IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DANA SCHWARTZ, on behalf of herself and all others similarly situated,

Plaintiff,

v.

No. 1:18-CV-00328-KWR-SCY

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, AND STATE FARM GENERAL INSURANCE COMPANY,

Defendants.

UNOPPOSED MOTION FOR CLASS PLAINTIFF'S ATTORNEYS' FEES AND COSTS AND AWARD OF INCENTIVE FEE TO NAMED PLAINTIFF

Plaintiff Dana Schwartz, for herself and on behalf of the prospective class defined herein, through her counsel of record, Dominguez Law Firm (Paul M. Dominguez), Justin Pizzonia Law (Justin P. Pizzonia), and The Law Office of Ryan J. Vila (Ryan J. Villa), and respectfully moves this Court for an order of attorney's fees, costs, and incentive award to the named Plaintiff, pursuant to Fed. R. Civ. P. 23(h) and the Settlement Agreement [Doc. 161-1] reached by the parties and before the Court for final approval. The Settlement Agreement is incorporated by reference herein. The factual background is set out in Plaintiff's Unopposed Motion for Order [Doc. 161], which is incorporated by reference herein.

Defendants State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company, and State Farm General Insurance Company (the three Defendants are defined and referred to herein as "State Farm") have agreed that they will not object to an award of attorneys' fees and reimbursement of expenses of $4,250,000.00. Further, State Farm agrees that it will pay the allowed fees and reimbursed expenses over and above all sums that it will pay to members of the class pursuant to the Settlement, should such Settlement be approved by the Court. As detailed, *infra*, counsel seek an award of fees, in the amount of $4,250,000, inclusive of gross receipts tax and costs incurred.

Counsel have achieved this Settlement after over eight years spent in litigation. The litigation included defending three dispositive motions, awaiting two stays while parallel litigation occurred in the New Mexico Supreme Court, and intensive settlement negotiations. The settlement negotiations with State Farm included an unsuccessful, full-day, in-person mediation on June 4, 2025, followed by ongoing negotiations that culminated in a full day zoom mediation on August 15, 2025, which resulted in the Settlement.

The proposed Settlement, if approved by the Court, will allow State Farm's insureds who submit a claim to receive payment for a percentage of the premiums paid for U coverage (Uninsured/Underinsured Motorist Coverage) from between January 1, 2010 and December 31, 2021. The amounts are 21 percent of the total U Coverage premium paid by the if they had U Coverage at minimum limits, or 13 percent of the total U Coverage premium paid by the insured if the Settlement Class Member had U Coverage at non-minimum limits; provided, however, that the aggregate of all payments are subject to a $20,925,000 cap. If the value of aggregate claims exceeds $20,925,000, insureds who submit a claim shall be subject to a pro rata reduction to keep the aggregate payments within the agreed cap.

Accordingly, Class Plaintiff and her counsel respectfully request that the Court enter an Order granting their petition, awarding the requested fees and expenses and, in accordance with precedent in litigation of this sort.

ARGUMENT

It is well settled that a fee award is appropriate where a common fund for the benefit of class members is created through the efforts of counsel. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole"); *Gottlieb v. Barry*, 43 F.3d

474, 482 (10th Cir. 1994). The rationale for this is straightforward: attorneys' fees are appropriately awarded under the common fund doctrine because if they were not, "persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigants' expense." *See Van Gemert*, 444 U.S. at 478. Here, as set forth below, the proposed award of attorney fees does not draw from or diminish the common fund at all but is agreed to be paid by Defendant as a separate feature of the settlement without reduction of the benefits secured for the class members.

The Settlement establishes a fair, reasonable and accessible process by which all claims based upon premiums paid or uninsured/underinsured motorist benefits which were not paid after an automobile accident involving a Financial insured that occurred after January, 2010, in which an at fault motorist caused the damages to a Financial insured and the Settlement Class Member did not receive underinsured motorist benefits because of the application of the offset. This is the equivalent of a common fund established for the benefit of settlement class members. As demonstrated below, the expenses that counsel seeks to have reimbursed were incurred properly by counsel in the prosecution of this action and the fees sought are both reasonable and appropriate.

Four recent (unpublished) decisions in the United States District Court for the District of New Mexico also support the reasonableness of this request: *Candelaria v. Health Care Serv. Corp.*, 2020 U.S. Dist. LEXIS 207337 (D.N.M. November 4, 2020) and *Montgomery v. Cont'l Intermodel Group-Trucking LLC*, 2021 U.S. Dist. LEXIS 68946 (D.N.M. April, 2021). These very recent decisions of this District Court awarded attorney fees and class representative service fees from class action settlement funds. In *Candelaria*, United States District Judge Kenneth J. Gonzales awarded 35 percent of the gross settlement amount for an attorney fee, and a service award of $5,000 to each named plaintiff. Judge Gonzales cited to several earlier cases in the District Court of New Mexico, which previously awarded attorney fees as a percentage of the common settlement fund in class actions, without a lodestar analysis. Judge Gonzales ruled that awards have been approved as high as 58 percent and cited cases in which fees of 33 percent and 39 percent were awarded.

In *Montgomery v. Cont'l Intermodel Group-Trucking LLC, supra*, United States Magistrate Judge Gregory J. Fouratt approved the settlement and a request for attorney fees equal to 31.47 percent of the gross settlement fund (33 percent minus the value of eleven class members identified after the fairness hearing). Judge Fouratt included the following two footnotes, Nos. 5 and 6, in his order:

> District courts in New Mexico routinely approve attorneys' fees based on a percentage of fund method without a lodestar cross- check. *See Candelaria v. Health Care Serv. Corp.*, No. 2:17-cv- 404-KG-SMV, 2020 U.S. Dist. LEXIS 202390, at *15-16 (D.N.M. 2020); *see also Barela v. Citi Corp.*, No. 1:11-cv-506-KG-GBW, ECF 93 (D.N.M Sept. 15, 2014) (awarding percentage of fund in wage and hour case without lodestar cross check); *Ramah Navajo v. Jewell*, 167 F. Supp. 3d at 1241-42 (D.N.M. 2016); *Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091, 1097 (D.N.M. 1999); Ramah Navajo Chapter v. Kempthorne, Case No. CIV 90-0957 LH/KBM, 2008 U.S. Dist. LEXIS 143974, 2008 WL 11342943, at *5 (D.N.M. Aug. 27, 2008) (same); *Robles v. Brake Masters Sys.*, Inc., Case No. CIV 10-0135 JB/WPL, 2011 U.S. Dist. LEXIS 14432, 2011 WL 9717448, at *19 (D.N.M. Jan. 31, 2011); *Acevedo v. Sw. Airlines Co.*, 1:16-CV-00024-MV-LF, 2019 U.S. Dist. LEXIS 213691, 2019 WL 6712298, at *1 (D.N.M. Dec. 10, 2019), report and recommendation adopted, 2020 U.S. Dist. LEXIS 4571, 2020 WL 85132 (D.N.M. Jan. 7, 2020); *Daye v. Cmty. Fin. Serv. Ctrs.*, LLC, 1:14-cv-759-KK-KBM, ECF 195 (D.N.M. August 15, 2019); *J.O. v. Dorsey, et al.*, No. 1:11-cv-254-MCA-GBW, ECF 157 (D.N.M. Nov. 19, 2014); *Willett v. Redflex Traffic Systems, Inc.*, No. 1:13-cv-1241-JCH-LAM (D.N.M. Nov. 24, 2016); *Dejolie v. T&R Market, Inc.*, No. 1:17-cv-733-KK-SCY (D.N.M. Dec. 10, 2018); *Jones v. I.Q. Data Int'l, Inc.*, No. 1:14- cv-130-PJK-GBW, ECF 65; *Yazzie v. Gurley Motor Co.*, No. 1:14-cv-555-JAP-SCY, ECF 196 (D.N.M. Oct. 28, 2016). Nonetheless, <u>this Court required Class Counsel to submit billing records</u> so <u>the Court could conduct a lodestar cross-check</u> as part of its reasonableness review. The Court has performed that cross-check and considered its results in evaluating the fairness and reasonableness of Class Counsel's fee request. [Note, the court's opinion does not indicate the results of this submission, nor the "multiplier".]
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> *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1257 (D.N.M. 2012) ("Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingency fee basis."); *Cook v. Rockwell Int'l Corp.*, 2017 U.S. Dist. LEXIS 181814, 2017 WL 5076498, at *1- 2 (D. Colo. Apr. 28, 2017) (explaining forty percent fee falls within acceptable range in Tenth Circuit); *Shaw v. Interthinx, Inc.*, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) (finding 1/3 of $6 million dollar fund, or $2 million, in wage and hour case to be "well within the percentage range approved in similar cases") (collecting cases); *Campbell v. C.R. England, Inc.*, 2015 U.S. Dist. LEXIS 134235, 2015 WL 5773709, at *6 (D. Utah Sept. 30, 2015) (awarding 1/3 of $5,000 fund in FLSA collective action). *Blanco v. Xtreme Drilling & Coil Services, Inc.*, 2020 U.S. Dist. LEXIS 126155, 2020 WL 4041456, at *5 (D. Colo. July 17, 2020) (awarding 38% fee of $850,000 settlement in wage hybrid action because it was in "line with the customary fees and awards in similar cases"); *Peck*, 2018 U.S. Dist. LEXIS 28630, 2018 WL 1010944, at *3 (D. Colo. Feb. 22, 2018) (finding 37.5% fee in wage and hour hybrid action to be "well within the

> range for a contingent fee award") (collecting cases); *Farley.*, 2014 U.S. Dist. LEXIS 154059, 2014 WL 5488897, at *4 (D. Colo. Oct. 30, 2014) (30.3% fee of $2.3 million fund in wage and hour hybrid action); *Whittington*, 2013 U.S. Dist. LEXIS 161665, 2013 WL 6022972, at * 6 (explaining that the fees and costs of 39% of the fund were "within the normal range for a contingent fee award" in wage and hour hybrid class action); *Shaulis v. Falcon Subsidiary LLC*, 2018 U.S. Dist. LEXIS 164775, 2018 WL 4620388, at *2 (D. Colo. Sept. 26, 2018) (finding 1/3 of common fund to be reasonable because the award was similar to fee awards in "similar wage and hour cases in this District"); *Williams*, 2007 U.S. Dist. LEXIS 67368, 2007 WL 2694029, at *6 (awarding 35% fee in employment class action); 4 *Newberg On Class Actions* § 14:6 (4th ed. 2002) ("Empirical 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."); *Enegren v. KC Lodge Ventures LLC*, 2019 U.S. Dist. LEXIS 177192, 2019 WL 5102177, at *9 (D. Kan. Oct. 11, 2019) (awarding 40% of fund in wage collective action); *In re Bank of Am. Wage & Hour Employment Litig.*, 10-MD-2138-JWL, 2013 U.S. Dist. LEXIS 180056, 2013 WL 6670602, at *3 (D. Kan. Dec. 18, 2013) (awarding 18.25 million plus up to $900,000 in costs from $73 million dollar settlement fund in hybrid wage case). [emphasis added]

In *Anderson Living Trust*, an oil royalty class action, *supra*, Chief United States Judge William P. Johnson approved the proposed findings and recommended disposition of United States Magistrate Judge Carmen E. Garza allowing the request for attorney fees equal to 40 percent of the gross settlement fund or $2,244,000.00 and litigation expenses in the amount of $102,661.43 to be paid to class counsel. *See Anderson Living Tr. v. Energen Res. Corp.*, 2021 WL 3076910, at (D.N.M. July 21, 2021).

It can be stated with reasonable certainty that this is a long and highly contested automobile insurance consumer class action case in the United States District Court of the State of New Mexico. After eight (8) years of contentious and hard-fought litigation, the parties have negotiated a Settlement Agreement that provides significant monetary relief to the Class. *See* Unopposed Motion for Preliminary Approval, at 2-4 [Doc. 161]; Settlement Agreement, at 2-6 [Doc. 161-1]. Plaintiffs' counsel have represented Ms. Schwartz since the inception of her case.

Importantly, Class Counsel's time expended in representation of the Class in this case precluded employment by other clients. Only attorneys with extensive class action experience, well-established reputations, substantive legal expertise in consumer and automobile insurance law and the necessary financial resources, could competently handle this complex case against a Defendant of unlimited financial means and sophistication. This Plaintiff and her Class Counsel have endured long hours for eight (8) years without compensation or reimbursement of the Class's out-of-pocket costs expended to prosecute this matter against a highly specialized and capable nationally recognized counsel.

It is also significant that many reputable attorneys throughout New Mexico declined to participate in this difficult and ground-breaking case at its various stages, given the tremendous risk, case costs and time expenditures for which there was no guaranteed return.

REQUESTED AWARD OF ATTORNEY FEES AND EXPENSES

The court-approved Class Notice was disseminated to all identified Settlement Class Members in accordance with the Court-approved Notice Program. As detailed in the Declaration of Cameron R. Azari dated May 22, 2026, attached to the Motion for Final Approval *see* [Doc. 169], the Notice Program successfully reached approximately 99% of the 533,225 identified Settlement Class Members. As of May 21, 2026, Epiq has received 24,006 Claim Forms and 32 requests for exclusion. One objection has been filed, by Alain Hielo [Doc. 166], which is being addressed in a separate response to be file at a later date consistent with this Court's scheduling order on objections.

CAFA notice was timely served on the appropriate federal and state officials on February 3, 2026, in compliance with 28 U.S.C. § 1715, and no governmental entity has objected to the Settlement.

The fee structure here does not trigger the heightened-scrutiny concerns identified in *In re Samsung Top-Load Washing Machine Marketing, Sales Practices & Products Liability Litigation*, 997 F.3d 1077 (10th Cir. 2021), because the Settlement contains neither of the two features that drive *Samsung's* red-flag analysis. There is no "clear-sailing" agreement: State Farm has not agreed to refrain from contesting Class Counsel's fee request. Section 12.2 of the Settlement Agreement provides only that State Farm will pay attorneys' fees, costs, and expenses "in an amount approved by the Court, but not to exceed $4,250,000." Settlement Agreement § 12.2 [Doc. 161-1]. By contrast, where the Parties did intend a non-opposition commitment, they said so expressly. *See id*. § 14.5 ("State Farm will not oppose final approval of the Proposed Settlement . . . ."). The absence of comparable language in § 12 is meaningful.

There is likewise no "kicker" or reverter: any portion of the requested fee not awarded by the Court does not revert to State Farm to offset class payments, which are governed independently by the separate $20,925,000 aggregate cap in § 4.1. *See id*. §§ 4.1, 12.2. Nor does § 15.1.5's termination right convert the cap into a clear-sailing provision. That provision protects State Farm only against an award exceeding the negotiated maximum; it does not constrain State Farm's ability to contest the reasonableness of any request at or below the cap, and it operates symmetrically with the cap itself rather than as an affirmative non-opposition commitment. Fees were negotiated only after the substantive class-relief terms were agreed to, *see id*. § 12.1, with the assistance of a neutral mediator. Because the fee is paid by State Farm separately and in addition to class payments, with no mechanism by which a reduction in fees would benefit State Farm at the Class's expense, the structural concerns underlying Samsung are absent.

In *Wells v. Best Buy Co. (In re Samsung Top-Load Washing Mach. Mktg., Sales Practices & Prods. Liab. Litig.)*, 997 F.3d 1077 (10th Cir. May, 2021), the Tenth Circuit affirmed the district court's attorney fee and cost award to the class counsel of approximately one-third (1/3) of the maximum settlement valuation, a multiplier of 1.3. Further, the *Wells* court found that a majority of common fund fee awards fall between twenty and thirty percent with an upper limit of fifty percent as a general rule. In another recent case in this District, *Acevedo v. Southwest Airlines Co.*, 2019 U.S. Dist. LEXIS 213691 (D.N.M. December 10, 2019), U.S. Magistrate Judge Laura Fashing found that a class action requested attorney's fee of 33.33 percent was justified by the *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d at 717-719 factors and was within the normal range. The court further stated the court has recognized in other cases fees in the range of 30-40 percent of any amount recovered are common in complex and other cases taken on a contingency fee basis. Note, the opinion did not state whether a "lodestar" or "multiplier" was calculated. In the instant proceeding, the Notice sent to all Class Members indicated that attorney fees were requested of $4,250,000. This amount is approximately 20 percent of the aggregate cap of $20,925,000. Only one objection was made by a person represented by counsel who previously sought to be class counsel in this matter on behalf of the Palmer plaintiffs. *See* Order on Appointment of Interim Counsel [Doc. 109]. The objections claim the fees and settlement have a "kicker" and "clear-sailing" agreement, but as noted above they do not.

In examining the factors set forth in *Johnson*, the approximately 20 percent fee sought here is appropriate. The *Johnson* factors are as follows:

> (i) the time and labor required; (ii) the novelty and difficulty of the question presented in the case; (iii) the skill requisite to perform the legal service properly; (iv) the preclusion of other employment because of acceptance of the case; (v) the customary fee; (vi) whether the fee is fixed or contingent; (vii) any time limitations the client or circumstances imposed; (viii) the amount involved and the results obtained; (ix) the attorneys' experience, reputation, and ability; (x) the undesirability of the case; (xi) the nature and length of the professional relationship with the client; and (xii) awards in similar cases.

488 F.2d at 717-719. As a starting point, the $4,250,000 fee includes costs expended by counsel and gross receipts tax which must be paid in the State of New Mexico. It is well established under the common fund doctrine that lawyers "whose efforts create, discover, increase, or preserve a fund to which others also have a claim [are] entitled to recover from the fund the costs of [the] litigation. *See In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 n.39 (3rd Cir. 1995), cert. denied 116 S.Ct. 88.

Counsel have incurred reasonable expenses totaling $14,025.64. These expenses include items that typically are billed to fee-paying clients, such as filing fees, expert witnesses, investigations, travel expenses, costs associated with discovery (notably, these counsel do not ordinarily bill for the cost of computer-assisted legal research and so they do not include these costs in their expense reimbursement request). All of these reasonable costs and expenses were directly related to Counsel's efforts to litigate this highly novel matter and to achieve the best possible result for Plaintiff and the Class.

Examining the *Johnson* factors, all support the fee agreed upon here:

Factor No. 1: Plaintiff's counsel has represented Ms. Schwartz since the inception of this case which followed her December 11, 2012 car crash. Over the last eight years since the instant suit was filed, Plaintiffs' counsel has filed, defended, and attended motions, obtained important discovery necessary to prove the allegations, attended hearings, hired expert witnesses and prepared for litigation on class certification and trial. Plaintiff's counsel has prepared for and attended two mediations; the first unsuccessful one in June of 2025 and the second successful one August 2025. Plaintiff's counsel helped craft a fair and reasonable settlement agreement where thousands of New Mexicans received notice and stood to benefit. Collectively among the three firms, counsel has expended over one thousand hours in this litigation, not including preparation for and attendance at the upcoming approval hearing or attending to all matters necessary after that including processing remaining claims and ensuring class members receive payment. *See* Exhibit 1, Affidavits from Class Counsel.

Factor No. 2: The issue of statutory and contractual offsets in New Mexico insurance law has been litigated for many years. However, since 1985 following the New Mexico Supreme Court's decision in *Schmick*, auto-insurance carriers, like State Farm have been able to misrepresent UIM coverages while also applying the complicated offset. It was not until *Crutcher* that the Court held charging premiums for coverage that will be offset is illusory, and then *Smith* when the Court held that ruling to be retroactive.

It is understandable why this case is novel, given that it took from 1985 until the 2021 *Crutcher* decision to determine certain premiums are illusory. Numerous courts have acknowledged the heightened risk presented by cases such as this where there is no road map and have recognized that counsel's acceptance of the risk supports an award of a substantial fee. *See, e.g., Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, Case No. Civ. A. 03- 4578, 2005 WL 1213926 at

*12 (E.D.Pa. May 19, 2005). The lengthy proceedings and the extended negotiations leading to the Settlement attest to the fact that this litigation has been difficult and complex, justifying the award of a significant fee. S*ee Pinto v. Princess Cruise Lines, Ltd.*, 513 F.Supp.2d 1334, 1342 (S.D. Fla. 2007) ("The voluminous papers of the case themselves testify that this was no simple piece of litigation").

Factor No. 3 and 9: The skill requisite to perform legal service properly is very specialized as to automobile insurance matters. This discussion addresses *Johnson* factors 3 and 9. Courts in this District and in the Tenth Circuit traditionally consider these factors in combination. *See, e.g., Lane v. Page*, 862 F.Supp.2d 1182, 1253 (D.N.M., Browning, J. May 22, 2012); *In re Thornburg,* 912 F.Supp.2d at 1255; *Droegemueller*, 2009 WL 961539 at *3; *Merit Energy Co.*, 2009 WL 3378526 at *3. Plaintiffs' counsel are all well-known and highly skilled New Mexico litigators. Counsel incorporate their Motion to Appoint Interim Counsel [Doc. 105] as though set forth herein. Ultimately, this Court ruled that this group of attorneys should represent the class on an interim basis over the *Palmer* plaintiff attorneys, in part due to counsel's skill and experience. *See* Order [Doc. 109].

The Settlement achieved here would not have been possible if Plaintiffs were not represented by such experienced and skilled lawyers. Plaintiffs' counsel are highly skilled and specialized attorneys who used their substantial experience and expertise to prosecute complex litigation. This factor should carry significant weight because the Plaintiff and Settlement Class Members likely would not have obtained the highly favorable relief from State Farm without the assistance of counsel with a high level of skill and expertise. *See, In re Qwest Communications International, Inc., Securities Litig.*, 625 F.Supp.2d 1143, 1150 (D. Colo. 2009) ("This factor augurs toward a substantial fee award"). Where Class Counsel's knowledge and experience ... significantly contributed to a fair and reasonable settlement" this factor supports a request for a large amount of attorneys' fees. *See Thornburg Mortg. Securities*, 912 F.Supp.2d at 1256, *citing Merit Energy*, 2009 WL 3378526. In awarding a substantial fee to class counsel, the District Court for the Northern District of Texas said "[t]he substantial and creative recovery obtained for the Class, short of trial, is just the sort of result the percentage-fee method was designed to reward. The skill and acumen of counsel have produced unprecedented benefits to the Class." *Schwartz v. TXU Corp.*, Nos 3:02-CV-2243, etc., 2005 WL 3148350 at *31 (N.D.Tex. Nov. 8, 2005).

Factor No. 4: The preclusion of other employment is solely based upon the time involved to represent the Class Members in this matter versus the time that could have been spent on other matters. Each of Plaintiffs' counsel's firms is successful and in fact their attorneys wide and deep experiences in often tedious, cost intensive, risky complex consumer and personal injury litigation, multiparty litigation, class actions and other complex cases is a rarity in this state. As discussed, a total of 1,217 hours have been expended to date by counsel. This expenditure of time required counsel to forego taking on other matters. Counsel will continue to forego other matters until the matter is fully resolved.

Factor No. 5: The $4,250,000 fee award is approximately 16.9% of the $25,175,000 total economic benefit to the Class (the $20,925,000 aggregate cap on class payments plus the $4,250,000 in fees and costs paid separately by State Farm), and approximately 20% of the $20,925,000 aggregate cap. Notably, this includes costs incurred by counsel which to-date are approximately $14,025.64. It also includes gross receipts tax whereas customary contingency fees are a percentage plus gross receipts tax. Counsel will be required to subtract gross receipts tax, which is 7.625%.

Thus, the fee to counsel will be less than 20% of the aggregate cap after deducting costs and gross receipts tax. Even at 20 percent, this is well within the range of the customary percentage. The customary fee to class counsel in a common fund settlement is approximately one-third of the economic benefit bestowed on the class. *Merit Energy*, 2009 WL 3378526 at *3; *see Lucken Partnership*, 2010 WL 5387559 at *2 (noting that class counsel's fee request that equated 33 1/3% of the common fund "is in accordance with attorney fees awards that have been approved in similar class action cases"). Significantly, the fee is in no way borne by the class members. Each class member receives his or her benefits without any reduction or dilution of those benefits to pay attorney fees.

Factor No. 6: The fee was contingent upon the outcome and the Plaintiff's attorneys have labored to this point for eight (8) years without knowing the outcome or whether they would have even obtained any reimbursement for their hundreds of hours of time, or out-of-pocket expense. That the fee was contingent supports a higher award.

Factor No. 7: The time it took to resolve the matter, due in part to stays to await relevant Supreme Court rulings in *Crutcher* and *Smith*, support the fee sought.

Factor No. 8: The result achieved is a major factor to consider in making a fee award. *See Hensley* v. *Eckerhart*, 461 U.S. 424, 436 (1983) (the "critical factor is the degree of success obtained.") In cases such as this one where "the recovery [is] highly contingent and ... the efforts of counsel were instrumental in realizing recovery on behalf of the class," the results obtained may be given greater weight. *See Brown*, 838 F.2d at 456. *See McNeely* v. *National Mobile Health Care, LLC*, Case No. 07-933, 2008 WL 4816510 at * 15, n.9 (W.D.Okla. Oct. 27, 2008) ("class counsel's willingness to prosecute this matter on a contingent basis ... ordinarily shifts the analytical focus away from hours spent on the case to the ultimate result class counsel has obtained").

And the results obtained here are truly impressive. It is the largest aggregate cap agreed to by any of the insurance companies who were sued for similar conduct. Moreover, the settlement covers an 11-year time period. As detailed in the Azari Declaration, the Notice Program reached approximately 99% of the 533,225 identified Settlement Class Members. As of May 21, 2026, 24,006 Claim Forms have been received, with only 32 opt-outs and a single objection. Moreover, unlike other class actions of this nature, where claims were limited to those involved in accidents, the Settlement Agreement calls for refunds of portions of premiums to any insured who had U coverage during the settlement period. This remedies the heart of the problem alleged in the complaint, that State Farm was collecting premiums for illusory coverage.

The premium-refund measure adopted by the Settlement reflects the maximum reasonably available recovery under New Mexico law. In *Apodaca v. Young America Insurance Co.*, No. CIV 18-0399 JB/JHR, Mem. Op. (D.N.M. Nov. 15, 2023), ECF No. 75 (Browning, J.), the court declined to permit reformation of a minimum-limits UM/UIM policy on the ground that the reformed contract would provide excess coverage, which is impermissible under New Mexico law. Because reformation to excess-theory coverage is unavailable, premium refunds remain the principal class-wide remedy for the illusory-coverage problem identified in *Crutcher* and *Smith*, and the Settlement secures that remedy on a class-wide basis. Counsel has obtained a settlement of real worth to class members – both financial and in terms of peace of mind. Because the settlement arguably represents "an enormous victory for [Plaintiffs] because the outcome of [a] trial [is] far from certain," *see In re Copley Pharm., Inc.,* 1 F.Supp.2d 1407, 1414 (D.Wyo. 1998), this factor weighs strongly in favor of counsel's fee application.

Factor No. 10: The case was not only undesirable in the context of the time and risk involved, but also with respect to the difficulty of class certification and success on the merits. State Farm contested and continues to contest that it sold illusory U coverage to its insureds. It certainly could have prevailed on this claim at trial. This makes the case far less desirable to many attorneys who seek cases with more certainty in the outcome.

Factor No. 11: As indicated, counsel represented Ms. Schwartz for over eight years.

Factor No. 12: Clearly, in awards in similar cases, as noted above and discussed in the footnotes from Judge Fouratt (*Montgomery*), the percentage of the gross settlement, from which undersigned Counsel has requested be awarded attorney fees, is in line with or less than awards in many class actions litigated in this district and others.

THE COURT SHOULD GRANT INCENTIVE AWARDS TO THE NAMED PLAINTIFFS

Per the Settlement Agreement, ¶ 12.5 [Doc. 161-1], State Farm agreed to pay a service or incentive award of $25,000 for the named Plaintiff, subject to this Court's approval. Accordingly, this Motion requests the Court approve this award. Along with counsel, Ms. Schwartz has endured eight years of litigation in this case, which notably occurred after her 2012 car crash that was the subject of this case. As such, this has been a nearly 14-year journey for Ms. Schwartz to effectuate her rights and those of all other State Farm insured's who are similarly situated. Ms. Schwartz has taken an active part in the prosecution of this action. She consulted with counsel representing the class and agreed to forego quick resolution of her personal claims in favor of asserting the rights of all members of the class. She was available during both mediations.

She demonstrated behavior exemplifying exactly how class representatives are supposed to genuinely represent a class or class of people. The purpose of incentive awards for class representatives is to encourage people with significant claims to pursue actions on behalf of others similarly situated. *Tennille*, 2013 WL 6920449 at *14. *See also Droegemueller*, 2009 WL 961539 at *5 (noting that incentive awards to named class representatives "reward[s] individual efforts taken on behalf of the class"). Should the Court agree to award named Plaintiff this incentive, State Farm has agreed that it will pay the incentive over and above its payments to claimants pursuant to the Settlement which will prevent dilution of any amounts provided to any other claimants. Notably, in *Montgomery*, Judge Fouratt further approved an incentive or service award to the named representative of $25,000.

The requested $25,000 incentive award is fully consistent with Tenth Circuit law. In *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455 (10th Cir. 2017), the Tenth Circuit vacated an incentive award where the district court failed to make particularized findings tying the award to the representative's actual contributions and the risks she bore. Here, by contrast, the record amply supports the requested award: Ms. Schwartz has been actively engaged in this litigation for nearly twelve years, was available for both mediations, declined opportunities to resolve her individual claim in favor of pursuing class-wide relief, and bore the reputational and personal exposure inherent in serving as the named plaintiff against a sophisticated national insurer. The award is also paid separately by State Farm, with no dilution of any class member's recovery.

CONCLUSION

For the foregoing reasons Plaintiffs respectfully request that the Court grant their petition, award the requested attorneys' fees and expenses, including the agreed to incentive fee to Dana Schwartz, and authorize Counsel to distribute attorneys' fees in a manner that, in the opinion of Class Counsel, fairly compensates each firm in view of each's contribution to the prosecution of Plaintiffs' claims.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I further hereby certify that on May 22, 2026, I filed the foregoing electronically through the CM/ECF File System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

/s/ Ryan J. Villa
RYAN J. VILLA