BRIGITTE HEADEN,	*	IN THE CIRCUIT COURT FOR
Plaintiff,	*	PRINCE GEORGE'S COUNTY
v.	*	Case No. CAL20-19314
CONSERVICE, LLC	*	
Defendant.	*	

* * * * * * * * * * *

MOTION FOR AN AWARD OF ATTORNEY'S FEES TO CLASS COUNSEL

Benjamin H. Carney (Att'y No. 0412140132)
bcarney@GWCfirm.com
Martin E. Wolf (Att'y No. 9112190282)
mwolf@GWCfirm.com
Richard S. Gordon (Att'y No. 8912180227)
rgordon@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
100 West Pennsylvania Avenue, Suite 100
Towson, Maryland 21204
Tel. (410) 825-2300
Fax. (410) 825-0066

Attorneys for Plaintiff and the Class

Table of Contents

I. INTRODUCTION IV

II. BACKGROUND AND PROCEDURAL HISTORY 3

A. CLASS REPRESENTATIVE'S CLAIMS AND CLASS ALLEGATIONS 3

B. THE LITIGATION 4

C. THE PARTIES' MEDIATIONS WITH RETIRED JUDGES 4

D. THE SETTLEMENT PROVIDES SUBSTANTIAL RELIEF FOR CLASS MEMBERS DESPITE CONSERVICE'S DEFENSES. 5

E. THE CLASS IS BEING NOTIFIED OF CLASS COUNSEL'S REQUEST FOR ATTORNEY'S FEES 7

F. THE LITIGATION INVOLVED A HIGH LEVEL OF RISK. 8

G. THE LITIGATION INVOLVED SUBSTANTIAL EFFORTS BY CLASS COUNSEL. 9

III. LEGAL STANDARDS GOVERNING THE AWARD OF ATTORNEY'S FEES ... 10

A. WHERE, AS HERE, LITIGATION PRODUCES A COMMON FUND, AN AWARD OF ATTORNEY'S FEES AS A PERCENTAGE OF THE FUND IS APPROPRIATE. 10

B. AN ATTORNEY'S FEE AWARD OF ONE THIRD OF THE COMMON FUND IS THE "MARKET RATE" AND THE CUSTOMARY AWARD IN CLASS ACTION LITIGATION IN MARYLAND AND ELSEWHERE. 13

C. THE MARYLAND RULES OF PROFESSIONAL CONDUCT SUPPORT AN ATTORNEY'S FEE AWARD OF ONE-THIRD OF THE COMMON FUND. 17

1. *This Matter Was Time-Intensive, Involved Novel and Difficult Legal Issues, and Required Skill. ...17*

2. *Opportunity Costs 18*

3. *The Fee Requested Is Within the Range of Awards in Similar Cases Both in and out of Maryland. .19*

4. *The Result Obtained for the Class Was Superior. 19*

5. *The Time Limitations Imposed on Counsel 19*

6. *The Nature of the Relationship Between the Attorneys and the Class 21*

7. *Class Counsel Are Experienced and Reputable 22*

8. *The Recovery Was Completely Contingent 22*

IV. CONCLUSION 24

Table of Authorities

CASES

Aleti v. Metro. Baltimore, LLC, 479 Md. 696 (2022) -- 10, 21

Boeing Co. v. Van Gemert, 444 U.S. 472 (1980)-- 14

Caligiuri v. Symantec Corp., 855 F.3d 860 (8th Cir. 2017)-- 18

Chavez v. Netflix, Inc., 162 Cal. App. 4th 43, 75 Cal. Rptr. 3d 413 (2008)---------------------------- 19

Collins v. United Pacific Ins. Co., 315 Md. 141 (1989) -- 25

Decohen v. Abbasi, LLC, 299 F.R.D. 469 (D. Md. 2014)----------------------------------- 4, 15, 16, 18, 24

Earls v. Forga Contracting, Inc., No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921 (W.D.N.C. June 9, 2020) -- 16

Equifax. Inc. v. Luster, 463 F. Supp. 352 (E.D. Ark. 1978)-- 14

Goldsmith v. Tech. Solutions Co., 1995 WL 17009594 (N.D. Ill. Oct. 10, 1995) ------------------------ 19

Huyer v. Buckley, 849 F.3d 395 (8th Cir. 2017) -- 18

In re Continental Illinois Sec. Litig., 962 F.2d 566 (7th Cir. 1992) -- 27

In re Employee Benefit Plans Securities Litigation, 1993 WL 330595 (D.Minn. June 2, 1993). ----------- 26

In re Merry-Go-Round Enterprises, Inc., 244 B.R. 327 (Bankr. D. Md. 2000) ----------------------------- 25

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 991 F.Supp.2d 437 (E.D.N.Y. 2014) --- 16

Jenkins v. Trustmark Nat. Bank, 300 F.R.D. 291 (S.D. Miss. 2014) --------------------------------------- 19

Jernigan v. Protas, Spivok & Collins, LLC, No. CV ELH-16-03058, 2017 WL 4176217 (D. Md. Sept. 20, 2017) ---5

Kelly v. Johns Hopkins Univ., No. 1:16-CV-2835-GLR, 2020 WL 434473 (D. Md. Jan. 28, 2020) -4, 16

Kirchoff v. Flynn, 786 F.2d 320 (7th Cir. 1986)-- 24, 25

Kirkpatrick v. Cardinal Innovations Healthcare Sols., 352 F. Supp. 3d 499 (M.D.N.C. 2018) ------------ 16

Kirven v. Cent. States Health & Life Co. of Omaha, No. CA 3:11-2149-MBS, 2015 WL 1314086 (D.S.C. Mar. 23, 2015)-- 16

Krakauer v. Dish Network, L.L.C., No. 1:14-CV-333, 2018 WL 6305785 (M.D.N.C. Dec. 3, 2018)--5

Landsman & Funk, P.C. v. Skinder-Strauss Assocs., 639 F. App'x 880 (3d Cir. 2016)--------------------- 18

Martinez v. Medicredit, Inc., 2018 WL 2223681 (E.D. Mo. May 15, 2018) ------------------------------ 19

McNeely v. Nat'l Mobile Health Care, LLC, No. CIV-07-933-M, 2008 WL 4816510 (W.D. Okla. Oct. 27, 2008) -- 19

Muehler v. Land O'Lakes, Inc., 617 F. Supp. 1370 (D. Minn. 1985) --------------------------------------- 15

Reynolds v. Fid. Investments Institutional Operations Co., Inc., No. 1:18-CV-423, 2020 WL 92092 (M.D.N.C. Jan. 8, 2020) --- 16

Seaman v. Duke Univ., No. 1:15-CV-462, 2019 WL 4674758 (M.D.N.C. Sept. 25, 2019)-------------5

Shaw v. Toshiba America Information Systems, Inc., 91 F.Supp.2d 942 (E.D.Tex.2000) ------------------ 19

Shenker v. Polage, 226 Md. App. 670 (2016)---4

Simpson v. Citizens Bank, 2014 WL 12738263 (E.D. Mich. Jan. 31, 2014) ------------------------------ 19

Smith v. CRST Van Expedited, Inc., 2013 WL 163293 (S.D. Cal. 2013)----------------------------------- 19

United Cable Television of Baltimore Ltd. P'ship v. Burch, 354 Md. 658 (1999)------------------------------ 16

Waters v. Int'l Precious Metals Corp., 190 F.3d 1291 (11th Cir. 1999)-------------------------------------- 18

Woods v. Club Cabaret, Inc., 2017 WL 4054523 (C.D. Ill. May 17, 2017) ------------------------------- 19

Statutes

Md. Code Ann., Bus. Reg. §§ 7-101---6

Md. Code Ann., Com. Law § 13-101 --7

Md. Code Ann., Com. Law § 14-201 --7

Md. Code Ann., Cts. & Jud. Pro. § 3-1801 ---8

Md. Code Ann., Cts. & Jud. Pro. § 3-406 ---------- 7

RULES

Maryland Rule of Professional Conduct 1.5 ---------- 16, 20

TREATISES

4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 14:6 (4th ed. 2002) ---------- 15

Manual for Complex Litigation, Fourth § 14.121 ---------- 15

Newberg on Class Actions § 15:62 (5th ed.) ---------- 15

I. Introduction

Class Counsel, who have prosecuted claims on behalf of Plaintiff and the members of the Class in this case, and who have negotiated a favorable settlement with Defendant Conservice, LLC ("Conservice"), respectfully move for approval of Class Counsel's contingency fees in the amount of one-third of the $2.5 million common fund secured through their efforts in this case, which is the market rate for class action attorney's fees in Maryland.

Indeed, as set forth in this Motion, Class Counsel request a lower amount in attorney's fees and expenses than contemplated by the parties in the Settlement Agreement.[1] Although the Settlement Agreement permits an attorney's fee of up to 40% of the Common Fund, plus expenses, Class Counsel's request is for one-third of the Common Fund, and Class Counsel do not request reimbursement of expenses. The requested one-third fee is well-supported in a case like this, by decisions including *Decohen v. Abbasi, LLC*, 299 F.R.D. 469 (D. Md. 2014), a decision which was obtained by the same Class Counsel and which is the leading Maryland decision on class action attorney's fees. *Decohen* has been cited approvingly by numerous Maryland courts – including the Court of Special Appeals' important decision on class action settlements in *Shenker v. Polage*, 226 Md. App. 670, 674 (2016). *See also Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020) (holding that "a one-third fee is the market rate" for class action attorney's fees, and citing *Decohen* as support for its award of attorney's fees of $4,666,667, which represented one-third of the common fund). *Decohen* has also been relied upon by courts across the nation. *See*, *e.g.*, *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 WL 6305785, at *5 (M.D.N.C. Dec. 3, 2018) (citing *Decohen* as support for its award of an attorney's fee of $20,447,600, which represented one-third of the common fund); *Seaman v. Duke*

---

[1] The Settlement Agreement is on file with the Court as Exhibit 1 to the Joint Motion for Preliminary Approval of Class Action Settlement (Doc. No. 41).

Univ., No. 1:15-CV-462, 2019 WL 4674758, at *5 (M.D.N.C. Sept. 25, 2019) (citing *Decohen* as support for its award of an attorney's fee of $18,166,666.67, which represented one-third of the common fund). Class Counsel here requests the same one-third fee approved in *Decohen* and the many other cases discussed below.[2]

The requested award is both appropriate and reasonable, especially considering the history and results of this case, as outlined in Part II of this Motion, the standards in Maryland and elsewhere for attorney fee awards from common funds generated by class action litigation, and the Maryland Rules of Professional Conduct. *See* Part III.

In the end, the ultimate touchstone of any fee recovery is related to success. And this settlement undoubtedly reflects success. Although Class Counsel is not aware of any other attorneys, anywhere, who have brought similar claims against Conservice or its competitors, and although the fees Plaintiff challenges in this case were "agreed" to as part of a lease, *see* Conservice's Motion to Dismiss, Doc. No. 11 at 13 n. 6 (emphasis in original), Class Counsel has secured Conservice's payment of $2.5 million for charging those "agreed" fees to Plaintiff and Settlement Class Members. And, Class Counsel secured this multi-million dollar recovery from Conservice just before the Court of Appeals rendered a decision in *Aleti v. Metro. Baltimore, LLC*, 479 Md. 696 (2022). One of Conservice's competitors, which is facing materially identical claims in federal court litigation also brought by Class Counsel, has argued that *Aleti* wholly forecloses monetary relief for claims like those brought here. *See* Plainitiff's Motion for Final Class

---

[2] *Decohen* also would have supported the 40% fee contemplated in the Settlement Agreement. *See Jernigan v. Protas, Spivok & Collins, LLC*, No. CV ELH-16-03058, 2017 WL 4176217, at *8 (D. Md. Sept. 20, 2017). *Jernigan* cited *Decohen* as support for attorney's fee award of 40% of a common fund settlement in a case which was settled immediately after the complaint was filed, with no litigation, because "[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." *Id.* The same is true here.

Certification and Settlement Approval ("Final Approval Motion"), Exhibit 2. Because of this settlement, however, Plaintiff and the Class do not face the risks posed by *Aleti* and may recover a cash payment in the near future if this settlement is approved.

These excellent results justify the award requested, which is the standard award in class action litigation.

II. Background and Procedural History

Although the background and procedural history of this case has been discussed in prior filings with the Court, the following discussion provides necessary context for the request for an award of attorney's fees and expenses.

A. Class Representative's Claims and Class Allegations

Class Representative filed this putative class action lawsuit in the Circuit Court for Prince George's County on December 8, 2020. *See* Doc. No. 1, Complaint. In the Complaint, Plaintiff alleges that the Maryland Collection Agency Licensing Act, Md. Code Ann., Bus. Reg. §§ 7-101 et seq. ("MCALA") requires Conservice to obtain a collection agency license before sending utility bills to Plaintiff and Class Members on behalf of Conservice's third-party landlord clients. The Complaint further alleges that Conservice is unlicensed, and that its unlicensed collection agency activity damaged Plaintiff and Class Members because Conservice charged Plaintiff and Class Members a service fee for conducting that unlicensed activity.

However, as Conservice noted in its motion to dismiss memorandum, Plaintiff agreed in her lease to the fee she challenges. *See* Doc. No. 11 at 13 n.6.

The Complaint asserts six claims: (a) for declaratory relief under Md. Code Ann., Cts. & Jud. Pro. § 3-406; (b) for violation of the Maryland Consumer Debt Collection Act, Md. Code Ann., Com. Law §§ 14-201 *et seq*.; (c) for violation of the Maryland Consumer Protection Act,

Md. Code Ann., Com. Law §§ 13-101 *et seq*. ("MCPA"); (d) for money had and received; e) for negligence; and f) for unjust enrichment. *See* Doc. No. 1, Complaint at ¶¶ 91-124.

B. The Litigation

The history of this litigation is set forth in Plaintiff's Final Approval Motion. As that discussion reflects, the Parties have engaged in vigorous litigation in this case, including the briefing and decision on Conservice's potentially dispositive motion to dismiss. Class Counsel and Conservice also conducted extensive analysis of the facts and research into the applicable law with respect to the claims and defenses and with respect to class certification issues.

Class Counsel struck a balance between an active and aggressive litigation strategy on behalf of the Class on the one hand, and a responsible approach to negotiations on the other. Class Counsel, for example, conducted informal pre-suit discovery, pursued formal discovery in this Court, and due diligence investigation following settlement. *See* Final Approval Motion Exhibit 1, Affidavit of Benjamin H. Carney ("Carney Aff.") at ¶ 4. Class Counsel has reviewed numerous Class members' documents related to Conservice's actions challenged in this case, has conducted extensive research into the applicable law with respect to the issues raised in the Class Representative's class action claims, and has interviewed numerous consumers with knowledge of Conservice's practices. *See id*. Class counsel, however, also engaged counsel for Conservice in lengthy and intense arm's-length settlement negotiations. *See id*. ¶ 15.

C. The Parties' Mediations with Retired Judges

The efforts of Class Counsel in this case have not been directed only to adversarial litigation. Class Counsel advocated for the parties to pursue settlement negotiations after the Court's decision on Conservice's motion to dismiss, which was a lengthy and arduous, but ultimately successful, process. *See id*. at ¶ 15. The parties conducted extensive settlement discussions in private mediation which took place over the better part of a year. *See id*. These

mediations and negotiations were supervised and facilitated by two experienced and well-respected retired Judges – the Hon. James R. Eyler (Ret.) of the Maryland Court of Special Appeals, and the Hon. Carol Smith (Ret.) of the Circuit Court for Baltimore City. *See id*.

Conservice provided substantial information bearing on the claims of Named Plaintiff and other Class members both in preparation for, and during, these mediation negotiations. *See id*. These intense arms-length negotiations included several full days of mediation and many additional weeks of continuing negotiations between and after the mediation sessions. *See id*. Although the content of the mediations is confidential under the Maryland Mediation Confidentiality Act, Md. Code Ann., Cts. & Jud. Pro. §§ 3-1801 *et seq*., the parties updated the Court as to the progress of their negotiations through multiple status reports and requests for extensions of a stay in this case to facilitate settlement. *See*, *e.g*., Doc. Nos. 24, 26, 28, 30, 31, 33, 39, 40. The Court's patience and graciousness in accommodating the parties' lengthy but productive settlement negotiations made this resolution possible.

As a result of the extensive efforts of Class Counsel, both in litigation and in settlement negotiations, the parties reached the Settlement Agreement which they are presently requesting the Court to approve – a settlement which provides monetary relief to more than a hundred thousand Class members.

D. The Settlement Provides Substantial Relief for Class Members Despite Conservice's Defenses.

In the settlement of this action, Class Counsel has achieved a superior result for the Class. Plaintiff alleged that Conservice charged her a monthly "service fee" of $5.00 which she claims is illegal because Conservice is not licensed as a collection agency. *See* Compl., *e.g*., ¶ 26. Although she alleged that this fee was illegal, it is a fee that Conservice has noted she "agreed" to pay as part of her lease. Doc. No. 11 at 13 n.6.

In light of these circumstances, the proposed settlement achieves a remarkable result for the Class. Despite the fact that the $5.00 monthly service fee at issue was "agreed" to, Class Counsel secured a $2.5 million common fund for the benefit of Settlement Class Members. Thus, the gross amount attributable to each of the roughly 106,000 Settlement Class Members is approximately $23.00. In the likely event that not all Settlement Class Members file claims, the gross amount attributable to each Settlement Class Member who does file a claim will be larger.[3]

This settlement is the result of diligent and efficient efforts by Class Counsel, who have accomplished a great deal in the time that this case has been pending. It is especially beneficial to the Class, considering the real risks Plaintiff and the Class faced. Class Representative and the Class were by no means assured of victory. Conservice, represented by experienced and able counsel, did and would have continued to contest liability and damages under a wide variety of theories.

For example, similar litigation is pending against one of Conservice's competitors, RealPage Utility Management, Inc. ("RealPage"), in federal court. RealPage has filed a motion for judgment in the case against it, asserting that claims materially identical to those in this case are foreclosed by a Maryland Court of Appeals decision issued approximately one month after the parties here signed a Term Sheet. *See* Final Approval Motion Exhibit 2, RealPage's Motion for Judgment (*citing Aleti v. Metro. Baltimore, LLC*, 479 Md. 696 (2022)). Had Class Counsel not vigorously pursued a reasonable settlement, and had the parties not entered into the Term Sheet

[3] In addition, in the event that some Class Members file claims and request payment by check, instead of an electronic debit card, and do not cash those checks before they expire, the amounts attributable to those non-negotiated checks will, if feasible, be redistributed to Class Members who filed claims and who do not have uncashed checks. If such a re-distribution is not feasible (i.e., if the payment to each Class Member would be less than $1) the amounts will be returned to Conservice. *See* Settlement Agreement ¶ 18(c).

when they did, the parties would likely be litigating a similar motion for judgment in this case right now.

Furthermore, had this matter proceeded through litigation, Conservice would have strenuously contested class certification. Class Representative and the Class also would have likely faced a comprehensive motion for summary judgment which could have been dispositive against the Class Representative and the Class.

E. The Class Is Being Notified of Class Counsel's Request for Attorney's Fees

Class members are being informed of Class Counsel's request for attorney's fees as part of Class Notice. After this Court gave preliminary approval to the Settlement, the Court appointed Settlement Administrator – Strategic Claims Services ("SCS") – has prepared and is mailing to each of the persons on the Class List a notice of the proposed settlement based upon the class list compiled by Conservice. The mailed Notice states that Class Counsel intends to apply for attorneys' fees and expenses in the amount of up to 40% of the Settlement Fund. Of course, Class Counsel's actual proposed one-third fee is less than the maximum amount referenced in the Notice. Settlement Class Members will all have the opportunity to review this Motion for attorney's fees, which will be posted on the Settlement Website. *See* Carney Aff. ¶ 21.

As discussed below, an attorney's fee of 1/3 of the common fund is the standard attorney's fee in class action settlements in Maryland state courts, and elsewhere.

Furthermore, Class Counsel's time expenditure of hundreds of hours in this case to date supports the requested fee, as discussed below. Nevertheless, based upon Class Counsel's substantial experience in class action settlements (*see* Carney Aff. at ¶¶ 3, 8, 11), Class Counsel expect that their time expenditures in this case are far from over. *See id*. at ¶ 20. Class Counsel's involvement and interaction with the Class, following the mailing of the Class Notice, will entail

numerous telephone calls and other interactions with Class members; requests for advice to Class members on whether they are entitled to payments from the Settlement Fund; clarification of the terms of the Settlement Agreement and questions relating to the protocol for receiving a settlement check. This involvement and time expenditure is expected to continue until well beyond the date of full distribution of the settlement monies. *See id*.

F. The Litigation Involved a High Level of Risk.

This case entailed a high level of risk in litigation. Although Class Representative and Class Counsel are confident in the merit of the Class' claims and believe that Plaintiff and the Class should and would ultimately prevail on those claims on a class-wide basis, this case would have to overcome substantial obstacles, and a substantial amount of time would pass during litigation and appeals, before Class members would be able to enjoy any fruits of a litigated resolution in this case.

Conservice demonstrated an intention to fully litigate its defenses in the absence of settlement. For example, Conservice hired two large and well-reputed litigation law firms (initially Goodwin Procter LLP and later Kiernan Trebach LLP) and filed a motion to dismiss arguing that the licensing requirements of the MCALA, upon which Plaintiff relies, do not apply to it. *See*, *e.g*., Doc. No. 10. Although that motion was denied, had the parties not settled Conservice likely would have filed a new motion for judgment based upon *Aleti*. Class Representative does not believe that such an argument has merit; nevertheless, the fact that the same argument is pending in a materially identical case illustrates the risk to Class Representative and the Class in proceeding with litigation. Indeed, even if Class Representative and Class members were to prevail in this Court, it is a virtual certainty that they would face a protracted appeal before they could recover any benefits.

G. The Litigation Involved Substantial Efforts by Class Counsel.

This case has involved significant expenditures of time and effort by Class Counsel, all of which positioned the litigation for the successful resolution which is now proposed to the Court.

In particular, prior to the filing of this lawsuit, Class Counsel reviewed numerous documents of Class Representative as well as other potential Class members relating to their dealings with Conservice. *See* Carney Aff. ¶ 4. In addition, Class Counsel interviewed potential Class members. *See id*. Class Counsel confirmed through that investigation that Conservice's billing practices with respect to Class members are materially uniform. *See id*.

Following the pre-suit investigation, Class Counsel researched and drafted the six-count, one-hundred and twenty-four paragraph Complaint, which sets forth claims for Declaratory Relief Under Md. Cts. & Jud Pro. § 3-406 (Count One), Violation of the MCDCA (Count Two), Violation of the MCPA (Count Three); Money Had and Received (Count Four); Negligence (Count Five) and Unjust Enrichment (Count Six). *See* Carney Aff. ¶ 4.

After the Complaint was filed, Class Counsel drafted and propounded written discovery on Conservice, including interrogatories and requests for production. *See* Doc. No. 8 (Notice of Service of Discovery Material).

Conservice did not immediately answer the Complaint, however; it filed a comprehensive motion to dismiss together with a lengthy memorandum of law in support. *See* Doc. Nos. 10 & 11 (Motion to Dismiss and Memorandum in Support). Had Conservice's motion to dismiss been successful, it would have entirely disposed of this case. Accordingly, Class Counsel vigorously opposed the motion to dismiss, and filed a thoroughly researched and lengthy opposition. *See* Doc. No. 14. Based on arguments raised by Conservice in its motion to dismiss, Class Counsel

also drafted and served additional discovery. *See* Doc. No. 18. The Court ultimately denied the motion to dismiss. *See* Doc. No. 15.

Then, at the same time that Class Counsel was engaging on the litigation front, Class Counsel also engaged counsel for Conservice in settlement negotiations. Those negotiations were arms-length and in good faith, and took substantial time, but were ultimately successful, as described above. *See* Carney Aff. ¶ 15.

After settlement was reached, Class Counsel worked diligently and cooperatively with Conservice's counsel to draft the Agreement – a process which involved numerous drafts of the Agreement, substantial give-and-take between the parties, and additional negotiations to reach consensus on disputed points. *See id*.

Class Counsel spent substantial time researching the facts and applicable law for this case, briefing motions, and on other necessary matters. *See id*. ¶ 20. Thus far, Class Counsel have devoted more than 673 hours to this litigation – and expect that the time spent on this litigation will substantially increase as notice is disseminated to the Class and Class Counsel responds to inquiries from Class members and other administrative issues during the notice period, and as the settlement is ultimately distributed to Class members and inquiries and administrative duties will continue. *See id*.

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

A. Where, as Here, Litigation Produces a Common Fund, an Award of Attorney's Fees as a Percentage of the Fund Is Appropriate.

Our legal system has long recognized as a fundamental principle of fairness that attorneys who produce a common fund for the benefit of others should receive a fair award of a percentage of that fund as attorney's fees. An award of fees under this "common fund" doctrine has been embraced by the U.S. Supreme Court:

> this Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. *See Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 90 S.Ct. 616, 24 L.Ed.2d 593 (1970); *Sprague v. Ticonic National Bank*, 307 U.S. 161, 59 S.Ct. 777, 83 L.Ed. 1184 (1939); *cf. Hall v. Cole*, 412 U.S. 1, 93 S.Ct. 1943, 36 L.Ed.2d 702 (1973). The common-fund doctrine reflects the traditional practice in courts of equity, *Trustees v. Greenough*, supra 105 U.S., at 532–537, and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees, *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S., at 257–258, 95 S.Ct., at 1621–1622. The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. *See*, *e.g.*, *Mills v. Electric Auto-Lite Co.*, 396 U.S., at 392, 90 S.Ct., at 625. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit. *See id.*, at 394, 90 S.Ct., at 626.

Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980).

As one court noted in memorable language, quoting the Book of Deuteronomy, a common fund fee award is designed to ensure that attorneys will continue to take the risks and invest the resources to confer such benefits:

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

Equifax. Inc. v. Luster, 463 F. Supp. 352, 358 (E.D. Ark. 1978), *aff'd per curiam*, 604 F.2d 31 (8th Cir. 1979), *cert. denied*, 445 U.S. 916 (1980).

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

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

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

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

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

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

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

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

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

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

Consistent with this approach, Maryland courts routinely award attorney's fees calculated as a 33 1/3 percentage (or one-third) of a common fund generated by class action litigation, as discussed below.

B. An Attorney's Fee Award of One Third of the Common Fund Is the "Market Rate" and the Customary Award in Class Action Litigation in Maryland and Elsewhere.

The Maryland Court of Appeals has held that the appropriate percentage of a common fund to award as attorney's fees should be determined "utilizing a market approach, *i.e.,* 'the fee customarily charged in the locality for similar legal services[.]" *United Cable Television of Baltimore Ltd. P'ship v. Burch*, 354 Md. 658, 688 (1999)) (citing Maryland Rule of Professional Conduct 1.5(a)(3)).

In turn, citing *Decohen*, Judge Russell of Maryland's federal court has held that the "market rate" for class action attorney's fees is one-third of the common fund. *See Kelly*, 2020 WL 434473, at *3 ("Contingent fees of up to one-third are common in this circuit…In similar ERISA excessive fee cases, and in particular those brought by Class Counsel, district courts have consistently recognized that a one-third fee is the market rate.") (*citing Decohen*, 299 F.R.D. at 483). *See also Earls v. Forga Contracting, Inc*., No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921, at *4 (W.D.N.C. June 9, 2020) ("Within the Fourth Circuit, contingent fees of roughly 33% are common.")(*citing Kirkpatrick v. Cardinal Innovations Healthcare Sols.,* 352 F. Supp. 3d 499, 505 (M.D.N.C. 2018) (33.39%); *Kirven v. Cent. States Health & Life Co. of Omaha*, No. CA 3:11-2149-MBS, 2015 WL 1314086, at *13 (D.S.C. Mar. 23, 2015) (33%); *Reynolds v. Fid. Investments Institutional Operations Co., Inc*., No. 1:18-CV-423, 2020 WL 92092, at *3 (M.D.N.C. Jan. 8, 2020) (33%)).

As with class counsel in *Kelly*, courts considering settlements achieved by Class Counsel here have repeatedly and consistently approved fee awards of one-third of the common fund. For example, numerous Maryland state Circuit Court decisions have approved a fee award of one-third of the common fund. *See, e.g.,* Final Approval Motion Exhibit 3, *Cottom v. North State Acceptance,*

LLC, Case No. 24-C-19005874 (Cir. Ct. Balt. City 2020) (Brown, J.) (awarding attorney's fees of one-third of common fund, in addition to reimbursement of counsel's out-of-pocket expenses in a consumer class action); Final Approval Motion Exhibit 4, *Hale v. Mariner Finance, LLC*, Case No. 24-C-18-00053 (Cir Ct. Balt. City 2018) (Brown, J.) (same); Final Approval Motion Exhibit 5, *Lendmark Financial Services, LLC v. Cruz*, Case No. 24C17000109 (Cir. Ct. Balt. City 2018) (Brown, J.) (same); Final Approval Motion Exhibit 6, *Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2019) (Rubin, J.) (same); Final Approval Motion Exhibit 7, *Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2018) (Rubin, J.) (same); Final Approval Motion Exhibit 8, *Chalk v. Tower Federal Credit Union*, Case No. 03-C-15-006873 (Cir. Ct. Balt. Co. 2016) (Ensor, J.) (same); Final Approval Motion Exhibit 9, *Clinton v. Money One Federal Credit Union*, Case No. 408053V (Cir. Ct. Mont. Co. 2016) (Greenberg, J.) (same); Final Approval Motion Exhibit 10, *Sekuler v. Financial Freedom Acquisition, LLC*, Case No. 360327-V (Cir. Ct. Mont. Co. 2013) (Mason, J.) (same); Final Approval Motion Exhibit 11, *Schmidt v. Redwood Capital, Inc*., Case No. 03-C-11-010442 (Cir. Ct. Balt. Co. 2012) (Nagle, J.) (same); Final Approval Motion Exhibit 12, *Wuerstlin v. Sandy Spring Bank*, Case No. 335030V (Cir. Ct. Mont. Co. 2011) (Rubin, J.) (same); Final Approval Motion Exhibit 13, *Ferrell v. JK III*, Case No. 13-C-03-56836 (Cir. Ct. How. Co. 2011) (Leasure, J.) (same); Final Approval Motion Exhibit 14, *Cooper v. United Auto Credit Corp.,* Case No. 03-C-09000477 (Cir. Ct. Balt. Co. 2011) (Cahill, J.) (same); Final Approval Motion Exhibit 15, *Butler v. C&F Finance Co.*, Case No. 03-C-09002127 (Cir. Ct. Balt. Co. 2010) (Stringer, J.) (same); Final Approval Motion Exhibit 16, *Taylor v. Wells Fargo Home Mortgage*, Case No. 24-C-02-001635 (Cir. Ct. Balt. City 2010) (Glynn, J.) (same).

Numerous decisions by Maryland's federal court have also approved the same one-third fee award to Class Counsel here. *See*, *e.g.*, *Decohen*, 299 F.R.D. at 480-83 (awarding attorney's fees of one-third of common fund, in addition to reimbursement of counsel's out-of-pocket expenses in

a consumer class action); *see also* Final Approval Motion Exhibit 17, *Thomas v. Cameron Mericle, P.A.*, Case No. 8:18-cv-03645-CBD (D.Md. Dec. 4, 2020) (same); Final Approval Motion Exhibit 18, *Smith v. Ace Motor Acceptance Corp*., Case No. 1:12-cv-02149-JKS (D. Md. Oct. 7, 2013) (same); Final Approval Motion Exhibit 19, *Benway v. Resource Real Estate Services, LLC, et al.*, Civil Action No. 1:05-cv-3250-WMN (D. Md. Oct. 12, 2011) (same); Final Approval Motion Exhibit 20, *Robinson v. Fountainhead Title Group Corp.*, Civil Action No. 03-cv-03106-WMN (D. Md. Oct. 7, 2010) (same); Final Approval Motion Exhibit 21, *Brittingham v. Prosperity Mortgage Company*, Case No. 1:09-cv-00826-WMN (D. Md. Apr. 14, 2010); Final Approval Motion Exhibit 22, *Watts v. Capital One Auto Finance, Inc*., Civil No. 1:07-cv-03477-CCB (D. Md. Jan 15, 2010) (same); Final Approval Motion Exhibit 23, *Shelton v. Crescent Bank & Trust*, Case No. 1:08-cv-01799-RDB (D.Md. May 28, 2009) (same).

And, decisions in other jurisdictions reflect that an attorney's fee award of one-third of a common fund created by class action litigation is standard nationwide. *See*, *e.g.*, *Caligiuri v. Symantec Corp*., 855 F.3d 860, 865 (8th Cir. 2017) (affirming award of one-third of $60 million common fund in addition to reimbursement of counsel's out-of-pocket expenses in a consumer class action); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (affirming award of one-third of $25.75 million common fund in a consumer class action); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs*., 639 F. App'x 880, 885 (3d Cir. 2016) (affirming award of one-third of $625,000 common fund in addition to reimbursement of counsel's out-of-pocket expenses in a consumer class action); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of one-third of settlement of $40 million); *Martinez v. Medicredit, Inc*., 2018 WL 2223681, at *5 (E.D. Mo. May 15, 2018) (awarding attorney's fees of one-third of $5,000,000.00 common fund plus expenses in consumer class action); *Goldsmith v. Tech. Solutions Co.*, 1995 WL 17009594, at *7-8 (N.D. Ill. Oct. 10, 1995) ("where the percentage method is utilized, courts in this District

commonly award attorneys' fees equal to approximately one-third or more of the recovery"); *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293, at *5 (S.D. Cal. 2013) ("Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent...."); *Woods v. Club Cabaret, Inc.*, 2017 WL 4054523, at *10 (C.D. Ill. May 17, 2017) ("In Illinois, '[c]ourts routinely hold that one-third of a common fund is an appropriate attorneys' fees award in class action settlement'"); *Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291, 310 (S.D. Miss. 2014) ("numerous decisions have found that a one-third recovery [from a common fund] is well within the range of a customary fee."); *Simpson v. Citizens Bank*, 2014 WL 12738263, at *6 (E.D. Mich. Jan. 31, 2014) ("Class Counsel's request for 33% of the common fund created by their efforts is well within the benchmark range and in line with what is often awarded in this Circuit."); *McNeely v. Nat'l Mobile Health Care, LLC*, No. CIV-07-933-M, 2008 WL 4816510, at *15 (W.D. Okla. Oct. 27, 2008) ("Fees in the range of at least one-third of the common fund are frequently awarded in class action cases of this general variety."); *Shaw v. Toshiba America Information Systems, Inc.* 91 F.Supp.2d 942, 972 (E.D.Tex.2000) ("[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, 75 Cal. Rptr. 3d 413, 434 (2008) (same). *See also* Alba Conte *et al., Newberg on Class Actions* § 14.6 (4th ed. 2002) ("[F]ee awards in class actions average around one-third of the recovery[.]")).

As the fee award requested in this case is the same as those approved by other courts, time and time again, in Maryland and nationwide, it should be approved as reasonable. The cases discussed above demonstrate that in this locality (i.e. Maryland) among others, the customary fee in class action litigation is one-third of the common fund. *See Burch*, 354 Md. at 688.

C. The Maryland Rules of Professional Conduct Support an Attorney's Fee Award of One-Third of the Common Fund.

Maryland Rule of Professional Conduct 1.5 provides general guidelines for determining the reasonableness of attorney's fees:

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

Maryland Rule of Professional Conduct 1.5(a).

Considering each of these factors, the request for attorney's fees in the amount of one-third of the Settlement Fund, as well as litigation expenses, is both reasonable and appropriate, as discussed below.

1. This Matter Was Time-Intensive, Involved Novel and Difficult Legal Issues, and Required Skill.

This action was time-intensive and novel. To Class Counsel's knowledge, no other attorneys have brought litigation against Conservice or its competitors, in Maryland or anywhere else, challenging their actions as a collection agency. Carney Aff. ¶ 13. And, as discussed above, a lawsuit brought by Class Counsel against one of Conservice's competitors is currently facing a potentially dispositive motion for judgment in federal court.

Class Counsel's pursuit of this litigation thus involved a substantial amount of risk and a significant possibility that the efforts expended in this litigation would go unrewarded. Indeed, as discussed above, had this case not settled before the Court of Appeals' decision in *Aleti*, 479 Md.

696, Plaintiff would likely be facing a potentially dispositive motion for judgment in this case as well.

Class Counsel, however, successfully litigated this case and achieved a superior class-action settlement benefitting many Maryland tenants. The settlement confers a significant financial benefit on the Class, and ensures that all Class members have the opportunity to recover for claims which, in the absence of a class action, they would have no practical ability to pursue.

It is also unquestionable that the results achieved in this case would not have been possible without the determination and mixed talent and skills of representation by private counsel throughout the litigation. Among other things, the crafting and litigation of the claims in this case required skill and expertise. Class Counsel is experienced in class action litigation, having been certified as class counsel dozens of times by numerous courts (*see* Carney Aff. at ¶¶ 3, 8, 11), and have been counsel in no fewer than 38 published and officially reported trial and appellate decisions in state and federal courts involving consumer claims. *See* Carney Aff. at ¶ 3.

Plaintiff's claims were opposed by experienced and able defense counsel, and by an opposing party with substantial resources. However, in face of that opposition, Class Counsel successfully negotiated a successful resolution. The time-intensive, novel, and difficult nature of this litigation supports the award requested.

2. Opportunity Costs

Class Counsel's representation of Plaintiff and the Class has been, and will continue to be, a significant undertaking, requiring substantial time and attention. Class Counsel has already devoted many hours to this case – more than 673 hours to date – and it is readily apparent that time spent by counsel on this litigation displaced substantial time from other matters. *See* Carney Aff. at ¶ 20. That time investment is not over but is expected to continue for many months. *See id.* The nature and complexity of class action litigation, if it is to be handled professionally and

effectively, requires a substantial allocation of time, staff, and other resources – and that reflects the experience of Class Counsel in this case. The opportunity costs factor thus militates in favor of the fee award requested.

3. The Fee Requested Is Within the Range of Awards in Similar Cases Both in and out of Maryland.

The fee requested is well within the range of awards allowed in class actions by courts in Maryland and is especially appropriate given the results achieved by the counsel. As discussed above, the requested 1/3 fee is the market rate and the customary award approved by this Court and other courts in Maryland, and elsewhere, in numerous other similar circumstances. *See* Part III.B, *supra*.

4. The Result Obtained for the Class Was Superior.

The Settlement Agreement in this case provides the Class with substantial relief – it recovers $2.5 million for Class members, even though this case is novel and challenges a service fee which was "agreed" to in the underlying lease. *See* Doc. No. 11 at 13 n. 6 (emphasis in original). And, Class Counsel secured Conservice's agreement to this relief just before the Court of Appeals issued a ruling which is the basis of a potentially dispositive motion in the materially identical case against RealPage, one of Conservice's competitors, in federal court.

The fact that Class Counsel has secured Conservice's payment of $2.5 million in a novel case, for charging fees which were "agreed" to, is superior.

5. The Time Limitations Imposed on Counsel

As noted above, this matter required a significant dedication of time on the part of Class Counsel. Counsel spent many hundreds of hours litigating this case – investigating the case, crafting legal theories, drafting pleadings, conducting informal and formal discovery, reviewing

records, preparing and participating in mediation and settlement negotiations and addressing other issues necessary to effect settlement. *See* Carney Aff. ¶ 20.

Indeed, the time expended by Class Counsel in this litigation – more than 673 hours to date – translates into a "lodestar" (or hours multiplied by billing rate) of $346,900. And that lodestar number will only go up from here. Class Counsel is investing substantial additional time in this case on an ongoing basis, including communicating with Class members about the proposed settlement, preparing documents in support of the settlement, and engaging in additional tasks in administering the settlement. *See* Carney Aff. ¶ 20. Accordingly, the eventual lodestar in this case will be significantly higher than it stands today. Yet even today, Class Counsel's lodestar firmly supports the fee requested under the cross-check employed in *Decohen*. As Judge Quarles held in that case:

> When the lodestar method is used only as a cross-check, the "exhaustive scrutiny" normally required by that method is not necessary. *Kay Co.,* 749 F.Supp.2d at 469 (*citing Goldberger v. Integrated Res., Inc.,* 209 F.3d 43, 50 (2d Cir.2000) ("[W]here used as a mere cross-check ... the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case.") (internal citations omitted)). Thus, the Court may accept as reasonable class counsel's estimate of the hours they have spent working on the case. *See, e.g., Jones v. Dominion Res. Servs., Inc.,* 601 F.Supp.2d 756, 766 (S.D.W.Va.2009).
>
> Class counsel aver that they have spent 650 hours litigating this case, and each attorney bills between $400 and $550 per hour. *See* ECF No. 87–4 at 7. Using the lower billing rate of $400, class counsel's requested award [of one-third of the $3 million common fund] is 3.9 times the lodestar rate. "Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorney's fee." *Singleton,* 2013 WL 5506027, at *16, 976 F.Supp.2d at 689. Accordingly, the lodestar cross-check confirms that the requested fee award is reasonable. The Court will award class counsel the requested fee award of one-third of the common fund.

Decohen, 299 F.R.D. at 483. Here, the requested award is far less than the 4.5 multiplier approved in *Decohen*. Even using the current lodestar, which will increase as this case continues, the present multiplier is only 2.4[4] (without any consideration of expenses).

Accordingly, the time limitations imposed on counsel support the award requested.

6. The Nature of the Relationship Between the Attorneys and the Class

The nature of the relationship between the attorneys and the Class also supports the award requested. Class Counsel pursued relief on behalf of the Class and negotiated a settlement which includes substantial relief for the Class, all prior to obtaining any compensation. Indeed, any recovery for Class Counsel was and is contingent on recovery of money for the claims in this case. *See* Carney Aff. ¶ 18. Accordingly, in the contingent-fee relationship between Class Counsel and Plaintiff and Class, the interests of Class Counsel and the Class are aligned. *See Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) ("The contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains. … So long as the percentage is set by category of case (as it should be), rather than case by case, defendants with good cases pay no more than defendants with poor ones. The adjustment for risk takes place not in the judge's chambers but in the private market-under a contingent fee system, potential litigants with poor chances simply cannot find counsel. Weak cases stay out of court.")

The aligned interests of Class Counsel and Plaintiff and the Class, and the contingent nature of the recovery of any fee in this case, weighs in favor of the requested one-third fee. *See, e.g.*, *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 339 (Bankr. D. Md. 2000) (awarding

---

[4] Class Counsel's current lodestar is $346,900.00; 1/3 of the settlement fund totals approximately $833,333,33. $833,333.33/$346,900=2.40

attorney's fee of $71.2 million, finding that "pure contingency fee of 40% was …within the range of fees customarily charged in Maryland for similar services" even though it was "as much as 20 times a customary hourly rate fee" when "the fee agreement was for a contingency"). Here, as described in part III.B, *supra*, the customary fee for consumer class action litigation which generates a common fund is one-third, and the contingent fee relationship between Class Counsel and the Class supports an award of that customary amount.

7. Class Counsel Are Experienced and Reputable

The standing and prior experience of Class Counsel are also relevant in determining fair compensation. Class Counsel are recognized nationally as leading and skillful practitioners in the field of complex class actions and have been certified as class counsel in dozens of class action cases. *See* Carney Aff. ¶ 3, 8, 11. The fact that Plaintiff and the other Class members were competently represented undoubtedly played a role in bringing Conservice to the settlement table and achieving a substantial recovery for Class members, despite Conservice's defenses.

8. The Recovery Was Completely Contingent

Class Counsel prosecuted this action on behalf of the Class on a fully contingent basis and at considerable risk. *See* Carney Aff. ¶ 18. If this were non-class action litigation, the customary fee arrangement would be contingent, based upon a percentage of the recovery, typically in the 33⅓ to 40 percent range. *See, e.g.*, *Kirchoff*, 786 F.2d at 323; *cf. Collins v. United Pacific Ins. Co.*, 315 Md. 141, 154 (1989) (finding that one-third contingency fee is customary and reasonable in Maryland).

Where counsel pursues a class action on a contingency basis "despite its risks," and the class action litigation results in a common fund, and where the Class has been notified of the percentage to be requested in attorney's fees, an award of attorney's fees as a percentage of the common fund is appropriate. As one court held in awarding $4 million in attorney's fees in a

securities litigation case which was litigated for approximately a year and a half, between 1992 and 1993, because of the contingent nature of the representation, and the notice to class members of the percentage requested, an award of 1/3 award of the settlement was reasonable:

> As part of the process of notifying class members of the proposed settlement in this action, plaintiffs' counsel notified class members that counsel would seek an award of attorney's fees from the Settlement Fund, and that counsel would request 33 1/3% of the total Settlement Fund. Class members were also notified of their right to object to the request for attorney's fees. No member of the Settlement Class has made any objection to the request for attorney's fees.
>
> Plaintiffs' counsel's efforts have resulted in creation of a $10.7 million common fund, plus interest, for the benefit of the class. Under *Blum v. Stenson*, 645 U.S. 886 900 n.16, 104 S.Ct. 1541, 1550 n. 16, 79 L. Ed. 2d 891 (1984), counsel may be awarded a reasonable fee based upon a percentage of the fund. *See In re Bulk Popcorn Antitrust Litig.*, Civ. No. 3-89-710 (D. Minn. Sept. 3, 1992); *In re Wirebound Boxes Antitrust Litig.*, File No. MDL-793 slip op., at 2 (D. Minn. May 2, 1991) (Murphy, J.); *In re Digital Sound Corp. Sec. Litig.*, File No. 90-3533-MRP (C.D. Cal. Apr. 9, 1991).
>
> Based upon a review of cases which have awarded attorney's fees under the "common fund" approach, the Court finds that an award of 33 1/3% of the common fund is reasonable.
>
> Based upon careful consideration of plaintiffs' counsel's application, the Court finds that it is reasonable and will be granted. Plaintiffs' counsel have achieved a successful result in this litigation, having amassed a total settlement value of at least $10.7 million in cash and the debenture, exclusive of interest. Counsel achieved this outcome through extensive efforts, in terms of both advocacy and compromise. The Court further notes counsel's willingness to pursue this action, despite its risks, on a contingency basis.

In re Employee Benefit Plans Securities Litigation, 1993 WL 330595 (D. Minn. June 2, 1993).

During the time that this case was pending, Class counsel received no compensation in this case, while expending significant attorney time and substantial resources for the benefit of the Class. *See* Carney Aff. ¶¶ 18-20. As important, had the Class lost, Class Counsel would have received no compensation from either Plaintiff or the Class. *See id*.

Despite the competent and diligent efforts of counsel, at no time was success guaranteed. Indeed, from the beginning, Class Counsel faced serious risks regarding liability and the ability to

establish harm. Those issues were explained in the Settlement Agreement and are discussed above. Suffice it to say that the multitude of legal issues in this case, any one of which, if resolved against Plaintiff and the Class could have been dispositive, made this case risky and recovery uncertain.

Even a victory at trial would not have guaranteed the ultimate success of Plaintiff and the Class, because Conservice no doubt would have pursued appeals. As a result of the settlement, however, Class members will be able to receive the benefits of the settlement immediately, without uncertainty or delay. *See In re Continental Illinois Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992) (fee award remanded to district court for revision, with admonition "that the failure to make any provision for risk of loss may result in systematic undercompensation of [Class] counsel in a Class action case").

IV. Conclusion

For the reasons set forth above, Class Counsel respectfully request that the Court approve one-third of the common fund as attorney's fees.

Respectfully submitted,

Benjamin H. Carney (Att'y No. 0412140132)
bcarney@GWCfirm.com
Martin E. Wolf (Att'y No. 9112190282)
mwolf@GWCfirm.com
Richard S. Gordon (Att'y No. 8912180227)
rgordon@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
100 West Pennsylvania Avenue, Suite 100
Towson, Maryland 21204
Tel. (410) 825-2300
Fax. (410) 825-0066

Attorneys for Plaintiff and the Class

By: ______________________________
Benjamin H. Carney

Certificate of Service

I hereby certify, this 1st day of November, 2022, that I served a copy of the foregoing document via the MDEC system on all persons entitled to service.

Benjamin H. Carney