

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 B. Rubin,
* Specially Assigned

* * * * *

**PETITION FOR AN INCENTIVE AWARD
TO NAMED CLASS REPRESENTATIVE
MATTHEW LEWIS**

Plaintiffs hereby request that the Court approve an incentive award of \$5,000⁰⁰ for Class Representative Matthew Lewis, to be paid from the Common Fund. The requested award is reasonable based on the Compromise achieved for the Class as a direct result of the Class Representative's efforts. Further support for this award is set forth in the accompanying Memorandum of Law.

Dated: July 26, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, this 26th day of July, 2019, that I served a copy of the foregoing Petition for Incentive Award to Named Class Representative Matthew Lewis and accompanying Memorandum of Law via electronic and first-class mail, postage pre-paid, on the following:


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**MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR AN INCENTIVE AWARD
TO THE NAMED CLASS REPRESENTATIVE
MATTHEW LEWIS**

I. INTRODUCTION

Plaintiff Class Counsel ask this Court to approve an incentive award of \$5,000⁰⁰ for the Class Representative Matthew Lewis (“Mr. Lewis”), to be paid from the Common Fund. This type of award is both permissible and reasonable where, as here, a class action has achieved a significant benefit for a large number of people.¹

¹ Earlier in this litigation, the Court awarded a \$7,500⁰⁰ incentive payment to the original Named Plaintiff Class Representative, Quan-en Yang (“Yang”). *See* Dkt. No. 144 at ¶13. Dr. Yang was instrumental in: (a) securing the \$22 million Judgment against G&C Gulf, Inc. f/d/b/a G&G Towing and (b) putting G&G Towing out of business. Additionally, the Court Awarded an aggregate incentive payment of \$5000⁰⁰ to Class Representatives Mary Pelz (“Pelz”) and Darcy Pelz-Butler (“Pelz-Butler”) in conjunction with the 2017 Settlement Agreement (Dkt. No.369) – which recovered additional funds for the Plaintiff Class from the Parking Lot Owners, Managers and Agents (who are jointly and severally liable for the amounts owed under the Judgment). The 2019 Proposed Compromise of Plaintiffs’ Claims does not provide for incentive payments to Yang, Pelz or Pelz-Butler.

There would not have been an agreement and recovery in this action without the participation of Mr. Lewis. It bears reiteration here that under the 2019 Proposed Compromise of Plaintiffs' Claims ("Compromise"), each Defendant Settlement Class member will pay the Common Fund \$72⁰⁰ per tow for each tow that occurred between April 16, 2012 and April 25, 2013 and \$400⁰⁰ per tow for each tow that occurred between April 26, 2013 and June 23, 2017. Plaintiffs believe that the payments recovered through this protocol will go a long way towards satisfying the \$22 million Judgment entered in May 2016 in favor of the Plaintiff Class in this case. *See* Dkt. No. 144. Indeed, Plaintiffs expect that Compromise has the potential to fully resolve this litigation.

The proposed \$5,000⁰⁰ incentive award is modest considering that, unlike the absent Class members, the Class Representative cooperated with Class Counsel and expended substantial effort to see this case through to resolution. The Class Representative provided valuable documentation and information to counsel relating to the legal violations in this case and was prepared to give deposition and trial testimony. In addition, Mr. Lewis's participation in this case is not yet over. He intends to continue his participation in this matter, all for the benefit of the Plaintiff Class, if any remaining Defendant Class members choose not to accept the Compromise and Plaintiff Class Counsel proceeds against them in litigation.

II. ARGUMENT

A. Courts Have Traditionally Awarded Incentive Payments in Class Actions

The award of incentive payments to named class representatives has been approved in a long line of cases under circumstances similar to those in this case. Two themes occur repeatedly in the many opinions approving incentive payments: First, it is important to encourage named

representatives to bring class actions because of the benefits they confer; and second, it is just to reward named class representatives for their work and effort on behalf of the class.

Both of these themes were articulated in *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270 (S.D. Ohio 1997), in which the court approved a \$25,000⁰⁰ incentive payment to each of the class representatives from a recovery of \$4.1 million. In *In re Southern Ohio Correctional Facility*, the court noted that:

[I]ncentive awards are not uncommon in class action litigation and particularly where, as here, a common fund has been created for the benefit of the entire class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.

Id. at 272. The court continued:

[M]any of the reasons given for approving incentive awards relate to the services rendered and the risks incurred by the class representatives on behalf of the class during the course of the litigation and settlement. As long as the services rendered are reasonable and relevant to the furtherance of the class' interests in the litigation, such compensation given to named plaintiffs is not unlike the fee awards given to experts, consultants or investigators which are reimbursable as a litigation expense from common funds; both compensate non-lawyers for services rendered in aid of the litigation.

Id. at 275.

Likewise, in *Meredith v. Mid-Atlantic Coca-Cola Bottling Co.*, Nos. 89-00302 and 89-00525, 13 Class Action Rep. 498 (E.D. Va. May 1 and June 18, 1990), Judge Merhige approved an \$18,000⁰⁰ incentive bonus payment to the named representatives, from a \$4.6 million recovery, declaring that without the named representatives' efforts, "no class member . . . would have recovered anything." Judge Merhige noted that "each worked closely with counsel" and that such awards have "been approved in a number of cases under circumstances similar to" those in *Meredith*. More significantly, Judge Merhige explained that "[i]f we are going to break up conduct

such as what was alleged in this case, somebody has got to do something about it,” and we must “encourage the little people to come forward”

The significant benefits conferred by class representatives was also stressed by the court in *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D. Ohio 1991), where the court approved incentive awards of \$50,000⁰⁰ to each of six class representatives as “fair, reasonable and warranted.” The court noted:

In this case, the Class Representatives have taken actions which have protected the interests of the Class Members and which have resulted in a Settlement that provides substantial economic and noneconomic benefits for the Class Members.

Id. See also *Gray v. Fountainhead Title*, Civil Action No. WMN 03-cv-01675 (D. Md. 2004) (Nickerson, J.) (approving \$5,000⁰⁰ incentive payments to named plaintiffs); *Naughton v. Millennium Escrow and Title*, Civil Action No. WMN 02-cv-3238 (D. Md. 2003) (Nickerson, J.) (same); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (approving incentive award in excess of \$60,000⁰⁰ to be awarded to seven named plaintiffs and noting that “courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation”); *Roberts, et al. v. Texaco*, 979 F. Supp. 185, 205 (S.D.N.Y. 1997) (approving incentive awards of \$50,000⁰⁰ to \$85,000⁰⁰ to the named plaintiffs who initiated the lawsuit); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Calif. 1995) (awarding \$50,000⁰⁰ to class representatives, where there was a \$76 million settlement fund); *In re Domestic Air Transp. Antitrust Litigation*, 148 F.R.D. 297, 357-58 (N.D. Ga. 1993) (awarding \$142,500⁰⁰ to class representatives, where there was a \$50 million settlement fund); *In re Dun & Bradstreet Credit Serv. Customer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (approving incentive awards of \$35,000⁰⁰ to \$55,000⁰⁰ for class representatives).

Likewise, in *In re Jackson Lockdown/MCO Cases*, 107 F.R.D. 703, 710 (E.D. Mich. 1985), the court stated:

[T]he Sixth Circuit has recognized the propriety of rewarding members of a class who protested and helped bring rights to a group who had been victims of discrimination. Active protesters were contrasted to protesters who were merely passive and indicated no particular desire to bring an end to a discriminatory policy.

(citations omitted). The court thus approved an incentive award, stating: “The Named Plaintiffs who stepped forward are responsible for the results achieved in the settlement of this litigation and are entitled in the proposed consent judgment to be preferred over the class as a whole.” *Id.*

B. The Maryland Courts Are in Line with Other Jurisdictions in Awarding Incentive Payments to Class Representatives

Maryland courts likewise have agreed with the sound policies underlying the award of incentive payments to named class representatives. The state courts throughout Maryland have consistently awarded incentive payments to named plaintiffs in class litigation. *See, e.g., Brown, et al. v. Deer Automotive t/a Liberty Ford*, case no. 03-C-15-002637 OC (Cir. Ct. Balt. Co. August 1, 2017) (Howe, J.) (approving incentive award of \$5,000⁰⁰ to class representatives); *Montgomery v. Driftwood Automotive t/a Northwest Honda*, case no. Case No. 03-C-13-008147 (Cir. Ct. Balt. Co. February 28, 2017) (Howe, J.) (approving incentive awards totaling \$27,500⁰⁰ to 5 class representatives); *Baker v. Antwerpen Motorcars Ltd.*, Case No. 03-C-12-004806 (Cir. Ct. Balt. Co. Mar. 27, 2013) (approving two incentive awards of \$7,500⁰⁰ to class representatives); *Ferrell v. JK III*, Case No. 13-C-03-56836 (Cir. Ct. Howard Co. 2011) (Leasure, J.) (approving total incentive awards of \$30,000⁰⁰ - \$7,500⁰⁰ to each of four class representatives); *Jones v. Pohanka Auto North*, Case No. 316574V (Cir. Ct. Mont. Co. May 16, 2011) (Rubin, J.) (approving total incentive awards of \$37,500⁰⁰, \$7,500⁰⁰ to each of five class representatives); *Rogers v. Criswell Chevrolet, Inc., et al.*, Case No. 356716V (Cir. Ct. Mont. Co. Nov. 19, 2012) (Mason, J.) (approving incentive award of \$7,500⁰⁰); *Sekuler v. Financial Freedom Acquisition, LLC*, Case No. 360327V (Cir. Ct. Mont. Co. Feb. 5, 2013) (approving incentive award of \$2,500⁰⁰ to class representative); *McNab v.*

Pohanka Auto North, case no. 349467V (Cir. Ct. Mont. Co. April 2012) (Rubin, J.)(approving incentive award of \$7,500⁰⁰ to class representative).

Maryland's federal court has also approved similar incentive payments in consumer class actions. *See, e.g., Decohen*, 299 F.R.D. 469 (D.Md. 2014) (approving \$10,000⁰⁰ incentive award to class representative); *Osinaga, et al. v. Whiteford Taylor & Preston LLP, et al.*, Case No. 8:17-cv-03750-PWG (D. Md. 2019)(approving \$4,000⁰⁰ incentive award to class representative).

The basis for the award of the incentive fees in the state court cases are the same principles guiding the Federal courts. As stated recently in *Sheppard v. Consolidated Edison Co. of New York, Inc.*, 2002 WL 20033206, *6 (E.D.N.Y. 2002):

In awarding these payments as part of a settlement, a court must ensure that the named plaintiffs, as fiduciaries to the class, have not been tempted to receive high incentive awards in exchange for accepting suboptimal settlements for absent class members.

In this case, the relief provided by the Compromise is anything **but** suboptimal and would not have been achieved without Mr. Lewis' participation and effort.

III. CONCLUSION

Mr. Lewis pursued this case – and will continue to do so if necessary – vigorously and successfully on behalf of the Plaintiff Class. He participated fully in the discovery and investigative process and was instrumental in bringing about a Compromise which, we expect, will significantly benefit more than 12,716 Plaintiff Class members whose vehicles were trespassed by G&G Towing off of Parking Lots owned or managed by the members of the Defendant Settlement Class. The amount requested is also well within bounds that have been approved in

other courts which have considered the issue. For all these reasons, the requested incentive award is reasonable and Class Representative requests that it be approved.

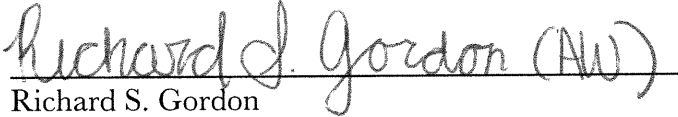
Respectfully submitted,

Dated: July 26, 2019

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