

QUAN-EN YANG
On His Own Behalf and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

G & C GULF, INC. d/b/a
G&G TOWING, *et al.*

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY, MD.
* Case No. 403885V
*
* TRACK VI
* Hon. Ronald Rubin,
* Specially Assigned
*

RECEIVED

APR 26 2016

Clerk of the Circuit Court
Montgomery County, Md.

* * * * *

**PLAINTIFFS' APPLICATION FOR AN
AWARD OF ATTORNEY'S FEES AND EXPENSES**

Pursuant to MARYLAND RULE 2-231 and Paragraph 18 of the Agreement in this case, Class Counsel in the above-captioned class action respectfully move for this Court to approve an award of attorney's fees of one-third (33⅓%) of the Common Fund as attorney's fees plus reimbursement of \$10,196.71. This application is well within the benchmark applied in similar cases, especially considering the results of this case.

In further support of this Application, Class Counsel submit the accompanying Memorandum of Law and the Affidavit of Richard S. Gordon, lead counsel for the Class, attached as **Exhibit 2** to the contemporaneously filed Memorandum of Law in Support of Motion for Final Approval of Agreement and for Court to Make Findings of Fact and Conclusions of Law, which is incorporated herein.

Dated: April 26, 2016

Richard S. Gordon
rgordon@GWCfirm.com
Benjamin H. Carney
bcarney@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.

102 West Pennsylvania Ave., St. 402
Baltimore, Maryland 21204
(410) 825-2300
(410) 825-0066 (facsimile)

Attorneys for Named Plaintiff and the Class

By: 
Richard S. Gordon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2016, a copy of the foregoing Plaintiffs' Application for an Award of Attorneys' Fees and Expenses and accompanying Memorandum of Law was served by electronic and first-class mail, postage prepaid, on:

Ronald S. Canter
The Law Offices of Ronald S. Canter, LLC
200A Monroe Street, Suite 104
Rockville, Maryland 20850

Frederic J. Einhorn
27 West Jefferson Street
Rockville, Maryland 20850


Richard S. Gordon

QUAN-EN YANG

On His Own Behalf and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

G & C GULF, INC. d/b/a
G&G TOWING, *et al.*

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY, MD.
* Case No. 403885V
*
* TRACK VI
* Hon. Ronald Rubin,
* Specially Assigned
*

* * * * *

**PLAINTIFF’S MEMORANDUM OF LAW
IN SUPPORT OF APPLICATION FOR APPROVAL OF
AWARD OF ATTORNEY’S FEES AND COSTS**

Introduction

Named Plaintiff Quan-en Yang (“Dr. Yang” or “Plaintiff”) (acting individually and on behalf of the Class defined below), who has prosecuted the above-captioned action and negotiated a favorable agreement with Defendant G&C Gulf, Inc., d/b/a G&G Towing (“Defendant” or “G&G Towing”), respectfully submits this Memorandum in Support of their Application for an Award of Attorneys’ Fees and Expenses.

As set forth in this Memorandum, Class Counsel request that the Court award 33⅓% of the Common Fund as attorney’s fees plus reimbursement of \$10,268.71 for counsels’ litigation expenses.¹ Such an award is both appropriate and reasonable, especially considering the history

¹ At this point, the Common Fund includes \$335,000⁰⁰ which was deposited by G&G Towing following Preliminary Approval of the Agreement. Plaintiffs’ request for 33⅓% of the common fund as

and results of this case, as outlined in Part II of this Memorandum, the standards and requirements set forth in the Maryland Rules of Professional Conduct and the actions of other courts in cases discussed herein. *See* Part III.

In the end, the ultimate touchstone of any fee recovery is related to success. It is undeniable that Class Counsels' efforts on behalf of the Class obtained substantial restitution for the Class. As a result of this Agreement, G&G Towing is winding down its business operations in 2016. In addition, G&G Towing has also agreed that the damages awardable to the Class under the Complaint, subject to Court approval, should result in a judgment of Twenty-Two Million Dollars (**\$22,000,000⁰⁰**), and G&G Towing has already paid \$335,000⁰⁰ into the Common Fund in partial satisfaction of the Judgment. *See* Agreement at ¶¶16 (c) & (d). In total, this settlement will benefit nearly 26,000 victims of G&G Towing's predatory practices.

These results justify the award requested. In further support of this application is the affidavit of Richard S. Gordon ("Gordon Aff."), which is attached as **Exhibit 2** to the contemporaneously filed Memorandum of Law in Support of Motion for Final Approval of Agreement and for Court to Make Findings of Fact and Conclusions of Law.

I. BACKGROUND AND PROCEDURAL HISTORY

As the Court is aware, the Agreement in this case partially resolves a consumer class action lawsuit. Plaintiffs allege in the Complaint that G&G Towing and others² employed aggressive

attorney's fees, at this point, is limited to a percentage of the funds as currently deposited – namely, 1/3 of the \$335,000⁰⁰. As the Common Fund increases over time – assuming, of course, that Class Counsel are successful in recovering additional damages from the Parking Lot owners, managers and agents – Plaintiffs expect to ask the Court to award additional fees and costs.

² An Amended Complaint filed on July 27, 2015 (Dkt. No. 36) named Glenn W. Cade, Jr. ("Cade"), the owner of G&G Towing, as an additional Defendant. On January 6, 2016 (Dkt. no. 116), the Court granted Cade's motion, pursuant to Md. Rule 2-503, to sever the claims in this lawsuit asserted against him. Contemporaneous with the filing of this Motion for Attorney's Fees and Costs, Plaintiffs are filing a Second Amended Complaint that adds as defendants in this lawsuit a Defendant Class of Parking Lot owners, managers and agents ("Parking Lot Owners"). As further discovery in this case will establish,

“trespass towing” practices and then ransomed the vehicles of nearly 26,000 persons over a four year period from April 16, 2012 to January 7, 2016. In particular, the Class Action Complaint in this case alleges violations of statutory and common law obligations governing the involuntary/nonconsensual towing of motor vehicles (also known as “trespass towing”) by G&G Towing. Both Maryland’s Towing or Removal of Vehicles from Parking Lots Law, Md. Code Ann., Transp. §21-10A-01 *et seq.* (the “Maryland Towing Act”) and Montgomery County’s Tow Ordinances, Montgomery County Code, § 30C-1, *et seq.* (the “MC Tow Law”), provide significant protections and safeguards for consumers against predatory and aggressive towing practices.

In resolving the portion of this action against G&G Towing, Plaintiffs have achieved a superior result for the Class. As a result of this lawsuit, G&G Towing has agreed that the statutory and common law damages in the Class’ transactions total \$22 million dollars. G&G Towing has not only partially funded the Common Fund with an initial payment of \$335,000⁰⁰, but also has agreed to wind down its business operations by the end of 2016. Moreover, because the Class is obtaining a judgment against G&G Towing, Class members are not giving a release to either G&G Towing or anyone else responsible for the damages recoverable in this case. Thus, Class Counsel have a clear path to add other parties into the suit – such as the Parking Lots Owners – who have derivative liability.

In the end, Class Counsel expect to recover most if not all of the damages reflected in the judgment against G&G Towing and anticipate returning the illegal towing fees, and more, to the Class as this lawsuit enters its next phase. If we are successful, the Agreement will be a remarkable vehicle for the disgorgement of funds paid by Class Members to G&G Towing.

the Parking Lot Owners largely facilitated G&G Towing’s illegal activities and are jointly and severally liable to the Plaintiff Class. *See* Montgomery County Code, § 30C-9(c).

The Agreement also sets up a streamlined process for the Class to establish its case against the Parking Lot Owners, managers and agents. G&G Towing has executed a series of Stipulations, attached as **Exhibit 1-B** to the Agreement, that memorialize a series of indisputable facts, based upon the discovery taken in the lawsuit to date. The Stipulations set forth facts sufficient to establish Plaintiffs' claims (Counts I-X) in the lawsuit, and in particular, that G&G Towing violated a series of duties imposed under the Maryland Tow Act, the MC Tow Law and common law. Agreement at ¶16(a).

Finally, recognizing that some Class members can no longer be located and that there may be some Class members who fail to cash their settlement checks when funds are added to the Common Fund, the Agreement provides that any monies that remain unclaimed or undistributed from the Common Fund will be given to a *cy pres* fund and, in turn distributed to non-profit 501(c)(3) institutions to be approved by the Court. The parties have agreed that, with the approval of the Court, the residue funds be distributed as *cy pres* awards to four charitable organizations: Maryland Consumer Rights Coalition, Civil Justice, Inc., Vehicles for Change and the University of Maryland Francis King Carey School of Law.

This Agreement is the result of diligent and efficient efforts by Class Counsel, who have accomplished a great deal in the year that this case has been pending. It is especially beneficial to the Class, considering the real risks faced in this case. Plaintiffs were by no means assured of victory. G&G Towing, represented by experienced counsel, would have contested liability and damages under a wide variety of theories. G&G Towing also would have strenuously contested class certification and vigorously litigated any trial.

Throughout the litigation, Class Counsel struck a balance between an active and aggressive litigation strategy on behalf of the Class on the one hand, and a responsible approach to negotiations on the other. Class Counsel, for example, conducted an in-depth investigation of

the case and the transactions of Class members, conducted extensive discovery, took numerous depositions, obtained and reviewed tens of thousands of pages of documents (produced by G&G Towing and third parties) relating to the trespass tows of the Class members, conducted extensive research into the applicable law with respect to the issues raised in the Complaint, and interviewed many witnesses with knowledge of G&G Towing's practices.

Class Counsel, however, also engaged counsel for G&G Towing in lengthy, arduous and intense arm's-length settlement negotiations which resulted in the proposed Agreement.

After this Court granted preliminary approval to the Agreement, the Escrow Administrator, Strategic Claims Services (located in Media, Pennsylvania), used G&G Towing's electronic records to compile the Class List, mailed notice of the proposed Agreement to the Class Members from the nearly 26,000 tows on the Class List. The mailed Notice specifically notified the Class that Plaintiffs' counsel intended to apply for attorneys' fees from the Common Fund.

Since the mailing of the Class Notice, Class counsel's office has fielded hundreds of telephone calls and letters from Class Members. Class Counsel have provided advice to Class Members on the future course of this litigation, clarified the terms of the Agreement and answered questions relating to the protocol for receiving a reimbursement of their towing fees in the future. Because this litigation will continue against other parties, there is no doubt that Class Counsel's involvement and interaction with the Class will continue well beyond the date of final approval. Class Counsel's work in this case is far from over.³

³ As important, as a result of the notice process following preliminary approval, the Agreement facilitated the opening of a significant and real line of communication between Class Counsel and the Class. Class Counsel had great success in identifying and locating the Class using the information and data produced during discovery – the Vehicle Identification Number (VIN), license plate and the date of the tow. With this information alone, Class Counsel have located and provided notice to more than 85% of the Class and more than 6,350 Class Members have visited the official website for this case –

Based upon the criteria described below, and taking into account the results achieved and the actions taken by Class Counsel in prosecuting this case, Class Counsel submit that their application is reasonable and appropriate and should be granted.

II. LEGAL STANDARDS GOVERNING THE AWARD OF ATTORNEYS' FEES

A. Percentage Awards of Attorney's Fees from Common Funds are Commonplace

Our legal system has long recognized as a fundamental principle of fairness that attorneys who produce or preserve a common fund or confer a substantial benefit upon others should receive a fair award of attorney's fees. *See e.g., Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1976) (“To allow the others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses, would be to enrich the others unjustly at the plaintiff's expense”); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980) (“persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense”). Where, as in this case, the Agreement results in substantial relief and the establishment of a common fund – one which will ultimately benefit the nearly 26,000 Class Members – such an award is particularly appropriate. As one court noted in memorable language, a fee award is awarded in such circumstances 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).

www.TowingClassAction.com. In addition, more than 535 Class Members have called and spoken with Class Counsel's office. Gordon Aff., ¶¶27-29. These Class Members have provided valuable information that will assist Class Counsel in pursuing the Parking Lot Owners and holding them financially accountable for G&G Towing's illegal acts.

The general approach is that attorney's fees are awarded as a percentage of the common fund. *DeCohen v. Abbasi, LLC*, 299 F.R.D. 469, 480-81 (D.Md. 2014). Courts have mandated the percentage of recovery method for determining appropriate fees in common fund cases, and have typically awarded between 25% and 40%. See e.g. *Waters v. International Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *Williams v. MGM-Pathe Communications, Co.*, 129 F.3d 1026 (9th Cir. 1997); *Aguinaga v. United Food and Commercial Workers International Union*, 993 F.2d 1480, 1482 (10th Cir. 1993) (quoting *Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973)) ("successful plaintiff is awarded attorneys' fees because his suit creates 'a common fund, the economic benefit of which is shared by all members of the class'"); *Swedish Hospital Corporations v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993); *Camden I Condominium Association v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Edmonds v. United States*, 658 F. Supp. 1126 (D.S.C. 1987) (noting that the percentage-of-the-fund method is the preferable approach to use in determining a reasonable fee in common fund cases).

B. The Factors in Determining an Appropriate Percentage Fee Award from the Common Fund

The factors that will affect the appropriate percentage to be awarded as a fee in any particular case are relatively similar from jurisdiction to jurisdiction. *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). As Professor Newberg notes:

No general rule can be articulated on what is a reasonable percentage of a common fund. A district court may use its discretionary powers to determine what is a reasonable and fair award from a common fund, where the fund itself represents the benchmark from which reasonableness is measured. Usually 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented.

4 H. Newberg and A. Conte, *Newberg on Class Actions*, § 14:6. In the end, the methodology for awarding attorney's fees to class counsel will vary depending upon the case and the nature of the

recovery by the class and several different methods for analyzing the reasonableness of the fee “may be appropriate depending upon the circumstances.” *In re Washington Public Power Supply System Litigation*, 19 F.3d 1291, 1295 (9th Cir. 1994).

The 33⅓% award requested in this case is in line with the award in the cases cited above, and is identical to awards approved numerous times in Maryland Circuit Courts. *See e.g. Ferrell v. JK III*, Case No. 13-C-03-56836 (Cir. Ct. Howard Co. April 7, 2011) (awarding 33⅓% to class counsel *in addition to* reimbursement of counsel’s out-of-pocket expenses in a consumer class action) (Leisure, J.); *Cooper v. United Auto Credit Corp.*, Case No. 03-C-09000477 (Cir. Ct. Balt. Co. Jan. 11, 2011) (awarding 33⅓% to class counsel *in addition to* reimbursement of counsel’s out-of-pocket expenses in a consumer class action); *Taylor v. Savings First Mortgage, LLC*, Case No. 24-C-02001635 (Cir. Ct. Balt. City. Apr. 15, 2010) (same) (Glynn, J.); *Greer v. Crown Tile Corp.*, Case No. 24-C-02001227 (Cir. Ct. Balt. City) (2005) (awarding 33⅓% to class counsel *in addition to* reimbursement of counsel’s out-of-pocket expenses) (Noel, J.); *LeBrun v. Nationwide Motor Sales Corp.*, Case No. 03-C-02-005144 (Cir. Ct. Balt. County) (2005) (awarding 33⅓% to class counsel in consumer class action *in addition to* reimbursement of counsel’s out-of-pocket expenses) (Byrnes, J.); *Dua v. Comcast Cable Communications*, Case No. 03-C-99-002158 (Cir. Ct. Balt. County) (2003) (awarding 33⅓% to class counsel in consumer class action *in addition to* reimbursement of counsel’s out-of-pocket expenses) (Byrnes, J.); *Duffy v. Jerry’s Chevrolet*, Case No. 03-C-00-008650 (Cir. Ct. Balt. County, Settled 2002) (Dugan, J.) (33⅓% fee); *Gilleland v. Blue Cross and Blue Shield of Maryland, Inc.*, Case No. 03-C-95-011918 (Cir. Ct. Balt. County, Settled 1998) (Bollinger, J.) (33⅓% of fund); *Berger v. First National Bank of Maryland*, Case No. 85-CG-2289 (Cir. Ct. Balt. County, Settled 1987) (Fader, J.) (awarding 33⅓% of fund in a class action); *Talbot v. Mid-Atlantic Coke Coca-Cola Bottling Co, Inc.*, Case No. 87-CG-4888 (Cir. Ct. Balt. County, Settled 1993) (Nickerson, J.) (same).

The 33⅓% is also identical to awards approved by the U.S. District Court for the District of Maryland. *See e.g., DeCohen*, 299 F.R.D. at 483.

Ultimately, the efforts of counsel and the results achieved for the Class must be considered in the context of the individual case. *United Cable Television of Baltimore v. Burch*, 354 Md. 658, 686-87, 732 A.2d 887, 902-903 (1999). In *Burch*, which provided for a \$7.6 million fund in a Class action brought in the Circuit Court for Baltimore City alleging overcharges by the City's cable television provider, Judge Rodowsky noted that the ultimate fee award in a case is within the sound discretion of the Court:

There is no need in the present case for this Court to mandate a particular methodology. As the circuit court described its process, it determined the award basically as a percentage of the fund, and then checked that result against the factors in Model Rule of Professional Conduct 1.5(a). This is a blend of the approaches advocated by the parties, and, as a methodology, it was within the discretion of the circuit court.

354 Md. at 687, 732 A.2d at 903.

Maryland Rule of Professional Conduct 1.5 provides the following general guidelines for determining the reasonableness of attorneys 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, it is clear that the request for attorney's fees in the amount of 33⅓% of the Common Fund is both reasonable and appropriate.

(i) **This Matter Was Time Intensive and Involved Novel and Difficult Legal Issues**

Class Counsel achieved a superior resolution against G&G Towing. The Agreement confers a financial benefit on the Class. In reaching terms on an Agreement – and having G&G Towing agree to establish a Common Fund – Class Counsel faced numerous difficult and novel legal questions involving, *inter alia*, proof of harm, measuring damages for the Class, and the methodology for determining Class membership. Indeed, the settlement negotiations themselves were intensive and required the expert mediation skills, over two days, of Honorable Irma Raker.

The legal theories were not only novel but went to the core of G&G Towing's business model. Although the Court of Special Appeals in *T.R. Ltd. v. Lee*, 55 Md.App. 629, 627 (1983) held that Maryland law does not establish a possessory lien in favor of towing companies, either by statute or at common law, G&G Towing ignored this clear precedent for more than 30 years. *See also Cade, t/a G&G Towing v. Montgomery County*, 83 Md. App. 419, 427 (1990) (G&G Towing acknowledging that no possessory lien exists in Maryland). Despite Defendants' concession in *Cade*, G&G Towing – **for the next 25 years** – continued to condition the return of possession of trespass towed vehicles to their owners on payment of what G&G Towing demanded.

Because the legal action was central to G&G Towing's existence, litigation was hard fought, protracted and intensive. Class Counsel faced significant opposition from experienced defense counsel who understood that the essence of G&G Towing's business model was at risk. As a result, G&G Towing contested virtually every discovery request and motion. It also filed a comprehensive motion in an attempt to dismiss the action.

To meet G&G Towing's aggressive approach, Class Counsel took a hard-hitting approach to discovery. Plaintiffs took numerous depositions, pursued written discovery and issued more than 60 subpoenas to third party witnesses and Parking Lot Owners. Class Counsel

also reviewed hundreds of complaints against G&G Towing filed with the Montgomery County Office of Consumer Protection and expended significant time preparing for and participating in mediation sessions in this case.

It is unquestionable that the results achieved in this case would not have been possible without the determination and mixed talent and skills of the representation provided by private counsel throughout the litigation.

Given the scope of G&G Towing's illegal acts – which victimized nearly 26,000 persons in Montgomery County from April 2012 to January 2016 – Plaintiffs also took significant steps to preserve the Class' rights against others who may have liability in this case. After reviewing G&G Towing's database – which included a comprehensive list of all towing fees collected by G&G Towing – Plaintiffs determined that the damages in this case were roughly \$22 million. Class Counsel took great care during the mediation, and with the assistance of Judge Raker, to craft an Agreement that, on the one hand, collected a significant sum from G&G Towing directly – \$335,00000 paid into the Common Fund – while, on the other hand, permitted Class Counsel to continue this litigation against other parties who have derivative liability. Thus, even though this proposed Agreement will resolve the Class' claims against G&G Towing, the litigation will continue against the Parking Lot Owners.⁴

All tolled, Class Counsel have already expended more than 600 lawyers' hours on this litigation to date, and anticipate that this Agreement will require the dedication of significantly more time going forward. *See Gordon Aff.*, ¶ 37.

⁴ In addition to their liability under principal-agent, aider-abettor and conspiracy theories, for **any and all violations** of the MC Tow Law, the “property owner and [] towing service are **jointly and severally liable**,” for “3 times the amount of any towing, release or storage fees charged.” MC Tow Law, § 30C-9 (emphasis added).

(ii) Opportunity Costs

Class Counsel's representation of Named Plaintiff and the Class in this matter has been, and will continue to be, a significant undertaking, requiring substantial time and attention. It is readily apparent from the Gordon Affidavit, that time spent by counsel on this litigation – *more than 600 hours already* – displaced time from other matters. Indeed 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. This factor militates in favor of a substantial fee award.

(iii) The Fee Requested is Within the Range of Awards in Similar Cases Both in and out of Maryland

The fee requested, one-third ($\frac{1}{3}$) of the Common Fund, 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 noted above, it is identical to the awards approved by this Court and other Courts in Maryland in many other cases.

The requested percentage award is also well within the range allowed in Class actions by courts in other circuits and states. *See e.g., DeCohen v. Abbasi, LLC*, 299 F.R.D. 469, 480-81 (D.Md. 2014) (awarding 33 $\frac{1}{3}$ % of the common fund); *Smith v. FMC Corp*, 225 F. Supp. 2d 707 (S.D. W. Va. 2002) (awarding fees and cost equaling 48.7% of the Class settlement fund); *Gaskill v. Gordon*, 942 F. Supp. 382 (N.D. Ill. 1996) (awarding 38%); *Goodrich v. E.F. Hutton Group, Inc*, 681 A.2d 1039 (Del. 1996) (awarding fees of 33 $\frac{1}{3}$ % of gross amount paid out to claimants).

In line with these cases, the application for a fee of 33 $\frac{1}{3}$ % of the total value of the Common Fund for Class Counsel's attorney's fees is reasonable.

(iv) The Results Obtained for the Class Were Superior

The Agreement in this case is multi-faceted and provides the Plaintiff Class with substantial relief. Although the benefits are outlined above, *see* Part II, it is worth repeating that the Agreement, with Court approval, will result in a judgment of \$22 million and G&G Towing has already paid \$335,000⁰⁰ in partial satisfaction of the judgment. In addition, G&G Towing will be winding down its business and closing its doors in 2016.

Equally significant, the Agreement is structured so as to maximize the likelihood that the Class will collect upon the \$22 million judgment in the future. The Class in this regard has not given up any of their rights in respect of the continued litigation and has not even agreed to a release *of any kind* in G&G Towing's favor.

Moreover, the parties have agreed that in the future any residue of the Common Fund will not be returned to G&G Towing, but rather will be distributed to charities through a *cy pres* fund. The non-profit institutions proposed to receive these funds – Maryland Consumer Rights Coalition, Civil Justice, Inc., Vehicles for Change and the University of Maryland Francis King Carey School of Law – provide important legal assistance to consumers throughout Maryland. In the current atmosphere of economic crisis and the concomitant cutbacks in funding for organizations that assist the poor, it is appropriate that the *cy pres* award – “derived from the Norman French expression *cy pres comme possible*, which means ‘as near as possible’” – be devoted to an organization that fits that purpose. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm’n*, 84 F.3d 451, 455 n.1 (D.C. Cir. 1996). The Maryland Consumer Rights Coalition, Civil Justice, Inc., Vehicles for Change and the University of Maryland Francis King Carey School of Law are appropriate recipients considering the services that they provide to consumers around the state.

(v) The Time Limitations Imposed on Counsel

As noted above, this matter required a significant dedication of time on the part of Class Counsel. As described in the Gordon Aff. ¶ 37, Class Counsel spent hundreds of hours reviewing records, crafting legal theories, litigating the substantive issues, and addressing the issues and concerns of Class Members in connection with the Agreement.

(vi) The Nature of the Relationship Between the Attorneys and the Class

The settlement achieved in this case is demonstrative of the relationship between Class Counsel and the Class. The Class in this case is thrilled at the outcome. Although money will not be distributed to the Class during this phase of the litigation, Class Members have expressed to Class Counsel their appreciation that G&G Towing was finally taken to task. Class Members appreciate that G&G Towing's contribution to the Common Fund is real and substantial; and Class Members look forward to assisting Class Counsel in pursuing the Parking Lot Owners for the remainder of the damages assessed against G&G Towing. Gordon Aff. at ¶ 29.

Although Class Counsel has been litigating consumer class actions for more than 25 years, we have rarely seen the reaction to an Agreement like the reaction of the Class here. Class Members fully understand that no monies will be distributed at this time. Nonetheless, they appreciate that, through the proposed Agreement, G&G Towing is paying significantly – both monetarily and otherwise – for its many years of abusive conduct. They also look forward to cooperating with and assisting Class Counsel in the pursuit of the Parking Lot Owners as this litigation enters its next phase.

(vii) Plaintiffs' Counsel are Experienced and Reputable

The standing and prior experience of Class Counsel are also relevant in determining fair compensation. Class Counsel are recognized nationally as leading and skillful practitioners in the

field of complex Class actions. *See* Gordon Affidavit. The fact that the Named Plaintiffs were competently represented undoubtedly played a role in bringing G&G Towing to the settlement table.

(viii) The Recovery was Completely Contingent

Class Counsel prosecuted this action on behalf of their clients on a fully contingent basis and at considerable risk. If this were non-Class action litigation, the customary fee arrangement would be contingent, based upon a percentage of the recovery, typically in the 33½ to 40 percent range. *See e.g., Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986); *Cf Collins v. United Pacific Ins. Co.*, 315 Md. 141, 154, 553 A.2d 707, 713 (1989) (finding that one-third contingent fee is customary and reasonable in Maryland). During the time that this case was pending, Class Counsel received no compensation, while expending substantial funds and resources for the benefit of the Class. As important, had the Plaintiffs lost, counsel would have received no compensation either from the Named Plaintiff or the Class.

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 filed Agreement dated December 30, 2015, and are discussed in more detail in the pleadings – filed contemporaneously with this Application for Award of Attorney’s Fees and Expenses – requesting the Court to confirm the Agreement. Suffice it to say that the multitude of legal issues in this case, any one of which, if resolved against the Class Representatives – including class certification – could have been dispositive, made this case risky and recovery uncertain.

Even a victory at trial would not have guaranteed the ultimate success of Plaintiffs and the Class, since Defendant no doubt would have pursued appeals. As a result of the Agreement, however, Class Members will be able to receive some benefits 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 Plaintiffs’ counsel in a Class action case”).

III. PLAINTIFFS’ COUNSELS’ REQUEST FOR REIMBURSEMENT OF LITIGATION EXPENSES SHOULD BE APPROVED

Class Counsel request that they be reimbursed from the Settlement Fund for the total cost and expense incurred in connection with this action, in the amount of \$10,268.71. The requested amount is reasonable in light of the status of the litigation at the time of resolution, and represents the actual expenses incurred by the law firm representing the Named Plaintiff and class. *See* Gordon Aff. at ¶ 38-41. The expenses incurred in this case were reasonable and necessary in order to obtain the successful result. *In re Mid-Atlantic Toyota Antitrust Litigation*, 605 F. Supp. 440, 448 (D. Md. 1984) (prevailing party entitled to traditional costs and expenses where they were crucial to the resolution of the case); 4 H. Newberg, *Newberg on Class Actions*, §14:2 (4th ed. 2003) (noting that “it is long settled, based largely on windfall and unjust enrichment principles, that the attorneys who created that Class recovery are entitled to be reimbursed from the common fund for their reasonable litigation expenses”).

As the court noted in *Strang v. JHM Mortgage Sec. Ltd. Partnership*, 890 F. Supp. 499 (E.D. Va. 1995), the award of costs is to be paid from the Common Fund and “should be borne equally by the beneficiaries of the Class action.” *Id.* at 503.

IV. CONCLUSION

This Application seeks amounts that are reasonable when considered in light of the applicable criteria. Accordingly, Class Counsel respectfully request that the Court award attorneys' fees of one-third (33 $\frac{1}{3}$ %) of the Common Fund and reimbursement of litigation expenses of \$10,268.71.

Dated: April 26, 2016

Richard S. Gordon
rgordon@GWCfirm.com
Benjamin H. Carney
bcarney@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
102 West Pennsylvania Ave., St. 402
Baltimore, Maryland 21204
(410) 825-2300
(410) 825-0066 (facsimile)

Attorneys for Named Plaintiff and the Class

By:


Richard S. Gordon