

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

PEDRO LUGO, individually and on  
behalf of similarly situated individuals,

*Plaintiff,*

v.

INOVA HEALTH CARE SERVICES,

*Defendant.*

No. 1:24-cv-00700-PTG-WEF

Hon. Patricia T. Giles

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF  
APPROVAL OF ATTORNEYS’ FEES, EXPENSES, & SERVICE AWARD**

Plaintiff Pedro Lugo, by and through his attorneys, hereby moves for an award of attorneys’ fees and expenses for Class Counsel, as well as a service award for Plaintiff as the Class Representative in connection with the Settlement Agreement with Defendant Inova Health Care Services. In support thereof, Plaintiff submits the following:

Dated: February 6, 2026

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**I. INTRODUCTION**

The Settlement<sup>1</sup> that Class Counsel has achieved in this case is an exceptional result for the Settlement Class because it provides meaningful financial benefits in the form of cash payments, as well as valuable non-monetary relief. The Parties' Agreement establishes a non-reversionary Settlement Fund of \$3,147,390.04, from which each Settlement Class Member will receive an equal, *pro rata* distribution in connection with the alleged disclosure of their Personally Identifiable Information and Protected Health Information (collectively, "Private Information") to third parties in violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* ("ECPA").

The Court preliminarily approved the Settlement on December 17, 2025. As a result, the Settlement Fund was established and the Notice Program was implemented, including Direct Notice by email to the Settlement Class Members. As of the filing of this Motion, no Settlement Class Member has objected to the Settlement, and only two have elected to exclude themselves.

In light of this extraordinary result, Class Counsel request a fee of 33% of the total Settlement Fund, or \$1,038,638.71, plus reimbursement of their litigation costs and expenses. As detailed below, the requested attorneys' fees and costs are fair and reasonable based on the time and labor expended; the exceptional results obtained for the Settlement Class; the skill required to perform the legal services; the novelty and difficulty of the issues involved; the customary and contingent nature of the fee; the experience and ability of counsel; the positive reaction of the Settlement Class; public policy considerations; and fee awards in similar class actions.

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<sup>1</sup> Unless otherwise indicated, capitalized terms have the same meaning as those terms are used in the Settlement Agreement, which is attached as Exhibit 2 to Plaintiff's previously filed Memorandum in Support of Preliminary Approval of Class Action Settlement. (Dkt. 48-2) ("Settlement Agreement or "Agreement").

Class Counsel and the Class Representative devoted significant time and effort to prosecuting these claims, and their work produced an excellent result for the Class.<sup>2</sup> The requested attorneys' fees, litigation expenses, and Service Award are therefore amply justified given the investment, the significant risks assumed, and the result obtained—particularly in light of the complexity and uncertainty inherent in class actions and ECPA pixel litigation. Accordingly, Plaintiff and Class Counsel respectfully request that the Court approve an award of attorneys' fees of \$1,038,638.71, plus \$19,986.51 in expenses, and a Service Award of \$5,000.00 for Plaintiff as the Class Representative.

## **II. BACKGROUND**

### **A. The Case and Procedural History**

On April 29, 2024, Plaintiff Pedro Lugo (“Plaintiff”) filed this class action lawsuit against Defendant Inova Health Care Services (“Defendant”) in the U.S. District Court for the Eastern District of Virginia, Alexandria Division, where it was assigned to the Honorable Judge Patricia T. Giles. Plaintiff, a patient of Defendant’s health care services, alleged that Defendant disclosed his Private Information to third parties by deploying third-party tracking technologies known as “tracking pixels” or “pixels” on its public facing websites, in violation of the ECPA.

On July 1, 2024, Defendant filed its motion to dismiss Plaintiff’s Complaint pursuant to Fed. R. Civ. P. 12(b)(6). On March 25, 2025, after full briefing and oral argument of Defendant’s motion to dismiss, this Court issued an Order denying Defendant’s motion in part, allowing Plaintiff’s claims under the ECPA to proceed. On April 7, 2025, following the Court’s Order denying Defendant’s motion to dismiss, the Parties filed a joint motion to stay the case pending the outcome of mediation.

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<sup>2</sup> See Declaration of Eugene Y. Turin (“Turin Decl.”), attached hereto as Exhibit 1, ¶¶ 2, 8, 9.

On June 9, 2025, in an effort to reach a resolution, the Parties engaged in a full-day mediation session with third-party neutral Bruce Friedman of JAMS. The Parties did not reach an agreement on that day but agreed to continue settlement discussions. On July 28, 2025, after continued, extensive, arm's-length negotiations with the ongoing assistance of Mr. Friedman, the Parties reached an agreement in principle on the terms of a class action settlement. For the next several months – into October 2025 – the Parties continued to contentiously negotiate the contours of the settlement, including the appropriate relief to be provided to the Class Members, as well as the scope of the release and details about the notice to be provided to the Settlement Class Members. Eventually, these months-long further negotiations culminated in the final Settlement Agreement and Notice Program which this Court preliminarily approved on December 17, 2025. (Dkt. 56.) Thereafter, in accordance with the Settlement Agreement and this Court's order on preliminary approval, the Notice Program commenced, and Direct Notice was disseminated to the Settlement Class Members on January 9, 2026.

### **III. THE SETTLEMENT**

#### **A. The Settlement Class Members Will Receive Excellent Relief Under the Settlement.**

Class Counsel's prosecution of this litigation has culminated in this class-wide Settlement that provides exceptional monetary relief to the Settlement Class Members. The Settlement establishes a \$3,147,390.04 non-reversionary Settlement Fund. (Agreement, ¶ 20(a)). Each Class Member who submits a timely, valid Claim Form will be entitled to an equal share of the Net Settlement Fund distributed on a *pro rata* basis after deductions of administrative costs and the Court-approved attorneys' fees, litigation expenses, and service award. (*Id.* at ¶¶ 31, 32.) The Settlement Fund will be fully paid out with no amount reverting to Defendant, and any uncashed

checks or unclaimed funds after the distribution of checks will be distributed as *cy pres* to a recipient that is approved by the Court.

Furthermore, the Settlement Agreement provides that Defendant will implement all remedial measures necessary to ensure its use of tracking pixels materially complies with the ECPA and Health Insurance Accountability Act (“HIPAA”), which is further meaningful non-monetary relief to the Settlement Class Members who continue to use Defendant’s public facing website for healthcare services. (Agreement, ¶ 37.)

**B. Pursuant to the Settlement Agreement’s Notice Program, Direct Notice Has Been Sent To The Class Members.**

Under the Settlement Agreement’s Notice Program, which has already gone into effect, Direct Notice has been provided by email to the Settlement Class Members. (Turin Decl., ¶ 2.) In addition, the Settlement Website<sup>3</sup> is operational, which permits the Settlement Class Members to file claims and provides information about the Settlement, including instructions for filing claims, opt-out and objection procedures and deadlines, important court documents and dates, and other relevant information. To date, no Class Members have objected to the Settlement, and only two have elected to exclude themselves.

**IV. ARGUMENT**

**A. The Percentage-of-the-Recovery Approach Is Appropriate in This Common Fund Case.**

It is well established that the percentage-of-the-recovery approach is an appropriate methodology for awarding fees to plaintiffs’ counsel who have, as here, established a common fund for the benefit of a class. *See Blum v. Stenson*, 465 U.S. 886, 900 n. 16 (1984) (“[U]nder the ‘common fund doctrine,’ . . . a reasonable fee is based on a percentage of the fund bestowed on the

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<sup>3</sup> <https://www.healthpixelsettlement.com>.

class”); *Brundle on behalf of Constellis Employee Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 785 (4th Cir. 2019), *as amended* (Mar. 22, 2019) (it allows a court to award “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client . . . from the fund as a whole”) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, (1980)).

Moreover, the Fourth Circuit prefers the percentage-of-the-recovery method when awarding attorneys’ fees from a common fund. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010) (finding that “it makes sense to arrange these fees as a percentage of any recovery[,]” because “plaintiffs may find it difficult to obtain representation if attorneys know their reward for accepting a contingency case is merely payment at the same rate they could obtain risk-free for hourly work, while their downside is no payment whatsoever”); *Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at \*2 (D. Md. Jan. 28, 2020) (“Within the Fourth Circuit, district courts prefer the percentage method in common-fund cases”); *Hatzey v. Divurgent, LLC*, No. 2:18-cv-191, 2018 WL 5624300, at \*4 (E.D. Va. Oct. 9, 2018), *report and recommendation adopted sub nom. Hatzey v. Divurgent, LLC*, No. 2:18-cv-191, 2018 WL 5621967 (E.D. Va. Oct. 30, 2018) (“[A] fee award determined by percentage is preferred over the lodestar method in common fund cases such as this one”); *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 575 (E.D. Va. 2016) (noting the “current trend . . . favors the use of a percentage method to calculate an award of attorneys’ fees in common fund cases”); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260-61 (E.D. Va. 2009) (collecting cases) (stating that “other districts within [the Fourth Circuit], and the vast majority of courts in other jurisdictions consistently apply a percentage of the fund method for calculating attorneys’ fees in common fund cases.”).

Accordingly, the Court should award Class Counsel’s fee as a reasonable percentage of the recovery, which is the appropriate – and preferred – method in this case. As set forth more fully below, Class Counsel’s requested attorneys’ fees are eminently reasonable.

**B. Class Counsel’s Requested Fee Award is Supported by the Relevant Factors.**

When assessing a fee request, courts in the Fourth Circuit typically consider the relevant factors listed in *Barber v. Kimbrell’s, Inc.*, 577 F.2d 216 (4th Cir. 1978), or a variant of those factors. *Ciarciello v. Bioventus Inc.*, 760 F. Supp. 3d 377, 399 (M.D.N.C. 2024). The *Barber* factors are:

- (1) the time and labor expended;
- (2) the novelty and difficulty of the questions raised;
- (3) the skill required to properly perform the legal services rendered;
- (4) the attorney’s opportunity costs in pressing the instant litigation;
- (5) the customary fee for like work;
- (6) the attorney’s expectations at the outset of litigation;
- (7) the time limitations imposed by the client or circumstances;
- (8) the amount in controversy and the results obtained;
- (9) the experience, reputation, and ability of the attorney;
- (10) the undesirability of the case within the legal community in which the suit arose;
- (11) the nature and length of the professional relationship between attorney and client; and
- (12) attorneys’ fees awards in similar cases.

*Brown*, 318 F.R.D. at 577 (citing *Barber*, 577 F.2d at 226 n. 28). Because not every factor fits every case, a court should exercise its discretion to apply only the considerations that matter to the specific facts here. *See Ciarciello*, 2024 WL 5155539, at \*12 n. 8 (finding two of the *Barber* factors not applicable to that case); *Brown*, 318 F.R.D. at 577 (addressing 3 of the 12 factors); *Winingear v. City of Norfolk, Va.*, No. 2:12-cv-560, 2014 WL 3500996, at \*6 (E.D. Va. July 14, 2014) (“There is no strict manner in applying and considering these factors”).

That said, when evaluating reasonableness under the percentage-of-the-recovery approach, courts in this Circuit also consider: (1) the results obtained for the class; (2) the presence or absence of substantial objections by members of the class; (3) the quality and skill of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of non-payment; (6) public policy

considerations; and (7) awards in similar cases. *See, e.g., Gagliastre v. Capt. George's Seafood Rest., LP*, No. 2:17-cv-379, 2019 WL 2288441, at \*5 (E.D. Va. May 29, 2019); *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-cv-00361, 2018 WL 2382091, at \*4 (E.D. Va. Apr. 18, 2018). These factors, like the *Barber* factors, “need not be applied in a formulaic way because each case is different, and in certain cases, one factor may outweigh the rest.” *Gagliastre*, 2019 WL 2288441, at \*5 (citing *In re AT & T Corp.*, 455 F.3d 160, 166 (3rd Cir. 2006)).

Consideration of all the applicable factors strongly supports the requested fee award in this case.

1. *Time and labor expended in this case justify the requested fee.*

The time and effort Class Counsel devoted to this case confirms the requested fee is reasonable. From the outset, Counsel have worked aggressively to achieve this result for the Settlement Class. As detailed in the accompanying Turin Declaration, this litigation was hard-fought and required significant investigation, research, document review, and settlement negotiations. (Turin Decl., ¶¶ 2, 8, 9.)

Counsel conducted extensive factual investigation, including forensic analysis of Defendant’s public-facing websites, to determine whether internet communications disclosed protected Private Information and violated the privacy rights of Plaintiff and the Class. Counsel also evaluated Defendant’s anticipated defenses—which, in pixel cases, are complex and evolving and can materially affect class certification and summary-judgment issues.

In addition, Class Counsel drafted multiple iterations of the Complaint, litigated contested motions (including briefing and oral argument on Defendant’s motion to dismiss), conducted informal discovery, prepared a mediation statement, and participated in a full-day mediation before Bruce Friedman of JAMS. After mediation, Counsel continued negotiating with Defendant to reach agreement in principle, then spent months finalizing the Settlement Agreement’s terms and

working with the Settlement Administrator to implement and execute the Court-approved Notice Program. *See* (Turin Decl., ¶¶ 2, 8, 9.)

As such, Class Counsel have been fully committed to the prosecution of this case and have devoted substantial time and resources in order to obtain the excellent result for the Settlement Class. All work performed by Class Counsel was necessary, performed without duplication, and successfully advanced this litigation toward Settlement. As such, the effort and time expended by Class Counsel in navigating the complex legal and factual issues presented in this litigation support the requested fee. *See Bulls v. USAA Fed. Sav. Bank*, No. 5:21-cv-488-BO, 2025 WL 223768, at \*1 (E.D.N.C Jan. 16, 2025) (finding the efforts and time of counsel, among other factors, justified an award of attorneys' fee of one-third of the settlement fund).

2. *The results obtained for the Settlement Class are exceptional.*

“In the Fourth Circuit, ‘the most critical factor in calculating a reasonable award is the degree of success obtained.’” *Hooker v. Sirius XM Radio, Inc.*, No. 4:13-cv-003, 2017 WL 4484258, at \*6 (E.D. Va. May 11, 2017) (quoting *McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998) (internal quotation omitted)); *see also Brown*, 318 F.R.D. at 577 (“the ‘results obtained’ factor is typically considered the most important”); *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 843 (E.D. Va. 2016) (“The first and most important factor for a court to consider when making a fee award is the result achieved”) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). In assessing the quality of the results obtained, courts in this Circuit consider the value of both monetary and non-monetary relief. *See, e.g., Kelly*, 2020 WL 434473 at \*5 (“[T]he [c]ourt must also consider the value of the non-monetary relief when evaluating the overall benefit to the class”); *Hooker*, 2017 WL 4484258, at \*3 (“When awarding attorneys’ fees, courts consider the value of all benefits to the class—claimed and unclaimed, monetary and nonmonetary”); *Kruger v. Novant Health, Inc.*, No. 1:14-cv-208, 2016 WL 6769066, at \*3 (M.D.N.C. Sept. 29, 2016)

(“Considering the non-monetary benefits and relief created by counsel’s efforts is important because it encourages attorneys to obtain meaningful affirmative relief.”). Here, Class Counsel have achieved an excellent result.

First, the \$3,147,390.04 Settlement Fund negotiated by Class Counsel provides exceptional monetary relief for the 817,504 Settlement Class Members. The Settlement Fund is non-reversionary, meaning that after deducting the fees, service award, and reimbursable expenses, the entirety of the remaining fund will be distributed to Class Members who submit valid claims. Class Members’ receipt of material monetary relief now, as opposed to years from now, or perhaps never, represents a truly excellent result. Furthermore, this result is well in line with other similar settlements reached in the context of pixel-related class action lawsuits. *Reedy et. al v. Everlywell, Inc.*, 1:24-cv-02713, Dkt. 38 (N.D. Ill. Apr. 30, 2025) (approving ECPA tracking pixel class action settlement that created a \$5,000,000 common fund for approximately 2,000,000 class members); *Fiorentino v. FloSports, Inc.*, Case No. 1:22-cv-11502 (D. Mass. Mar. 5, 2024) (approving tracking pixel privacy class action settlement that created a \$2,625,000 common fund for approximately 639,000 class members); *Gregory v. Tubi, Inc.*, No. 2024LA0000209 (Cir. Ct. Winnebago Cnty., Ill.) (approving data privacy class action settlement establishing \$19.99 million fund for approximately 75 million class members); *Sellers, et al. v. Bleacher Report, Inc.*, 2024-003537-CA-01, slip opinion (August 8, 2024) (granting final approval to \$4,800,000 VPPA settlement yielding per settlement class member recoveries of \$1.78); *Ade et al. v. Viki, Inc.*, No. 3:23-cv-02161 (N.D. Cal.) (approving tracking pixel privacy class action settlement that created a \$7.8 million common fund for approximately 1,900,000 class members).

Second, in addition to the monetary relief, pursuant to the Settlement, Defendant has agreed to implement measures necessary to ensure its use of tracking pixels materially complies with the

ECPA and HIPAA. These changes directly address Plaintiff’s allegations and provide meaningful non-monetary relief to the Settlement Class Members. *See Kelly*, 2020 WL 434473, at \*5 (the non-monetary relief “provides substantial additional value to the class.”); *Kruger*, 2016 WL 6769066, at \*3 (“Considering the non-monetary benefits and relief created by counsel’s efforts is important because it encourages attorneys to obtain meaningful affirmative relief”).

Third, this case represents an excellent result for the Settlement Class given the risks, costs, and delay of continued litigation, while the Settlement provides tangible, immediate benefits. Defendant disputes Plaintiff’s allegations and denies that it is liable for any alleged harm caused to Plaintiff and/or the Class. While Plaintiff is confident in the merits of his case, the number of complex issues involved in this case, which centers on a developing area of law (third-party tracking technology/pixel litigation), creates significant uncertainty. *See, e.g., Sweat v. Houston Methodist Hospital*, No. H-24-775, 2025 WL 2697111 (S.D. Tex. Sep. 22, 2025) (granting summary judgment for the defendant in a tracking pixel ECPA class action). In the absence of settlement, the time and cost of continuing litigation would be immense: the Parties would engage in lengthy discovery, contested class certification briefing, and substantial dispositive motion practice. The Parties would then prepare and try the case, and regardless of the outcome of trial, one Party would likely notice an appeal to the Fourth Circuit. This process would be very costly and would take years to resolve, with no guarantee that the Class members would recover anything whatsoever.

In the face of these obstacles and unknowns, Class Counsel succeeded in negotiating and securing a Settlement which creates a substantial Settlement Fund that provides Class Members with meaningful cash payments that are consistent with similar settlements and obviates the need for the time, expense, and motion practice required to resolve the claims of the Class Members.

Class Members' receipt of monetary relief now, as opposed to years from now, or perhaps never, represents a truly excellent result.

3. *The novelty and difficulty of the legal and factual issues, the significant skill of experienced counsel, and awards in similar actions.*

Class actions are complex as a baseline, and those challenges were magnified here because this ECPA pixel case presented novel and evolving questions of both law and fact. In particular, Class Counsel identified and developed technical issues central to Defendant's conduct, including investigating how Defendant implemented, configured, and used tracking pixels; confirming that pixel transmissions to third parties contained information protected by the ECPA; evaluating whether that conduct supports viable ECPA claims; and assessing the strength of those claims in light of the motion practice and the case's procedural posture.

This type of litigation presents real hurdles at class certification and summary judgment. Against that backdrop, Class Counsel's investigation and analysis were instrumental in positioning the case for an early resolution. The complexity of this litigation translates into considerable and material risk that Class Counsel could prosecute this case for several more years (through full discovery, including expert discovery, class certification, summary judgment, trial and the inevitable appeals that would follow) and, in the end, recover less than the proposed Settlement, or nothing, for the Class. *See, e.g., In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 941 (N.D. Ill. 2022) ("Data privacy law is a relatively undeveloped and technically complex body of law, which creates uncertainty and, therefore, additional risk for Class Counsel"); *In re Ikon Office Solutions Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000) (noting where large sums of money are at issue, litigation is guaranteed to be long, drawn-out, and any plaintiff's verdict would be appealed by defendants, further extending litigation); *accord In re Aetna Inc. Sec. Litig.*, No 1219, 2001 WL 20928, at \*6 (E.D. Pa. Jan. 4, 2001) ("The risk of delay could have deleterious

effects on any future recovery”).

Despite the complexity and difficulty of the issues presented here, Class Counsel negotiated an excellent recovery for the Settlement Class. As discussed above, the work performed in this case reflects Class Counsel’s skill and experience litigating complex class actions. McGuire Law’s firm resume further confirms Class Counsel’s national reputation and extensive experience in complex class litigation. (Turin Decl. ¶¶ 13-17.) For those reasons, the quality of the work and the skill required to prosecute this case and obtain this Settlement support the requested fee.

Moreover, the requested fee is consistent with fees awarded in similar class litigation in the Fourth Circuit. Here, the requested fee award of 33% of the Settlement Fund, plus expenses, is consistent with fee awards in other similarly-sized settlements. *See, e.g., Moog v. The Christian Broadcasting Network, Inc.* 1:24-cv-00501-PTG, Dkt. 35, (E.D. Va. August 7, 2025) (Giles, J.) (awarding attorneys’ fees of \$1,333,333, plus reimbursement of expenses, from a \$4,000,000 common fund); *Six v. LoanCare, LLC*, No. 5:21-cv-00451, 2022 WL 16747291, at \*8 (S.D.W. Va. Nov. 7, 2022) (awarding attorneys’ fees of one-third of a \$4,500,000 settlement, plus expenses); *Robinson v. Nationstar Mortg. LLC*, No. 8:14-cv-03667-TJS, 2020 WL 8256177, at \*4 (D. Md. Dec. 11, 2020), *aff’d sub nom. McAdams v. Robinson*, 26 F.4th 149 (4th Cir. 2022) (awarding attorneys’ fees of \$1,300,000, or 43%, of a \$3 million settlement); *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 483 (D. Md. 2014) (awarding attorneys’ fees of one-third of a \$3,050,000 settlement, plus expenses); *see also Kirkpatrick v. Cardinal Innovations Healthcare Sols.*, 352 F. Supp. 3d 499, 505 (M.D.N.C. 2018) (“The requested 33.39 percent award is within the range of percentages that have been approved in other cases in this circuit”).

Indeed, where, as here, the monetary relief was paired with other, valuable non-monetary relief, courts in the Fourth Circuit have approved fee awards of even 40% of the fund. *See, e.g.,*

*Bradshaw v. Hilco Receivables, LLC*, No. 1:10-cv-00113 (D. Md. May 29, 2012), Dkt. 74; *Baker v. Sunshine Financial Group, LLC*, No. 1:11-cv-02028 (D. Md. October 26, 2012), Dkt. 34.

Accordingly, Plaintiffs' request of 33% of the Settlement Fund plus litigation expenses is reasonable considering the fees recently approved by this Court, as well as other courts in the Fourth Circuit in class action settlements. It is particularly reasonable here given the size of the recovery achieved and the risks and complexities of this litigation.

4. *The customary and contingent nature of the fee, attorneys' expectations at the outset of litigation, time limitations imposed by client or circumstances, and the undesirability of the case.*

In class actions, fees are customarily contingent because individual class members rarely have a stake large enough to justify paying counsel on an hourly basis. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.")

The instant case is no different. Here, "Class Counsel took this case on a contingency basis and understood from the outset that there would be no attorneys' fee without a recovery for the Plaintiff[] or the Class." *In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig.*, No. 3:09-CV-00054, 2012 WL 5430841, at \*5 (D.S.C. Nov. 7, 2012) (further noting "Class Counsel could have lost their entire investment in out-of-pocket expenses"). "Such 'burdens are relevant circumstances' that support the requested award." *Id.* (quoting *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993)).

Class Counsel also advanced all litigation costs and bore the full risk of no recovery. In taking this case, Class Counsel understood they could litigate for years, invest hundreds (if not thousands) of attorney hours, and incur tens of thousands of dollars in expenses only to lose at class certification, summary judgment, or trial.

Additionally, class actions are notoriously lengthy and hard to predict, and had Class Counsel not taken a role in this litigation, they would have been free to allocate their time and resources elsewhere. *See In re LandAmerica 1031 Exch. Servs.*, 2012 WL 5430841, at \*5 (noting “the time demands of this case required [c]lass [c]ounsel to delay or forgo work on other cases”). Further, the time and labor required to litigate a complex class action such as this one, coupled with the contingent nature of the case and its attendant risks, make this case undesirable to many attorneys.

In short, Class Counsel expected and were prepared to litigate this case through final judgment and any appeal, for as long as it took, on a fully contingent basis. Given the contingent nature of the engagement, Counsel’s expectations at the outset, the time demands and undesirability of the case, and the real possibility of no recovery, an award of 33% of the Settlement Fund is warranted.

5. *The absence of objections by members of the class.*

As set forth above, although the objection deadline has not yet passed, Class Counsel have received no objections to their fee request or Settlement Agreement to date. Consequently, the lack of objections by Settlement Class Members further supports the reasonableness of the requested fee. *See Galloway v. Williams*, 3:19-cv-470, 2020 WL 7482191, at \*10 (E.D. Va. Dec. 18, 2020) (finding lack of objections “weighs in favor of the reasonableness of the required fees”).

6. *Public policy considerations.*

This factor requires balancing “the policy goals of encouraging counsel to pursue meritorious” litigation, “while also protecting against excessive fees.” *Decohen*, 299 F.R.D. at 482. Where, as here, there is a “high risk of nonpayment . . . public policy favors the award.” *Id.*; *see also Mills*, 265 F.R.D. at 263 (“the risk of nonpayment naturally dovetails with . . . public policy.”). This is because “one object of an award of attorneys’ fees should be to counteract this deterrence

and incentivize competent attorneys to pursue [meritorious] cases when necessary.” *Mills*, 265 F.R.D. at 263. Additionally, public policy favors Class Counsel’s requested attorneys’ fees because the Settlement includes unique and valuable non-monetary relief in addition to the significant monetary benefits. *See Kruger*, 2016 WL 6769066, at \*3 (attorneys’ fee awards should “encourage[] attorneys to obtain meaningful affirmative relief.”). Finally, public policy favors the requested fee award because Class Counsel devoted significant time, effort, and resources to this case. *See Mills*, 265 F.R.D. at 263 (“public policy favors the requested fee here given [c]ounsel’s efforts for this [case].”).

**C. The Court Should Also Award Class Counsel’s Requested Reimbursable Litigation Expenses.**

Over the course of their prosecution of this case, Class Counsel have expended \$19,986.51 in reimbursable expenses related to filing fees, mediation, travel, expert fees and expenses, and settlement administration costs. (Turin Decl., ¶ 12.) Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *Kelly*, 2020 WL434473, at \*7 (quoting *Smith v. Krispy Kreme Doughnut Corp.*, 1:05-cv-00187, 2007 WL 119157, at \*3 (M.D.N.C. Jan. 10, 2007) (“The prevailing view is that expenses are awarded in addition to the fee percentage.”)); *see also In re Neustar, Inc. Securities Litig.*, No. 1:14-cv-885, 2015 WL 8484438, at \*10 (E.D. Va. Dec. 8, 2015) (“There is no doubt that costs, if reasonable in nature and amount, may appropriately be reimbursed from the common fund.”) Accordingly, Class Counsel respectfully requests that the Court approve reimbursement of their reasonable litigation expenses. Many of these costs were incurred nearly two years ago and, in effect, amounted to an interest-free advance on behalf of the Settlement Class—one made with a substantial risk of nonpayment given the litigation risks discussed above. For these reasons, the Court should award Class Counsel total fees and expenses in the amount of \$1,058,625.22.

**D. The Service Award Sought for Plaintiff is Reasonable and Should be Approved.**

Service award payments are regularly made to compensate class representatives for their help to a class. *See Kirkpatrick*, 352 F. Supp. 3d at 507 (“Service payments for named [p]laintiffs compensate [p]laintiffs for their additional efforts, risks, and hardships they have undertaken as class representatives on behalf of the group in filing and prosecuting the action[.]”) (internal quotation marks omitted). The requested \$5,000.00 Service Award for Plaintiff is reasonable and appropriate compared to other service awards granted to class representatives in similar class actions. *See Skochin v. Genworth Fin., Inc.*, Civ. No. 19-0049, 2020 WL 6536140, at \*11 (E.D. Va. Nov. 5, 2020) (approving named plaintiffs service awards of \$25,000 each in light of “the time and effort expended by [n]amed [p]laintiffs and in perspective of the fact that their efforts helped to secure a settlement that is highly beneficial to the class”); *LoanCare*, 2022 WL 16747291, at \*8 (approving service award of \$15,000); *Kirkpatrick*, 352 F. Supp. 3d at 507 (approving service award of \$10,000); *In re Cotton*, No. 14-30287, 2019 WL 1233740, at \*4 (W.D.N.C. Mar. 15, 2019) (awarding service awards to the four class representatives in the amount of \$10,000.00 each); *Robinson*, 2020 WL 8256177, at \*4 (approving service award of \$5,000).

Here, Plaintiff devoted time in the oversight of, and participation in, the litigation on behalf of the Class. Specifically, Plaintiff’s efforts included: (1) initial factual investigation, including making himself available for Class Counsel to perform analysis necessary to discover the allegations in this case; (2) reviewing the Complaint; (3) working with Class Counsel concerning case developments and informal discovery; and (4) reviewing the final terms of the Settlement Agreement reached in this case and ultimately approving the Settlement. Were it not for Plaintiff’s willingness to bring this action on a class-wide basis and his efforts and contributions to the

litigation up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would not exist.

Accordingly, a Service Award of \$5,000.00 is eminently justified by Plaintiff's time and effort in this case and should be approved.

**V. CONCLUSION**

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order: (1) approving an award of attorneys' fees and expenses of \$1,058,625.22; and (ii) approving the Service Award in the amount of \$5,000.00 to Plaintiff in recognition of his significant efforts on behalf of the Settlement Class Members.

Dated: February 6, 2026

Respectfully submitted,

PEDRO LUGO, individually and on behalf  
of similarly situated individuals

By: /s/ Kyle McNew  
*One of Plaintiffs' Attorneys*

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*Counsel for Plaintiffs and Class  
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on February 6, 2026, a copy of the foregoing *Plaintiff's Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, & Service Awards* was filed electronically with the Clerk of Court, with a copy sent by electronic mail to all counsel of record.

/s/ Kyle McNew