-of-the-recovery method, the Court is not required to conduct a lodestar crosscheck. *See Farrell v. Bank of Am. Corp., N.A*., 827 F. App'x 628, 630 (9th Cir. 2020) ("This Court has consistently refused to adopt a crosscheck requirement, and we do so once more."). However, courts may use a rough

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calculation of the lodestar as a crosscheck to assess the reasonableness of an attorneys' fees award based on the percentage-of-recovery method. *See Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."); *see also Glass v. UBS Fin. Servs*., 331 F. App'x 452, 456-57 (9th Cir. 2009) (affirming fee award of 25 percent of a settlement fund with an "informal" lodestar crosscheck despite "the relatively low time-commitment by plaintiff's counsel" because "the district court did not abuse its discretion in giving weight to other factors, such as the results achieved for the class and the favorable timing of the settlement").

Under the lodestar approach, a court multiplies "a reasonable hourly rate by the number of hours reasonably expended on the matter." *Mahler v. Szucs*, 135 Wn.2d 398, 434 (1998); *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 147 (1993); *Bowers v. Transamerica Title Ins*. Co., 100 Wn.2d 581, 597 (1983). When attorneys have an established rate for billing clients, that rate will likely be a reasonable rate. *Id.* at 597; *McGreevy v. Oregon Mut. Ins. Co*., 90 Wn. App. 283, 293 (1998). The rates of comparably skilled law firms are a likely basis for a reasonable hourly fee. *Id*.

Once the lodestar is determined, courts may adjust the amount to account for several factors, such as the benefit obtained for the class, the risk of nonpayment, the complexity and novelty of the issues presented, and awards in similar cases. *See In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 942 (9th Cir. 2011). "Foremost among these considerations … is the benefit obtained for the class." *Id*. "The aim is to 'do rough justice, not to achieve auditing perfection.'" *Gutierrez v. Amplify Energy Corp*., No. 8:21-CV-01628, 2023 WL 6370233, at *6 (C.D. Cal. Sept. 14, 2023) (citation omitted).

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Courts approach multipliers differently when the lodestar method is used as a crosscheck because they "are not bound by the Supreme Court's rulings that limit multiplied lodestars in the fee shifting context." 5 Newberg on Class Actions § 15:91 (6th ed. Nov. 2023 update); *see also Vizcaino*, 290 F.3d at 1051 ("courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases"). Multipliers are therefore commonplace when courts use the lodestar method to cross-check a percentage-of-the-recovery fee. 5 Newberg § 15:49 ("In common fee cases, fee adjustments—or multipliers—are common.").

As the Washington Supreme Court has recognized, "[t]he experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk." *Bowers,* 100 Wn.2d at 598 (citation omitted); *see also* 5 Newberg § 15:91 ("[B]ecause most class suits are contingent fee cases in which counsel only get paid if they prevail, a bonus is generally defensible on the ground that it provides an incentive that encourages lawyers to undertake such work—absent some 'upside' on their loan of services to their clients, they would have no economic reason to invest in such cases.").

The lodestar-multiplier method confirms the propriety of the requested fee in this matter. Class Counsel submitted detailed declarations and time records with this motion. Class Counsel's declarations describe their respective backgrounds, and that their rates are based on their experience, skill, sophistication, and risk required to perform plaintiff class action work, and the rates customarily charged in this specialized field of representation. (*See generally*, Sutherland Dec.; Cameron Dec.; Hogue Dec.). The time records provided with Class Counsel's declarations include the detailed number of hours expended, the work performed, and the attorney who performed the work.

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a. Class Counsel expended a reasonable number of hours litigating this case.

The more than 1479 hours of attorney time and 240 hours of legal support time that Class Counsel and their staff devoted to investigation, discovery, motion practice, and achieving a favorable settlement, as well as the additional 30 plus of time anticipated to push the case through final approval, is reasonable. *See Moreno v. City of Sacramento,* 534 F.3d 1106, 1111 (9th Cir. 2008) ("The number of hours to be compensated is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client.").

After the Complaint was filed, Class Counsel engaged in extensive, contested motion practice, proceeded through four separate appeals, reviewed and analyzed thousands of documents and data to ascertain appropriate class members and reasonable range of damages, and engaged in extensive mediated settlement negotiations with the Rudeen. (SN 302, ¶ 4; Sutherland Dec., ¶ 14, Ex. A; Cameron Dec., ¶ 4, Ex. A; Hogue Dec., ¶ 13, Ex. A). Moreover, Class Counsel will continue to assist in administration of the class and draft and present significant pleadings to allow the Court and the Class Members to assess the fairness of the Settlement. (Sutherland Dec., ¶ 17).

Class Counsel have produced their time sheets reflecting an accurate accounting of the hours litigating this matter over the last eight and one half (8 and ½) years, in this entirely contingent fee case. (Sutherland Dec., ¶ 6, ¶ 14, Ex. A; Cameron Dec., ¶ 4, Ex. A; Hogue Dec., ¶13, Ex. A). As the Ninth Circuit noted, "lawyers are not likely to spend unnecessary time on contingency cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee." *Moreno,* 534 F.3d at 1112. Thus, "[b]y and large, the court should defer to the winning lawyer's professional judgment as to how much time was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Id.*

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Here, Class Counsel's over 1479 hours of attorney representation were necessary and well spent. Class Counsel prevailed on multiple motions and appeals, and they ultimately resolved this case on excellent terms for the Class Members.

b. Class Counsel's hourly rates are consistent with rates for similar class action plaintiff attorneys of comparable skill, experience, and reputation.

In determining a reasonable rate, the court considers the "experience, skill and reputation of the attorney requesting fees." *Trevino v. Gates,* 99 F.3d 911, 924 (9th Cir. 1996). Courts also look at the prevailing market rates in the relevant community, which is the forum in which the district court sits. *Gonzalez v. City of Maywood,* 729 F.3d 1196, 1205 (9th Cir. 2013). Courts approve rates that are comparable to "the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity." *Welch v. Metro. Life Ins.* Co., 480 F.3d 942, 946 (9th Cir. 2007); *see also Dang v. Cross,* 422 F.3d 800, 813 (9th Cir. 2005) (hourly rates are reasonable if they fall within the range of "prevailing market rates in the relevant community" given "the experience, skill, and reputation of the attorney"). Courts consider declarations from plaintiffs' counsel and fee awards in other cases as evidence of prevailing market rates. *Welch,* 480 F.3d at 947.

Last year, Mr. Sutherland and Mr. Cameron were approved at a rate of $625 per hour in the Spokane County Superior Court for class action contingency work. (Sutherland Dec., ¶ 11; Cameron Dec., ¶ 10); *Dirk v. RC Schwartz & Associates, Inc*., SCSC No. 23-2-03085-32 at SNs 29, 38. Nearly four years ago, Mr. Hogue was approved at $550 per hour for class action contingency work in Washington Federal Court. (Hogue Dec., ¶ 11). As plaintiff class action contingent representation is complex, niche, and fraught with risk, Washington courts have regularly approved reasonable hourly rates for firm partners prosecuting successful class actions

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of up to $1,180, associate attorneys up to $710, paralegals up to $450, legal assistants up to $285, and law clerks up to $250. *See* Final Approval Order and Judgment, *Moore and Gillette v. Robinhood Financial LLC*, 2:21-cv-01571- BJR (W.D. Wash. July 16, 2024) at ECF Nos. 98, 99, 108 (approving requested billing rates for plaintiff attorney partners at $1,180, $775, and $725 per hour, senior counsel at $740 per hour, associate attorney with three years less experience than Class Counsel here at $710 per hour, paralegal rates from $225 to $450 per hour, and law clerks at $250 per hour); *Berman v. Freedom Financial Network, LLC*, No. 4:18-cv-01060-YGR (N.D. Cal. Feb. 23, 2024) (ECF 368 at 8-11) (approving Washington based law firm partner rates from $725 to $775 and staff rates from $125 to $295); *Rinky Dink v. World Business Lenders, LLC,* No. 2:14-cv-0268-JCC (W.D. Wash. May 31, 2016), ECF No. 92 at 7-8 (ten years ago approving partner rates of $500 -$650 per hour, paralegal rates of $250, and litigation staff rates of $100-$200 per hour); *see also Brazile v. Comm'r of Soc. Sec*., No. C18-5914-JLR, 2022 WL 503779, at *3 (W.D. Wash. Feb. 18, 2022) (noting "that fee awards with hourly rates exceeding $1,000 have been approved by courts in this district on numerous occasions," and citing cases). Moreover, certain *non-contingent* defense counsel in Eastern Washington charge more than Plaintiff's counsel's contingent rates to defend class actions. (Sutherland Dec., ¶ 13).

Accordingly, rates for class action contingency work of $600-$750 per hour would be appropriate and well within the prevailing market rate for such specialized, difficult, and risky representation. (Sutherland Dec., ¶ 13; Hogue Dec., ¶ 11). Class Counsel have provided the Court with declarations describing the basis for their hourly rates, including their education, legal experience, and reputation in the legal community. Class Counsel set the rates for attorneys and staff members based on a variety of factors, including the experience, skill and

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sophistication required for the types of legal services typically performed, the rates customarily charged in the market, and the experience, reputation and ability of the attorneys and staff members. (Sutherland Dec., ¶¶ 4-13; Hogue Dec., ¶ 11). Because Class Counsel's billing rates are in line with rates approved in Washington state for class action contingency work, Class Counsel's requested class contingent hourly rates between $625-$675 are reasonable.

c. The requested multiplier is reasonable.

In the Ninth Circuit, multipliers "ranging from one to four are frequently awarded," in class action litigation. *Vizcaino*, 290 F.3d at 1051 n.6. Courts find higher multipliers appropriate when using the lodestar method as a crosscheck for an award based on the percentage method. *See, e.g., Steiner v. Am. Broad Co., Inc.*, 248 F. App'x 780, 783 (9th Cir. 2007) (finding a multiplier of approximately 6.85 to be "well within the range of multipliers that courts have allowed" when crosschecking a fee based on a percentage of the fund); *Van Vranken v. Atl. Richfield Co.,* 901 F. Supp. 294, 298-99 (N.D. Cal. 1995) (finding that a multiplier of 3.6 was "well within the acceptable range" and explaining that "[m]ultipliers in the 3-4 range are common"); *Maley v. Del Global Techs. Corp*., 186 F. Supp. 2d 358 (S.D.N.Y. 2002) (finding a "modest multiplier of 4.65 is fair and reasonable" when cross-checking a fee of 1/3 of the settlement fund).

The Washington Supreme Court has stated that an "award of fees under the percentage of recovery theory is not improper merely because it is three times the lodestar amount." *Bowles*, 121 Wn.2d at 73 (citing *In re GNC S'holder Litigation: All Actions*, 668 F. Supp. 450, 451 (W.D. Pa. 1987).

Class Counsel undertook this litigation with substantial risk that they might not obtain any recovery for Mr. Silver and the Settlement Class, a significant factor in the award of fees.

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See Omnivision, 559 F. Supp. 2d at 1047; *In re Wash. Pub. Power Supply Sys. Secs. Litig*., 19 F.3d at 1299-1301. As endorsed by the Ninth Circuit, the risk associated with contingent representation and litigation is an important, if not the foremost, factor in determining the attorneys' fee percentage award. *See Vizcaino*, 290 F.3d at 1048-49 (that the case is "fraught with risk and recovery is far from certain" is "a relevant circumstance" that courts must take into account).

Class Counsel are all too aware of the risk of non-payment in contingent fee cases as they have been involved in numerous consumer rights cases that for assorted reasons were either dismissed or not certified. (Sutherland Dec., ¶ 12; Cameron Dec., ¶¶ 7, 8). In cases like those, Class Counsel received no payment for the firm's services and lost all the money spent on expenses. (Sutherland Dec., ¶ 12; Cameron Dec., ¶¶ 7, 8). Despite these risks, and prior disappointments, Class Counsel invested significant resources and time to successfully litigate this matter. (Sutherland Dec., ¶¶ 14-17; Cameron Dec., ¶ 4, Hogue Dec., ¶ 13). Class Counsel obtained a substantial and meaningful recovery for the Class. As the Ninth Circuit has observed "[c]ontingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless, whether they win or lose." *In re Wash. Pub. Power Supply Sys. Secs. Litig*., 19 F.3d at 1299.

Here, as a lodestar crosscheck to the reasonableness of the attorneys' fees, no multiplier or a minimal multiplier of ~1.04 would need to be applied to reach the requested 33.33 percent percentage-of-the-recovery award amount of $966,667. (Sutherland Dec., ¶ 18). Such a multiplier (if any) is far below the multiplier routinely applied when crosschecking the reasonableness of attorney's fees awarded pursuant to the percentage-of-the-recovery method.

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C. Class Counsel's requested litigation costs are necessarily and reasonably incurred.

"Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996).

Class Counsel advanced several thousands of dollars of costs without assurance that they would ever be repaid. (Sutherland Dec., ¶¶ 12, 16). Here, Class Counsel requests costs are minimal, as they only request reimbursement of their direct out-of-pocket expenses incurred in litigating this matter, $2,907.82, over its nearly nine-year history. (Sutherland Dec., ¶ 16).

D. Class Representative Silver requests a reasonable service award.

Service awards are "fairly typical in class actions." *Barovic v. Ballmer,* Nos. C14-0540 JCC, *et al.,* 2016 WL 199674, at 5 (W.D. Wash. Jan. 13, 2016) (citation omitted). They "are intended to 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." *Rodriguez v. W. Publ'g Corp.,* 563 F.3d 948, 958-59 (9th Cir. 2009). Service awards "help promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits." *Byles v. Ace Parking Mgmt*., 2019 U.S. Dist. LEXIS 141272, *4 (W.D. Wash. Aug. 20, 2019) (citing *Rodriguez v. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

The criteria courts consider when determining whether to make an incentive award and the amount of the award include the risk to the class representative, both financial and otherwise, the notoriety and personal difficulties encountered by the class representative, the amount of time and effort spent, the duration of the litigation, and the personal benefit enjoyed

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by the class representative as a result of the litigation. *Carideo v. Dell, Inc.,* No. 06-CV-01772-PET, 2010 WL 11530555, at 3 (W.D. Wash. Dec. 17, 2010).

Class Representative Thomas Silver requests a combined statutory damage and service award payment of $20,000 in recognition of his service to the Class. (SN 302, ¶ 12). His requested service award is on par with service awards awarded in other actions. *See, e.g., Hughes v. Microsoft Corp.,* C98–1646C, 93–0178C, 2001 WL 34089697, at *12–*13 (W.D. Wash. Mar. 26, 2001) (approving incentive awards of $7,500, $25,000, and $40,000); *Pelletz v. Weyerhaeuser Co*., 592 F. Supp. 2d 1322, 1330 (W.D. Wash. 2009) (awarding $7,500 payments to four different class representatives); *Veridian Credit Union v. Eddie Bauer LLC,* No. 2:17-CV-00356 JLR, 2019 WL 5536824, at 3 (W.D. Wash. Oct. 25, 2019) (approving service award of $10,000); *Morris v. FPI Mgmt., Inc*., No. 2:19-CV-0128-TOR, 2022 WL 3013076, at *7 (E.D. Wash. Feb. 3, 2022) (approving service award of $10,000).

Here, for nearly nine (9) years Mr. Silver assisted Class Counsel in investigating Rudeen's practices, drafting the complaint, answering discovery, participating in motion practice, and mediating an agreed settlement in this matter. (Sutherland Dec., ¶ 19). With this litigation Mr. Silver faced real, substantial personal financial loss, as he was originally assessed Rudeen's attorney's fees costs in the amount of $15,193.00 when the trial court erroneously dismissed his matter back in 2018 (SN 35), and then additional significant financial loss when Division III erroneously approved that decision. As such, if the Washington Supreme Court had not agreed to hear his discretionary appeal, Mr. Silver was faced with catastrophic personal financial ruin. Such risks taken by Mr. Silver for the benefit of over 7,000 Class Members should be acknowledged and rewarded, and the requested $20,000 service award should be approved.

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E. Rudeen does not contest the attorneys' fees and costs and service award requests and has agreed to pay them, so no substantial objections are anticipated.

Rudeen does not oppose Mr. Silver's requests for attorneys' fees and costs and a service award. In addition, Class Counsel anticipates that the reaction of the class members to the Settlement Agreement will be overwhelmingly positive. Although Class Members still have ample time to object or opt out, it is highly unlikely in Class Counsel's experience that many, if any, will do so. If there are any objections, they will be brought to the Court's attention prior to the final fairness hearing and addressed at that time.

III. CONCLUSION

For the foregoing reasons, the Representative Plaintiff, Thomas Silver, respectfully requests the Court grant the motion approving $966,667 in attorneys' fees, $2,907.82 in direct litigation costs, and a service award of $20,000.

DATED this 1st day of April 2026.

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s/ *Shayne J. Sutherland*
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CERTIFICATE OF SERVICE

I hereby declare upon penalty of perjury under the laws of the state of Washington that on the date stated below I served a copy of this document in the manner indicated:

PISKEL YAHNE KOVARIK, PLLC 612 W. Main Ave., Ste. 207 Spokane, WA 99201 Attn: Ryan D. Yahne Whitny Norton William Emmal	☐ First Class U.S. Mail X E-Mail: wnorton@pyklawyers.com; wemmal@pyklawyers.com; ryahne@pyklawyers.com ☐ Hand Delivery ☐ Next Day Air

DATED this 1st day of April 2026.

s/ Bonnie Morey
Bonnie Morey, Legal Assistant

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