Honorable Grant Blinn
December 19, 2025 at 9:00 a.m.

SUPERIOR COURT OF WASHINGTON
IN AND FOR PIERCE COUNTY

M.N., A.B., G.T., and W.N., individually and on behalf of all others similarly situated,

Plaintiff,

v.

MULTICARE HEALTH SYSTEM, INC., a Washington corporation,

Defendant.

No. 18-2-08055-5

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

Noted for Consideration:

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I. INTRODUCTION

This Court preliminary approved a Settlement Agreement that will creates a Settlement Fund of $4 million out of which Settlement Class Members will each be paid hundreds of dollars.[1] The Settlement Agreement follows prolonged litigation that went up to the Washington Supreme Court and back. Over more than 7 years, Class Counsel devoted over 5,500 hours of work to this Action and advanced some $260,000 in litigation expenses. They prosecuted the Action on a contingent basis, despite the real risk that they and class members would receive nothing.

The length, complexity, and riskiness of this litigation, and Class Counsel's huge investment of time, make it reasonable to grant the $1,333,333 fee sought here—a fee of one-third of the Settlement Fund. The considerable expenses that Class Counsel bore over the course of this long Action should also be reimbursed as reasonable and necessary to achieve the result here. Finally, in recognition of their services to the Settlement Classes, each of the Named Plaintiff should be granted a service award of $5,000.

II. RELEVANT BACKGROUND

The declaration that supports this motion narrates in detail the work that Class Counsel performed on behalf of the Class over more than seven years, *see* Decl. of Benjamin Gould in Supp. of Pls. Mot. for Atty. Fees and Costs ("Gould Decl.") ¶¶ 6–68, so only an overview of that work is provided here.

After filing this Action in May 2018, Class Counsel began vigorous discovery efforts. *See id.* ¶¶ 10–19. They ultimately served Defendant with 50 requests for production, 22 interrogatories, and 114 requests for admission. *Id.* ¶ 11. They also requested, received, and reviewed documents from numerous government agencies and third parties. *Id.* ¶¶ 20–27.

[1] Unless context requires otherwise, the capitalized terms used in this Motion have the same meaning as provided in the Amended Settlement Agreement. Note that the Amended Settlement Agreement uses the term "Settlement Agreement," rather than "Amended Settlement Agreement," to refer to itself.

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Document discovery was intensive. The Named Plaintiffs produced thousands of pages of documents in response to Defendant's requests. *Id*. ¶ 29. Defendant produced about 30,000 documents totaling about 217,000 pages, while public and private third parties produced about 4,000 documents totaling over 15,000 pages. *Id*. ¶ 30. And even this page count understates matters, because it excludes electronic files produced in "native" format, like Excel spreadsheets. *Id*.

Class Counsel also prepared for and took depositions of nine employees that Defendant designated under CR 30(b)(6). These depositions covered a wide range of topics, concerning several technical subjects that would be the subject of expert testimony. *Id.* ¶ 31.

Indeed, experts were a vital part of this Action, which after all was a medical-negligence case under chapter 7.70 RCW. Class Counsel began identification of potential experts shortly after filing the action in May 2018, a process that lasted well into 2019. *Id.* ¶ 34. Once suitable experts were retained, in-depth consultations were necessary. *See id.* ¶¶ 35–36,

In 2019, the Named Plaintiffs moved for class certification. After full briefing and argument, the Court certified two classes. The subsequent notice to the classes, *see* CR 23(c)(2), called for considerable work. *See id.* ¶¶ 42–44.

When Defendant moved for partial summary judgment on the claims of the General Treatment Class, opposing the motion required extensive work, including three expert declarations. *See id*. ¶¶ 46–47. After a hearing, the Court granted Defendant's motion; Plaintiffs moved for reconsideration, which was denied. *Id*. ¶ 48.

When the Court entered a CR 54(b) judgment, Plaintiffs appealed. Class Counsel filed opening and reply briefs and conducted oral argument. *Id.* ¶¶ 50–52.

The Court of Appeals issued an unpublished opinion, affirming the summary judgment. *Id*. ¶ 53. On Plaintiffs' motion, the Court of Appeals published its opinion. *Id.* Thereafter, Class Counsel drafted a petition for review with the Supreme Court, which granted it. *Id*. ¶¶ 54–55. After filing a supplemental brief and answers to two amicus briefs supporting Defendant, Class

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Counsel prepared for and conducted oral argument before the Supreme Court in September 2023. *Id.* ¶¶ 55–57.

In January 2024, the Supreme Court issued an opinion reversing the Court of Appeals, establishing a new standard for legal causation in medical-negligence cases involving the risk of infection. This standard closely resembled the one for which Class Counsel argued in their supplemental brief. *Id*. ¶ 58.

Following remand to this Court, Class Counsel reviewed existing discovery to identify and fill any gaps and entered into discussions with a few additional possible experts. *Id.* ¶ 59. This work took a significant amount of time. *Id*.

Class counsel also invested significant time and effort in an intensive mediation process that began in the winter of 2024 and ended only in May 2025, when the Parties reached a settlement. *See id.* ¶¶ 61–65.

Class Counsel drafted and negotiated a settlement agreement and proposed notice, in consultation with Defendant and the Settlement Administrator. *See id.* ¶ 66. They also drafted and filed a lengthy motion for preliminary approval, which was granted. *Id*. The Parties soon became aware, however, that the formal definitions of the two Settlement Classes needed to be changed, and that the Notice Plan could be substantially improved. *Id*. ¶ 67. After considerable additional work, Class Counsel moved for preliminary approval of the amended Settlement Agreement, which was granted in September. *Id*. ¶ 68.

III. ARGUMENT

A. The Court Should Award Class Counsel's Requested Fees of One-Third of the Settlement Fund.

This Action has resulted in the Settlement Fund of which the Settlement Class Members will be paid. "Because the plaintiffs have created a common fund for the benefit of others, their attorneys are entitled to attorney fees." *Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 71, 847 P.2d 440 (1993). "[I]n calculating fees under the common fund doctrine," courts typically use "the percentage of recovery approach," which "calculat[es] the total recovery secured" and awards

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the attorneys "a reasonable percentage of that recovery, often in the range of 20 to 30 percent." *Id.* at 72.

In Washington, "the 'benchmark' award is 25 percent," which "can be adjusted upward or downward" based on "special circumstances." *Id.* (quoting *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)). These circumstances include cases where the benchmark "would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Ariz. Citrus Growers*, 904 F.2d at 1311.

On class-action fees, Washington has a practice "of looking to federal law for guidance," *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (applying Washington law), and especially case law from the Ninth Circuit, *see Bowles*, 121 Wn.2d at 72–73 (relying nearly exclusively on federal cases, including *Arizona Citrus Growers* and *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268 (9th Cir. 1989)). While this Court has "broad discretion in determining the reasonableness of attorney fees," *id.* at 71–72, the Ninth Circuit, applying Washington law, has found a number of factors relevant to determining whether a percentage-based fee is reasonable: (1) whether "counsel 'achieved exceptional results for the class'"; (2) how "risky" it was "for class counsel" to take the case on a contingent basis; (3) whether "counsel's performance generated benefits beyond the cash settlement fund"; (4) "the range of fee awards" from "common funds of comparable size"; and (5) the burdens that counsel assumed by prosecuting the case. *Vizcaino*, 290 F.3d at 1048–50; *see, e.g., Williams v. PillPack LLC*, No. 3:19-cv-05282-DGE, 2025 WL 1149710, at *2 (W.D. Wash. Apr. 18, 2025).

Also crucial to the reasonableness of percentage-based fee is the so-called "lodestar cross-check." *See Vizcaino*, 290 F.3d at 1050. This cross-check compares the percentage fee against what the attorneys' fee would be under the lodestar method, which takes "the number of hours that were reasonably spent by the attorneys" and multiplies those hours against "a reasonable hourly compensation." *Bowles*, 121 Wn.2d at 72. Calculating the lodestar, "which measures the lawyers' investment of time in the litigation, provides a check on the

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reasonableness of the percentage award." *Vizcaino,* 290 F.3d at 1050. Where that investment was "minimal," the lodestar calculation may favor a downward adjustment of the percentage award. *Id.* Conversely, "the lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted." *Id.*; *accord Ariz. Citrus Growers,* 904 F.2d at 1311 (adjustment may be necessary "in light of the hours devoted to the case").

Here, the relevant factors, plus the lodestar cross-check, favor an upward adjustment of benchmark award to one-third of the Settlement Fund—i.e., $1,333,333.

1. Class Counsel Have Achieved an Excellent Result for the Settlement Classes.

"Exceptional results are a relevant circumstance" when analyzing the reasonableness of attorney fees. *Vizcaino,* 290 F.3d at 1048. Here, the results achieved were exceptional for many of the same reasons that the results in *Vizcaino* were deemed exceptional. Here, as there, "counsel pursued this case in the absence of supporting precedents," *id.*; indeed, counsel had to *create* a precedent before securing this result. Class Counsel continued to prosecute this litigation, moreover, despite the rejection of their legal theory by multiple judges: one in this Court and three at the Court of Appeals. *See id.* (noting that "four judges" had rejected the plaintiffs' arguments). And they pursued it "against . . . vigorous opposition throughout the litigation" from Defendant and its able attorneys. *Id.*

The amount of money that Settlement Class Members are likely to receive is also significant. After deducting likely notice and settlement-administration expenses and all the fees and expenses requested here, equal distribution of the remaining funds to the approximately 2,750 Settlement Class Members will amount to about $850 per capita.

This recovery is remarkable in light of the challenges the Settlement Classes would have faced at trial and beyond. To minimize the intensity and duration of the Settlement Class Members' fear of illness, and hence to minimize their emotional-distress damages, Defendant could have pointed to the lack of positive hepatitis C tests among the Settlement Class

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Members, the easily treatable nature of hepatitis C,[2] and the accuracy of a commonly used blood test for the disease.[3] And even if the Settlement Classes had secured a highly favorable jury verdict, Defendant might have been able to overturn class certification on appeal. *See* Pls.' Mot. for Prelim. Approval at 8 (July 11, 2025). And if Defendant had been able to do that, the likely result would have been no recovery at all—for anyone. Given the costs of suit, the "*realistic* alternative to a class action" here would have been "zero individual suits." *Carnegie v. Household Int'l*, 376 F.3d 656, 661 (7th Cir. 2004) (Posner, J.) (emphasis in original).

The results here favor an above-the-benchmark percentage fee.

2. In Taking on This Litigation, Class Counsel Assumed Significant Risk.

"Risk is a relevant circumstance" when analyzing the reasonableness of attorney fees. *Vizcaino*, 290 F.3d at 1048. Here, the case was "extremely risky." *Id.* In 2018, when this case was filed, Washington had no precedent governing medical-negligence claims arising from fear of disease transmission. Out-of-state precedent did not seem especially favorable. *See M.N. v. MultiCare Health Sys., Inc.*, 2 Wn.3d 655, 541 P.3d 346, 356 (2024) ("MultiCare points out that the majority of jurisdictions [have] adopted the 'actual exposure' requirement [for legal causation]."). Despite the lack of supportive case law, Class Counsel undertook and litigated this case on a fully contingent basis, knowing full well that attorney fees and litigation expenses might never be recovered. *See* Gould Decl. ¶¶ 5, 84.

The risks here went beyond the merits. This case was filed as a putative class action, and class certification of classes seeking damages solely for emotional distress are rare. Some decisions can be read to cast doubt on whether class-action treatment is appropriate in such cases. *See Rader v. Teva Parenteral Medicines, Inc.*, 276 F.R.D. 524, 530 (D. Nev. 2011).

The risks inherent in this case favor an above-the-benchmark fee.

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[2] *See* World Health Organization, *Hepatitis C* (Apr. 9, 2024), https://www.who.int/news-room/fact-sheets/detail/hepatitis-c [https://perma.cc/8ZXS-JGBJ].

[3] U.S. Department of Veterans Affairs, *Laboratory Tests Hepatitis C* (Oct. 23, 2018) https://www.hepatitis.va.gov/hcv/screening-diagnosis/laboratory-tests.asp [https://perma.cc/RSC7-7Y5Y].

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3. Class Counsel's Work Generated Benefits Beyond the Cash Settlement Fund.

Whether class-action litigation has "generated benefits beyond the cash settlement fund" is "a relevant circumstance" in determining a percentage-based fee. *Vizcaino*, 290 F.3d at 1049. This Action established a new standard for legal causation in chapter 7.70 RCW cases involving the risk of infection. This new standard for legal causation lowered the barrier to recovery erected by Division II's opinion in this case, clarified the law, and creates a "strong incentive" for hospitals and other providers to prevent and detect drug diversion. *M.N.*, 541 P.3d at 355. Class Counsel's work has thus benefitted Washingtonians generally. *See Vizcaino*, 290 F.3d at 1049 ("[T]he litigation also benefitted employers and workers nationwide by clarifying the law of temporary worker classification."). That benefit favors an above-the-benchmark fee.

4. Fees of One-Third of the Settlement Fund Would Be Well Within the Range of Fee Awards Made in Comparable Cases.

"[T]he range of fee awards out of common funds of comparable size" is also relevant to whether Class Counsel's requested award is reasonable. *Vizcaino*, 290 F.3d at 1050. Several courts have found that fee awards of one-third are "typical for settlements up to $10 million." *Williams v. PillPack LLC*, No. 3:19-CV-05282-DGE, 2025 WL 1149710, at *3 (W.D. Wash. Apr. 18, 2025) (quoting *Zamora v. Lyft*, No. 3:16-CV-02558-VC, 2018 WL 4657308, at *3 (N.D. Cal. Sept. 26, 2018), and citing two other federal district court orders). Percentage fees appear to range widely in settlements of smaller size. Indeed, where the settlement fund is small (several million dollars or less), fees of up to 40% are not uncommon. *See, e.g.*, *Dunne v. Quantum Residential Inc.*, No. 3:23-cv-05535-DGE, 2025 WL 896741, at *2 (W.D. Wash. Mar. 24, 2025); *Ginzkey v. Nat'l Sec. Corp.*, No. C18-1773RSM, 2022 WL 16699092, at *1 (W.D. Wash. Nov. 3, 2022); *see also Dennings v. Clearwire Corp.*, No. C10–1859JLR, 2013 WL 1858797, at *8 (W.D. Wash. May 3, 2013) (awarding a lodestar-based fee, but noting that, if calculated as a percentage, it would be 35.78%). Class Counsel's request for one-third of the Settlement Fund is within the range for cases of this size.

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5. Class Counsel Assumed Sizeable Burdens by Prosecuting This Action.

The "burdens" that attorneys assume in litigating a class action are "relevant circumstances" for their fee. *Vizcaino*, 290 F.3d at 1050. Here these burdens have been unusually heavy. Class Counsel pursued this case on a contingent basis over seven years, paid out "hundreds of thousands of dollars of expense," and the approximately 5,500 hours spent on this Action necessarily prevented Class Counsel from taking on other work. *Id.*; *see* Gould Decl. ¶ 86 (categorizing expenses). This consideration favors an upward adjustment to the benchmark fee.

6. A Lodestar Cross-check Confirms the Reasonableness of the Fee Request.

Comparing a requested percentage fee against the lodestar—a "lodestar cross-check"—"provides a check on the reasonableness of the percentage award" and can "be helpful in suggesting a higher percentage when litigation has been protracted." *Vizcaino*, 290 F.3d at 1050. This comparison produces what is called a "multiplier," or the ratio of the percentage fee to the lodestar fee. *See id.* at 1050–51. Because the percentage fee normally exceeds the lodestar fee, this ratio is normally above one (which is why the ratio is called a multiplier). *See id.* at 1051. The multiplier is intended to reflect the risk of taking a case on contingency. *See id.*

Here, the declaration submitted with this motion sets out Class Counsel's lodestar in detail. It supports the lodestar fee by providing a comprehensive account of the work Class Counsel performed, Gould Decl. ¶¶ 6–68, 73, and showing how much each legal professional billed to this case, *id.* ¶ 75.[4]

[4] The declaration's detailed averments are more than sufficient to support the claimed lodestar for the limited purpose of a lodestar cross-check. For that purpose, a trial court "may rely on attorney fee summaries rather than actual billing records." *In re NCAA Grant-in-Aid Cap Antitrust Litig.*, 768 F. App'x 651, 654 (9th Cir. 2019); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306–07 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records." (footnote omitted)). This lower evidentiary bar makes sense; a lodestar cross-check is meant not to calculate the *actual fee* that counsel is receiving, but simply to provide a check on the percentage fee. Plus, even if Class Counsel's lodestar were drastically reduced, it would *still* show that a one-third

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Both the rates and the hours in the lodestar calculation are reasonable. Keller Rohrback's rates have been repeatedly approved as reasonable. *Id.* ¶ 82. The rates range from about $250 to $300 for paralegals, from about $370 to $525 for associates, and from about $525 to $1,040 for partners. These are in line with the prevailing rates for class-action litigation in western Washington. *See Washburn v. Porsche Cars N. Am., Inc.*, 2:22-CV-01233-TL, 2025 WL 1017983, at *9 (W.D. Wash. Apr. 4, 2025) (noting that rates up to $975 and $1,000 per hour have been approved for partners); *Dunne*, 2025 WL 896741, at *2 (approving rate of $500 per hour for associate and $300 per hour for paralegals). The over seven years of complex and often highly labor-intensive litigation at both the trial and appellate level support the 5,569.80 hours claimed.

Even without an increase in the lodestar to reflect a delay in payment, *see generally* Gould Decl. ¶¶ 76–79, a lodestar cross-check results in an unusual "negative" multiplier—a multiplier of less than one: 0.43. *Id.* ¶ 80. Such a multiplier "bolsters the reasonableness" of the percentage fee that Class Counsel request. *Dunne*, 2025 WL 896741, at *2; *see also, e.g.*, *Rinky Dink, Inc. v. World Bus. Lenders, LLC*, No. C14-0268-JCC, 2016 WL 3087073, at *4 (W.D. Wash. May 31, 2016) (noting that negative multiplier was "especially reasonable" since "courts ordinarily approve" multipliers of 1.9 to 5.1 or even higher). Indeed, this unusually small multiplier means that even if Class Counsel's lodestar were much lower, the lodestar cross-check would still show a one-third fee to be reasonable. *See* Gould Decl. ¶¶ 83–84.

B. Class Counsel's Litigation Expenses Are Reasonable and Should Be Approved.

Attorneys who create a common fund are entitled to recover reasonable litigation expenses. *See generally* 5 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 16:5 (6th ed. 2025). Expenses generally recognized as recoverable include photocopying expenses; postage, courier and messenger-service charges; travel costs, including meals and

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fee would be reasonable. *See* Gould Decl. ¶¶ 83–84. If, however, the Court wishes to examine Class Counsel's billing records themselves, we would gladly provide them for *in camera* examination upon request.

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transportation incidental to travel; and computer-assisted legal research. *See id.* Most courts also hold that mediation expenses and jury-consultant services are reimbursable, since they are expenses that paying clients would normally be charged. *See id.*

Here, Class Counsel respectfully request $265,781.77 in litigation expenses incurred in the course of prosecuting this case. The magnitude of these expenses testifies to Class Counsel's commitment to the effective prosecution of this case, and they are reasonable in light of the duration and complexity of this Action. More than half of the expenses incurred (approximately $170,000) fell into one of two buckets. The first bucket consisted of expert fees, which Class Counsel incurred because this is a medical-negligence case that requires expert testimony. *See, e.g.*, *Estate of Essex ex rel. Essex v. Grant Cnty. Pub. Hosp. Dist. No. 1*, 3 Wn.3d 1, 14, 546 P.3d 407 (2024) (expert testimony is usually needed to prove causation in medical malpractice cases); *Williams v. Gillies*, 19 Wn. App. 2d 314, 318, 495 P.3d 862 (2021) (expert testimony is needed to prove standard of care and breach thereof in a medical malpractice case). The second bucket consisted of fees paid for the database that held and allowed easy retrieval of the many documents produced in this complex case.

The declaration supporting this motion sets out each category of expense and shows how much was paid for each category. *See* Gould Decl. ¶¶ 85–86; *see also, e.g.*, *Hawthorne v. Umpqua Bank*, No. 11–CV–06700–JST, 2015 WL 1927342, *6 (N.D. Cal. Apr. 28, 2015) ("To support an expense award, Plaintiffs should file an itemized list of their expenses by category and the total amount advanced for each category in order for the Court to assess whether the expenses are reasonable.").

C. The Named Plaintiffs Should Be Granted Service Awards.

"Service or 'incentive' awards to named plaintiffs are commonplace in class actions" and are generally intended to compensate class representatives for the work they performed on behalf of the class. *Washburn*, 2025 WL 1017983, at *10; *see also Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). When evaluating proposed service awards, courts

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consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, the amount of time and effort the plaintiff expended in pursuing the litigation, and any financial or reputational risks the plaintiff faced." *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 786 (9th Cir. 2022) (internal quotation marks and citation omitted).

Here, the Named Plaintiffs estimate they spent between 50 and 80 hours on this case. *See* Gould Decl. Ex. 3–5. They submitted themselves to depositions that probed sensitive matters. *See id.* The proposed awards of $5,000 together represent only one-third of one percent of the Settlement Fund, are in line with service awards granted in Washington, and are well merited. The Named Plaintiffs' commitment to the Settlement Classes and their desire to hold Defendant accountable was essential to the prosecution of this action

IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant attorneys' fees of $1,333,333, reimburse the requested expenses of $265,781.77, and make a service award of $5,000 to each of the Named Plaintiffs.

DATED this 10th day of October, 2025.

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