SAMUEL STOKES, Plaintiff,	*	IN THE CIRCUIT COURT FOR
	*	PRINCE GEORGE'S COUNTY
v.	*	Case No. C-16-CV-24-001546
NOVELPAY, LLC	*	
Defendant.	*	

* * * * * * * * * * *

PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES

Benjamin H. Carney (ID # 0412140132)
bcarney@GWCfirm.com
Richard S. Gordon (ID # 8912180227)
rgordon@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
11350 McCormick Rd.
Executive Plaza 1, Suite 1000
Hunt Valley, Maryland 21031
Telephone: (410) 825-2300
Facsimile: (410) 825-0066

Attorneys for Plaintiff and the Class

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I. INTRODUCTION

This innovative litigation challenged fees charged by Defendant NovelPay, LLC ("NovelPay") to the Representative Plaintiff and others for collecting their rent online, when NovelPay was not licensed as a collection agency under the Maryland Collection Agency Licensing Act ("MCALA"), Md. Code Ann., Bus. Reg. §§ 7-101 *et seq*.

Class Counsel has pioneered this new area of litigation, at considerable risk. *See* Exhibit 4 to Plaintiff's Motion for Final Approval of Class Action Settlement ("Final Approval Motion"), Affidavit of Benjamin H. Carney ("Carney Aff.") ¶ 18. To Class Counsel's knowledge, no other lawyers have pursued similar litigation against online collectors of residential real estate payments like NovelPay. *See id*. No other lawyers have been willing to devote the resources required to pursue a lawsuit like this one and endure the delay in payment – and risk of no payment at all – which is inherent in litigation like this which is undertaken on a contingency basis. *See Kelly v. Johns Hopkins Univ*., No. 1:16-CV-2835-GLR, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020) ("no other law firm had been willing to devote the necessary resources to prosecute this type of action. Without question, this case required a willingness by counsel to risk very significant amounts of time and money 'in the face of vigorous resistance' by the defendants.") (citation omitted).

Now, after litigation and hard-fought negotiation, Class Counsel has secured a settlement under which NovelPay has agreed to obtain the licensing and bonding that Representative Plaintiff alleged it was required to have; *plus* it has agreed to pay $3 million into a common settlement fund; *plus* is has agreed to pay settlement administration expenses; *plus* it has agreed to pay a $15,000 incentive fee to the Representative Plaintiff separate from the settlement fund – all despite the fact that NovelPay denies any wrongdoing and contends that it conducted itself lawfully, and did not act as a collection agent. *See* Settlement Agreement (Exhibit 1 to the November 27, 2024 Joint Motion for Preliminary Approval of Settlement) ¶ 7.

The settlement is an excellent result for Settlement Class members. The Service Fees challenged here were a few dollars a month. If every one of the roughly 63,200 Settlement Class Members file claims, each would be entitled to receive an average of approximately $30.00 from this settlement – *after* the requested attorneys' fees and costs are paid.[1] In light of the amount of the fees challenged, that is a good result on its own. Class action settlements typically only recover less than 10% of potential damages. *See In re Ravisent Techs., Inc. Sec. Litig.,* No. Civ. A. 00–CV–1014, 2005 WL 906361, at *9 (E.D.Pa. Apr. 18, 2005) (approving settlement, which amounted to 12.2% of damages, and citing study by Columbia University Law School, which determined that "since 1995, class action settlements have typically recovered between 5.5% and 6.2% of the class members' estimated losses") (internal citations omitted); *see also City of Pontiac Gen. Employees' Ret. Sys. v. Lockheed Martin Corp.*, 954 F. Supp. 2d 276, 280 (S.D.N.Y. 2013) ("while the recovery represents only approximately 10% of the plaintiff's best-case damages model, it is unlikely that, if the case were to go to trial, plaintiff would recover its best-case model."); *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust*, 834 F.2d 677, 682 (7th Cir. 1987) (finding settlement of 10% of the total amount sought is adequate due to risks and costs of trial); *Viceral v. Mistras Group, Inc.*, 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759 *21 (N.D. Cal. Oct. 11, 2016) (settlement payment equal to 11.6% and 5.2% of estimated value of state and federal claims is fair and reasonable in light of strength and variability of claims and risks on merits). Here, the recovery would be excellent even if every Settlement Class Member files a claim.

But the payment here is likely to be much higher. Claims rates in consumer class actions rarely exceed 7%. *See, e.g.*, *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329

[1] The Settlement Fund totals $3 million. Class Counsel requests an attorney's fee of 1/3 plus costs of $6,674.73. Subtracting that amount from the Settlement Fund leaves $1,993,325.27 for distribution to Settlement Class members – or an average of $31.52 for each Settlement Class member, if every one of the 63,227 persons on the Class List files a Claim Form.

n.60 (3d Cir. 2011) (en banc) (noting that the claims rates do not normally exceed 7% "even with the most extensive notice campaigns."); *see also Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 290 (6th Cir. 2016) ("response rates in class actions generally range from 1 to 12 percent, with a median response rate of 5 to 8 percent").

Accordingly, if the claims rate is in line with the 7% expectation identified in *Sullivan*, that would mean claims filed by 4,424 Settlement Class members (63,200 x 7% = 4,424). At that level of claims, each participating Settlement Class Member would receive an average of roughly **$450.57** – again, *after* payment of the requested attorney's fees and expenses. ($1,993,325.27 / 4,424 = $450.57). *See, e.g.*, *Ware v. CKF Enterprises, Inc.*, No. CV 5:19-183-DCR, 2020 WL 2441415, at *13 (E.D. Ky. May 12, 2020) (reasonableness of class action settlement supported because "consultants ***who participate*** will receive a substantial portion of unpaid wages") (emphasis added).

In fact, the recovery for claimants may be even higher than that. In another recent class settlement challenging similar service fees, which was approved by the federal court in Greenbelt, the claims rate was about 1%. *See Sullivan v. YES Energy Management, Inc.*, 8:22-cv-00418-TDC. As a result, claimants in that case were entitled to average payments of more than $1,200.00 apiece. In this case, if the claims rate is 1%, class members could receive more than $3,000 apiece.

The settlement is thus an excellent result for the Settlement Class. Having obtained substantial relief for the Settlement Class, Class Counsel now respectfully requests the standard award of attorney's fees of one-third of the Settlement Fund plus reimbursement of a portion of Class Counsel's litigation costs in the amount of $6,674.73. *See* Carney Aff. ¶ 24.

The requested award is well-supported by decisions including *Headen v. Conservice, LLC*, Case No. CAL20-19314 (Cir. Ct. Pr. George's Co.), in which this Court approved a one-third attorney's fee in another very similar consumer class action brought by these same Class Counsel. Indeed, a one-third fee is the standard award in Maryland, as shown by case after case including *Decohen v. Abbasi, LLC*, 299 F.R.D.

469 (D. Md. 2014), in which Maryland's federal court awarded these same Class Counsel a one-third attorney's fee in similar circumstances. And *Decohen*'s rationale and result has been cited approvingly and followed by numerous courts in Maryland and elsewhere. *See, e.g., Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020) (citing *Decohen*, holding that "a one-third fee is the market rate" for similar class action attorney's fees, awarding of attorney's fees of $4,666,667, which represented one-third of the common fund); *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*, awarding attorney's fee of $20,447,600, which represented one-third of the common fund); *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758, at *5 (M.D.N.C. Sept. 25, 2019) (citing *Decohen*, awarding attorney's fee of $18,166,666.67, which represented one-third of the common fund). Class Counsel here requests the same one-third award approved in *Headen*, *Decohen*, and many other cases.

For all these reasons and the reasons discussed below, Class Counsel's requested fee of one-third of the Settlement Fund is reasonable and should be approved.

II. BACKGROUND

A. Allegations of the Complaint

Representative Plaintiff filed this putative class action lawsuit in the Circuit Court for Prince George's County on March 29, 2024. *See* Complaint. In the Complaint, Plaintiff alleges that NovelPay contracted with residential property managers to collect charges from residents. Those charges that NovelPay allegedly collected include Service Fees for NovelPay's actions as a collection agency. However, Plaintiff alleges that NovelPay should not have collected residential real estate charges from him and should also not have collected additional Service Fees to pay itself for its collection activity, without a collection agency license under MCALA. *See id.*

The Complaint asserts four claims for relief: (1) Violation of the Maryland Consumer Debt Collection Act, Md. Code Ann., Com. Law §§ 14-201 *et seq.*; (2) Violation

of the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 *et seq.*; (3) money had and received; and, (4) unjust enrichment. *See* Complaint.

B. The Litigation

After the filing of the Complaint, Class Counsel promptly began discovery. For instance, Class Counsel propounded interrogatories and requests for production of documents directed to NovelPay. *See* May 17, 2024 Notice of Service of Discovery. In addition, Class Counsel served subpoenas on NovelPay clients, including MCM, Inc., and RGN Management Services, Inc. *See id.* Class Counsel obtained important documents and information as a result of that discovery. *See* Carney Aff. ¶ 11.

After beginning discovery, and after undertaking additional investigation, Class Counsel filed an Amended Complaint which included new allegations, and a new proposed class, challenging NovelPay's alleged failure to obtain the necessary bond for acting as a collection agency from the state of New Jersey. *See* May 31, 2024 Amended Complaint at, *e.g.*, ¶¶ 6-9, 88-96.

Soon after the filing of the Amended Complaint, the parties agreed to attempt a negotiated resolution of the lawsuit via mediation with a retired Judge.

C. The Parties' Settlement Negotiations and Mediation with a Retired Chief Magistrate Judge

The Parties ultimately agreed to engage the Hon. William G. Connelly (Ret.), the former Chief Magistrate Judge of Maryland's federal court, as mediator. *See* Carney Aff. ¶ 12. The parties each submitted mediation statements and information to Judge Connelly in advance, and Judge Connelly conducted a full day of in-person mediation on August 29, 2024. *See id.* The parties were unable to reach agreement at that mediation.

However, the parties agreed to meet again with Judge Connelly in another attempt to reach a compromise. Judge Connelly held another full day of in person mediation on September 29, 2024. *See id.* At that mediation, and under the Judge's supervision, the Parties reached the settlement proposed here.

Considering the nature of the Parties' negotiations, is safe to say that the Parties' efforts to resolve this case were lengthy, intensive, and arms-length. *See also id.* The negotiations between the parties were characterized by substantial compromise on both sides, mutual give-and-take, and the absence of collusion. *See id.* ¶ 13. These extended arms-length efforts to reach compromise resulted in the Settlement Agreement. *See id.*

Prior to mediation, the Parties each conducted extensive research into the applicable facts and law relating to the practices challenged by Representative Plaintiff in this case. For example, Class Counsel engaged in extensive research of the facts and applicable statutory and case law in the course of drafting the Complaint and litigating the case. *See id.* ¶¶ 8-11. Class Counsel obtained relevant information through formal discovery and subpoenaed third-party documents. *See id.* ¶ 11. Furthermore, Class Counsel obtained relevant information about the composition of the Settlement Class from Defendant in preparation for and during the course of mediation. *See id.* ¶ 13.

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 millions of dollars in monetary relief to thousands of Settlement Class members. *See* Settlement Agreement.

D. The Settlement Provides Substantial Relief to Settlement Class Members Despite NovelPay's Defenses

The proposed Settlement recovers $3 million for Settlement Class members' payment of Service Fees – even though the fees were disclosed to Settlement Class members, and even though Settlement Class members agreed to pay them. That is a remarkable result. As mentioned above, if every single Settlement Class member files a claim, each would be entitled to an average cash payment of around $30 – after attorney's fees and costs.

But the actual payment for claimants is likely to be much higher. As discussed above, the average payment could be much more, depending on how many claims are filed.

On top of the substantial cash relief for Settlement Class members, Class Counsel also procured NovelPay's agreement to pay settlement administration expenses – so the Settlement Class will not bear those expenses, and settlement administration will not diminish Settlement Class members' recovery.[2]

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 has prepared and is disseminating notice to Settlement Class Members. Each Notice states that Class Counsel intends to apply for attorneys' fees and expenses in the amount of one-third of the Settlement Fund, plus costs. *See* Final Approval Memo Exhibits 1, 2 & 3 (Settlement Notices). Settlement Class Members will also have the opportunity to review this motion for attorney's fees and other documents, which will be posted on the Settlement Website. *See* Carney Aff. ¶ 23.

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

A. An Award Of Attorney's Fees Is Warranted Under the Common Fund Doctrine

Under the "common fund doctrine," "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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The common fund doctrine is based on the inherent powers of the federal court to "prevent . . . inequity by assessing attorney's fees against the entire fund, thus

[2] NovelPay may recover up to a maximim $150,000 of its out-of-pocket expenses for settlement administration from amounts left in the Settlement Fund (if any), but only *after* all distributions to Settlement Class members have been made. *See* Settlement Agreement ¶ 19(f).

spreading fees proportionately among those benefited by the suit." *Id.* 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); *see also Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 921 F.2d 1371, 1392 (8th Cir. 1990) (same).

A percentage-of-the-fund award is particularly appropriate in cases like this one, in which Class Counsel has a contingent fee agreement with the Representative Plaintiff.

> Class Counsel were not hired on an hourly basis, nor have any of their fees or expenses been paid as would have been required in representation on an hourly basis. Accordingly, this Court will determine the reasonableness of the requested fee using a percentage of the fund approach.

In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig., 2012 WL 5430841, at *2; *see also* Carney Decl. ¶ 16 (Class Counsel have a contingent fee agreement with Representative Plaintiff).

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 35% fee).

Accordingly, as this Court 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 courts 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). As a sister Court in the Fourth Circuit held:

> While the Fourth Circuit has not definitively answered this debate, other districts within this 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.

In re The Mills Corp. Sec. Litig., 265 F.R.D. 246, 260 (E.D. Va. 2009) (*citing Jones v. Dominion Res. Servs.*, 601 F.Supp.2d 756, 758 (S.D.W.Va.2009); *Smith v. Krispy Kreme Doughnut Co*rp., 2007 WL 119157, *1, 2007 U.S. Dist. LEXIS 2392, *3–4, (M.D.N.C. Jan. 10, 2007); *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 787 (E.D. Va. 2001); *Strang et al v. JHM Mortgage Sec. Ltd. P'ship et al.*, 890 F.Supp. 499, 502 (E.D.Va.1995).

Though, 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 legal market for class counsel's services in class action cases:

> 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).

The long history of courts approving an award of a percentage of the settlement fund for class counsel's attorneys' fees recognizes that like other contingency-based litigation, a percentage fee in class litigation best aligns the interests of Class Counsel with those of the Class and rewards counsel for undertaking risky, but ultimately successful, cases. As the leading treatise on class actions observes, "in a common fund case, counsel is typically entitled to a percentage of the fund." 4 Newberg and Rubenstein on Class Actions § 13:7 (6th ed.).

B. The Requested One-Third Award Is the "Market Rate"

The Maryland Supreme Court 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 held that the "market rate" for class action attorney's fees in Maryland 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). As Maryland's federal court held in another case, a request for a one-third fee from a settlement fund is both "common" and "reasonable":

> "[A] request for one-third of a settlement fund [in attorney's fees] is common in this circuit and generally considered reasonable." *Id.* (*citing*

> *Kirkpatrick v. Cardinal Innovations Healthcare Sols.*, 352 F. Supp. 3d 499, 505 (M.D.N.C. 2018)); *see also Phillips v. Triad Guar. Inc.*, 2016 WL 2636289, at *6 (M.D.N.C. May 9, 2016) (collecting cases on percentage-of-recovery fee awards and finding that, generally, attorneys' fee awards between 25% and 33% are reasonable).

Boger v. Citrix Sys., Inc., No. 19-CV-01234-LKG, 2023 WL 1415625, at *9 (D. Md. Jan. 31, 2023). The one-third of a common fund attorney fee award is reasonable even in the "mega-fund" context with a common fund in excess of $100 million. *See, e.g., In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318 RDB, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding attorney's fee of $54.5 million, one-third of the $163.5 million common fund).

Indeed, this Court and other Maryland Circuit Courts have awarded Class Counsel one-third of the common fund in attorneys' fees. *See, e.g.*, Final Approval Memo Exhibits 5 - 19 (including *Headen v. Conservice, Inc.*, Case No. CAL2019314 (Cir. Ct. Pr. George's Co., Dec. 9, 2022) (Snoddy, J.) (awarding Class Counsel attorneys' fees of one-third of common fund, in addition to reimbursement of counsel's out-of-pocket expenses in a consumer class action brought by Class Counsel); *Cottom v. North State Acceptance, LLC*, Case No. 24-C-19005874 (Cir. Ct. Balt. City 2020) (Brown, J.) (same); *Hale v. Mariner Finance, LLC*, Case No. 24-C-18-00053 (Cir Ct. Balt. City 2018) (Brown, J.) (same); *Lendmark Financial Services, LLC v. Cruz*, Case No. 24C17000109 (Cir. Ct. Balt. City 2018) (Brown, J.) (same); *Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2019) (Rubin, J.) (same); *Yang v. G&C Gulf, Inc.,* Case No. 403885V (Cir. Ct. Mont. Co. 2018) (Rubin, J.) (same); *Chalk v. Tower Federal Credit Union*, Case No. 03-C-15-006873 (Cir. Ct. Balt. Co. 2016) (Ensor, J.) (same); *Clinton v. Money One Federal Credit Union*, Case No. 408053V (Cir. Ct. Mont. Co. 2016) (Greenberg, J.) (same); *Sekuler v. Financial Freedom Acquisition, LLC*, Case No. 360327-V (Cir. Ct. Mont. Co. 2013) (Mason, J.) (same); *Schmidt v. Redwood Capital, Inc.*, Case No. 03-C-11-010442 (Cir. Ct. Balt. Co. 2012) (Nagle, J.) (same); *Wuerstlin v. Sandy Spring Bank*, Case No. 335030V (Cir. Ct. Mont. Co. 2011) (Rubin, J.) (same); *Ferrell v. JK III*, Case No. 13-C-03-56836 (Cir. Ct. How. Co. 2011) (Leasure, J.) (same);

Cooper v. United Auto Credit Corp., Case No. 03-C-09000477 (Cir. Ct. Balt. Co. 2011) (Cahill, J.) (same); *Butler v. C&F Finance Co.*, Case No. 03-C-09002127 (Cir. Ct. Balt. Co. 2010) (Stringer, J.) (same); *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 Exhibits 20 through 28 (including *Thomas v. Cameron Mericle, P.A.*, Case No. 8:18-cv-03645-CBD (D.Md. Dec. 4, 2020) (same); *Smith v. Ace Motor Acceptance Corp*., Case No. 1:12-cv-02149-JKS (D. Md. Oct. 7, 2013) (same); *Benway v. Resource Real Estate Services, LLC, et al*., Civil Action No. 1:05-cv-3250-WMN (D. Md. Oct. 12, 2011) (same); *Robinson v. Fountainhead Title Group Corp*., Civil Action No. 03-cv-03106-WMN (D. Md. Oct. 7, 2010) (same); *Brittingham v. Prosperity Mortgage Company*, Case No. 1:09-cv-00826-WMN (D. Md. Apr. 14, 2010); *Watts v. Capital One Auto Finance, Inc*., Civil No. 1:07-cv-03477-CCB (D. Md. Jan 15, 2010) (same); *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, and "the normal rate of compensation." *George v. Kraft Foods Global, Inc*., No. 1:08-cv-3799, 2012 WL 13089487, at *2 (N.D. Ill. Jun. 26, 2012)("[t]he normal rate of compensation in the market [is] 33.33% of the common fund recovered' because the class action market commands contingency fee agreements and the class counsel accepts a substantial risk of nonpayment."); *see also 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.

A. 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 plus expenses is both reasonable and appropriate.

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 NovelPay or its competitors, in Maryland or anywhere else, challenging their actions as a collection agency. Carney Aff. ¶ 18.

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. Class Counsel, however, successfully litigated this case and achieved a superior class-action settlement benefitting many Marylanders. 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, 7), and have been counsel in no fewer than 40 published and officially reported trial and appellate decisions in state and federal courts involving consumer claims. *See id.* 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 351 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. ¶ 21.

Indeed, Class Counsel prosecuted this action on behalf of the Class on a fully contingent basis and at considerable risk, enhancing the opportunity cost. *See id.* ¶ 20. 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; *see also Richendollar v. Bertini,* 27 F.3d 563 (4th Cir. 1994) (characterizing as "typical" a "contingent fee arrangement" under which the plaintiff's attorney "would collect one-third of the settlement.")

The "risk of receiving little or no recovery is a major factor in awarding attorney's fees" in class actions. *Savani v. URS Professional Solutions, LLC*, 121 F.Supp.3d 564, 572 (D.S.C. 2015) (*citing Phillips v. Crown Cent. Petroleum Corp.,* 426 F.Supp. 1156, 1174 (D.Md.1977)). Often, the risk of non-payment is realized, and contingent-fee attorneys like Class Counsel are paid nothing after years of efforts:

> The risk of no recovery in complex cases of this sort is not merely hypothetical. Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs, yet have lost the case despite their advocacy. *See, e.g. Glover v. Standard Fed. Bank,* 283 F.3d 953 (8th Cir.2002) (reversing class certification); *In re Milk Prods. Antitrust Litig.,* 195 F.3d 430, 437–38 (8th Cir.1999) (affirming dismissal of complaint without leave to replead).

Id.

In this case, the risk of non-payment was very real. One of the factors enhancing the risk of non-payment is the "novel nature of th[e] case." *Kelly*, 2020 WL 434473, at *3 (*citing Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *4 (M.D.N.C. Sept. 29, 2016)).

Despite the novel nature of this case, Class Counsel transformed it into a cash recovery for Settlement Class members. Class Counsel shepherded the case into and through mediation. *See* Carney Aff. ¶ 12. After substantial negotiations including two full days of in-person mediation, Class Counsel secured a substantial monetary recovery for Settlement Class members of $3 million.

Furthermore, contingent-fee representation is inherently risky. Percentage fee awards like the one requested here take that risk into account. Here, any recovery for Class Counsel was and is contingent on recovery of money for the claims in this case. *See* Carney Aff. ¶ 20. Class Counsel pursued relief on behalf of the Class on a contingency

basis and negotiated a settlement which includes substantial relief for the Class, all prior to obtaining any compensation. Contingent-fee awards recognize the risk Class Counsel faced here and help keep bad cases out of court. *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 high risk of non-payment is undertaken in a case like this in the expectation that where a case reaches a successful resolution, Class Counsel will be "rewarded for his efforts (if successful) in the form of a significant attorney's fee for results obtained for the benefit of the Class." *Savani*, 121 F.Supp.3d at 572. *See also In re Employee Benefit Plans Securities Litigation*, 1993 WL 330595 (D. Minn. June 2, 1993). (where settlement class members were advised of one-third fee requested and class counsel worked on contingency, "an award of 33 1/3% of the common fund is reasonable.")

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 Plaintiffs and the Class could have been dispositive, made this case risky and recovery uncertain. *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").

Even a victory at trial would not have guaranteed the ultimate success of Representative Plaintiff and the Class, because Defendant no doubt would have pursued

appeals. As a result of the settlement, however, Settlement Class members will be able to receive the benefits of the settlement immediately, without uncertainty or delay. Class Counsel's compensation is entirely dependent upon relief to the Settlement Class, which demonstrates the opportunity costs faced by Class Counsel and supports the contingent fee 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, as described above. The result here is superior – the settlement recovers $3 million for Class members, even though this case is novel and challenges an agreed service fee for making an electronic payment. As a result, Settlement Class members are each entitled to claim a cash award, and each claimant may receive as much as or more than the full amount that they were charged. *See* Settlement Agreement ¶ 19(c)(2) & (d).

In addition, the Class does not bear the burden of the cost of settlement administration. Instead, Class Counsel obtained NovelPay's agreement to fund the administration of the settlement. *See id.* ¶ 18.

Also, Class Counsel secured NovelPay's agreement to become licensed and bonded as required, preventing Settlement Class members from being subjected to further unlicensed collection practices by NovelPay. *See id.* ¶ 21. That relief could not have been obtained at trial.

Finally, Class Counsel secured NovelPay's agreement to fund the incentive payment for the Representative Plaintiff of $15,000 – that is a cost that the Class will not bear, either. *See id.* ¶ 20.

In sum, the settlement marks an excellent recovery for the Settlement Class, and includes prospective relief which could not even have been obtained with a favorable judgment in the Class' favor.

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 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. ¶ 21.

Indeed, under the U.S. Department of Justice's Fitzpatrick Matrix for attorney's fees for the greater Washington, D.C. area, the time expended by Class Counsel in this litigation – more than 351 hours to date – translates into a "lodestar" (or hours multiplied by applicable billing rate) of $280,473.70. *See* **Exhibit 1**, Fitzpatrick Matrix; **Exhibit 2**, Declaration of Brian T. Fitzpatrick (also available at https://www.justice.gov/usao-dc/page/file/1504381/dl?inline (last visited Feb. 8, 2025)). That means that the requested lodestar "multiplier" is 3.56, which is firmly within the "reasonable" range of attorney's fees.

Indeed, where a case involves a contingent fee arrangement like this one, an award of "as much as 20 times a customary hourly rate fee" is appropriate when "the fee agreement was for a contingency." *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 339 (Bankr. D. Md. 2000) (awarding attorney's fee of $71.2 million, a "pure contingency fee of 40%). "Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorney's fee." *Singleton v. Domino's Pizza, LLC,* 976 F. Supp. 2d 665, 689 (D. Md. 2013). For example, in *Decohen*, the

lodestar multiplier was 3.9, higher than this case. And many courts have approved much higher lodestar multipliers. *See Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) (*citing Nieman v. Duke Energy Corp.*, No. 3:12-cv-456-MOC-DSC, 2015 U.S. Dist. LEXIS 148260, at *4 (W.D.N.C. Nov. 2, 2015) ("A multiplies [sic] of 4.5 would, in the circumstances of this case, be inappropriately too low."); *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 766 (S.D. W. Va. 2009) (approving lodestar multiplier between 3.4 and 4.3); *DeLoach v. Philip Morris Cos.*, No. 1:00CV01235, 2003 WL 23094907, at *11 (M.D.N.C. Dec. 19, 2003) (lodestar multiplier of 4.45 "represent[ed] a reasonable fee for the services provided"), *rev'd on other grounds. sub. nom. DeLoach v. Lorillard Tobacco Co.*, 391 F.3d 551 (4th Cir. 2004); *New Eng. Carpenters Health Benefits Fund v. First Databank*, Civil Action No. 05-11148-PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (multiplier of 8.3); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 741–42 (S.D. Tex. 2008) (multiplier of 5.2); *In re Cardinal Health Inc. Sec. Litigs.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (multiplier of 6); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (multiplier of 6.96); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (multiplier of 4.3); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (multiplier of 4.65); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 696 (N.D. Ga. 2001) (multiplier between 2.5 and 4); *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 182 (D. Mass. 1998) (multiplier of 8.9); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 197 (S.D.N.Y. 1997) (multiplier of 5.5); *In re RJR Nabisco Sec. Litig.*, MDL No. 818 (MBM), No. 88 Civ. 7905 (MBM), 1992 WL 210138, at *5 (S.D.N.Y. Aug. 24, 1992) (multiplier of six).

Class Counsel's multiplier here is far less than the many cases discussed above. And that multiplier will only go down as Class Counsel's hours invested in this case continue 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.

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. ¶ 20. 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). 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. Ten years ago, the Hon. William D. Quarles weighed in on Class Counsel's experience and reputation:

> class counsel have significant experience in consumer class action litigation and are nationally recognized for excellence. … Class counsel zealously pursued recovery for the class and litigated efficiently, despite a vigorous defense.

Decohen, 299 F.R.D. at 481–82. In the decade since *Decohen* was decided, Class Counsel's experience in class action litigation has only increased. *See* Carney Decl. at ¶¶ 2-7.

Class Counsel are also still "nationally recognized for excellence," as Judge Quarles recognized in 2014. *Decohen*, 299 F.R.D. 481. Among other things, lead Class Counsel here and in *Decohen* – Benjamin H. Carney – was named 2024 "Lawyer of the Year" in Mass Tort Litigation/Class Actions for Baltimore by *Best Lawyers*, maintains an AV Preeminent Peer Review rating from Martindale-Hubbell, was named a "Leader in Law" by the Daily Record in 2019, was named to the Daily Record's "VIP List" in 2017, is a Fellow of both the American Bar Foundation and the Maryland Bar Foundation, and is named in *SuperLawyers*. *See* Carney Aff. ¶ 2.

Co-counsel Richard S. Gordon has three times has been chosen by *Best Lawyers* as the "Lawyer of the Year" in Mass Tort Litigation/Class Actions for Baltimore (2016, 2018 and 2020). He was elected as a Fellow in the American Bar Foundation and the Litigation Counsel of America. He also maintains an AV Preeminent Peer Review Rating by Martindale-Hubbell, was one of the Daily Record's "Leadership in Law" Honorees in 2017, was honored with the Simon K. Walton Civil Justice Award by the Maryland Association for Justice in 2019 and is named in *SuperLawyers*. *See* Carney Aff. ¶ 6.

Class Counsel also "zealously pursued recovery for the class and litigated efficiently" here, despite the vigorous defense presented. *Decohen*, 299 F.R.D. at 481–82. Defendants retained the services of three able attorneys from one of the top-ranking

law firms in the United States (indeed, in the world) for defense. *See* https://www.venable.com/about/news/2024/04/american-lawyer-magazines-top-100-firms (Venable LLP, with 900 attorneys, placed 64th on The American Lawyer's 2024 Am Law 100 list). And Defendants utilized the considerable resources of their excellent lawyers. Defendants advanced competent and zealous defenses in settlement negotiations.

The defense was not only well-represented, but well-funded. Defendant is a subsidiary of a multi-billion dollar company, RealPage, Inc., so the resources available to the defense in this case are substantial.

Nevertheless, Class Counsel put their experience and reputation to work in this case, achieving a substantial resolution for the Settlement Class despite able and well-funded counsel on the opposing side. 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, and time spent by Class Counsel on this litigation displaced substantial time from other matters. *See* Carney Aff. ¶ 21. 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.

For all of these reasons, the experience and reputation of the lawyers involved supports the requested fee.

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. ¶ 20. 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); *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 339 (Bankr. D. Md. 2000) (40% fee award).

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. ¶ 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 NovelPay 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. THE REQUESTED EXPENSES ARE REASONABLE

"Reasonable costs include 'those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client in the course of providing legal services.'" *Amaya*, 2023 WL 8188628, at *3 (citations omitted). "Generally, courts permit recovery of costs advanced for litigation expenses, including … mediation costs." *Robinson v. Carolina First Bank NA*, No. 7:18-CV-02927-JDA, 2019 WL 2591153, at *17 (D.S.C. June 21, 2019); *see also McClaran v. Carolina Ale House Operating Co., LLC*, No. 3:14-CV-03884-MBS, 2015 WL 5037836, at *5 (D.S.C. Aug. 26, 2015) (same).

Accordingly, Class Counsel respectfully requests that the Court approve payment of $6,674.73 in costs from the common settlement fund, which represents the amount

paid by Class Counsel for the Representative Plaintiff's share of mediation costs. *See* Carney Aff. ¶ 24.

V. CONCLUSION

For the reasons set forth above, Representative Plaintiff respectfully requests that the Court approve payment to Class Counsel of one-third of the common fund as attorney's fees, plus $6,674.73 in mediation costs. The attached proposed Final Order Approving Settlement and Certifying Settlement Class resolves, *inter alia*, this Attorney's Fee Motion.

Respectfully submitted,

/s/ Benjamin H. Carney (ID # 0412140132)

Benjamin H. Carney (ID # 0412140132)
bcarney@GWCfirm.com
Richard S. Gordon (ID # 8912180227)
rgordon@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
11350 McCormick Rd.
Executive Plaza 1, Suite 1000
Hunt Valley, Maryland 21031
Telephone: (410) 825-2300
Facsimile: (410) 825-0066

Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2025, that I served a copy of the foregoing document via the MDEC system on all persons entitled to service.

/s/ Benjamin H. Carney (ID # 0412140132)
Benjamin H. Carney