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Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VIRGINIA SIMONIN**  
individually, and on behalf of  
others similarly situated

Plaintiff

vs

**WINCO FOODS, LLC**

Defendant

Case No. 3:19-cv-02094-AR

**CLASS ACTION  
SETTLEMENT  
FEE, EXPENSE, AND  
SERVICE AWARD  
APPLICATION**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....3

L.R. 7-1 CERTIFICATION .....7

MOTION.....7

INTRODUCTION .....8

GENERAL LEGAL STANDARDS .....9

ARGUMENTS IN SUPPORT OF APPLICATION .....11

    1. Class Counsel’s Requested Fees Are Fair and Reasonable and  
    Should Be Granted .....11

    2. Class Counsel’s Requested Costs and Expenses Are Fair and  
    Reasonable and Should Be Granted.....23

    3. Plaintiff’s Requested Service Award Is Fair and Reasonable and  
    Should Be Granted .....25

CONCLUSION .....29

## TABLE OF AUTHORITIES

### Cases

<i>Andrikos v. APM Terminals Pac., LLC</i> , No. CV 19-10421-GW-JCx, 2024 U.S. Dist. LEXIS 14768 (C.D. Cal. Jan. 25, 2024).....	27
<i>Anthony Ayala v. U.S Xpress Enters., Inc.</i> , No. EDCV 16-137-GW-KKX, 2023 U.S. Dist. LEXIS 183259, 2023 WL 6559786 (C.D. Cal. Sept. 15, 2023) .....	17
<i>Bell v. Consumer Cellular, Inc.</i> , No. 3:15-cv-941-SI, 2017 WL 2672073, 2017 U.S. Dist. LEXIS 95401 (D. Or. June 21, 2017) .....	16
<i>Bentley v. United of Omaha Life Ins. Co.</i> , No. CV 15-7870-DMG (AJWx), 2020 WL 3978090, 2020 U.S. Dist. LEXIS 126603 (C.D. Cal. Mar. 13, 2020) .....	28
<i>Bowen v. Jea Senior Living Health &amp; Welfare Ben. Plan, LLC</i> , No. 2:20-cv-2318-KJN, 2023 WL 8527732, 2023 U.S. Dist. LEXIS 218839 (E.D. Cal. Dec. 8, 2023) .....	23
<i>Campos v. Converse, Inc.</i> , No. EDCV 20-1576 JGB (SPx), 2022 WL 4099756, 2022 U.S. Dist. LEXIS 147715 (C.D. Cal. Aug. 15, 2022).....	11
<i>Cicero v. DirecTV, Inc.</i> , No. EDCV 07-1182, 2010 WL 2991486, 2010 U.S. Dist. LEXIS 86920 (C.D. Cal. July 27, 2010) .....	18
<i>Class Plaintiffs v. Seattle</i> , 955 F.2d 1268 (9th Cir. 1992)).....	10
<i>Craft v. County of San Bernardino</i> , 624 F. Supp. 2d 1113 (C.D. Cal. 2008).....	18, 19, 22
<i>Demmings v. KKW Trucking, Inc.</i> , No. 3:14-cv-0494-SI, 2018 WL 4495461, 2018 U.S. Dist. LEXIS 159749 (D. Or. Sept. 19, 2018).....	20
<i>Farrell v. Bank of Am. Corp., N.A.</i> , 827 F. App'x 628 (9th Cir. 2020) .....	19
<i>Figueroa v. Capital One, N.A.</i> , No. 18cv692 JM(BGS), 2021 WL 211551, 2021 U.S. Dist. LEXIS 11962 (S.D. Cal. Jan. 21, 2021).....	28
<i>Fox v. Vice</i> , 563 U.S. 826 (2011) .....	20
<i>Froeber v. Liberty Mut. Ins. Co.</i> , 222 Or. App. 266 (2008) .....	10

<i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994) .....	23
<i>In re Activision Sec. Litig.</i> , 723 F. Supp. 1373 (N.D. Cal. 1989) .....	12
<i>In re Apollo Grp. Inc. Sec. Litig.</i> , No. CV 04-2147-PHX-JAT, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012).....	20
<i>In re M.D.C. Holdings Sec. Litig.</i> , No. CV 89-0090 E (M), 1990 WL 454747, 1990 U.S. Dist. LEXIS 15488 (S.D. Cal. Aug. 30, 1990) .....	11, 12
<i>In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.</i> , No. 4:14-MD-2541-CW, 2017 WL 6040065, 2017 U.S. Dist. LEXIS 201108 (N.D. Cal. Dec. 6, 2017) .....	22
<i>In re Optical Disk Drive Prods. Antitrust Litig.</i> , No. 10-md-02143-RS, 2021 U.S. Dist. LEXIS 171405 (N.D. Cal. Sept. 9, 2021) .....	21
<i>Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)</i> , 654 F.3d 935 (9th Cir. 2011) .....	10, 20
<i>Kelley v. City of San Diego</i> , No. 19-cv-622-GPC-BGS, 2021 WL 424290, 2021 U.S. Dist. LEXIS 23710 (S.D. Cal. Feb. 8, 2021) .....	19
<i>Khanna v. Intercon Sec. Sys., Inc.</i> , No. 2:09-CV-2214 KJM EFB, 2014 WL 1379861 (E.D. Cal. Apr. 8, 2014).....	20
<i>Marshall v. Northrop Grumman Corp.</i> , No. 16-CV-6794 AB (JCx), 2020 WL 5668935, 2020 U.S. Dist. LEXIS 177056 (C.D. Cal. Sept. 18, 2020).....	13, 18, 24
<i>Ochinero v. Ladera Lending Inc.</i> , No. SACV191136JVSADXSX, 2021 U.S. Dist. LEXIS 192403, 2021 WL 4460334 (C.D. Cal. July 19, 2021) .....	18
<i>Paul, Johnson, Alston, &amp; Hunt v. Graultry</i> , 886 F.2d 268 (9th Cir.1989) .....	9
<i>Rausch v. Hartford Fin. Servs. Grp.</i> , No. 01-cv-1529-BR, 2007 WL 671334, 2007 U.S. Dist. LEXIS 14740 (D. Or. Feb. 26, 2007) .....	26, 28
<i>Reed v. Light &amp; Wonder, Inc.</i> , No. 18-cv-565-RSL, 2022 WL 3348217, 2022 U.S. Dist. LEXIS 147185 (W.D. Wash. Aug. 12, 2022) .....	28

*Rivera v. W. Express Inc.*,  
 No. EDCV 18-1633 JGB (SHKx), 2022 U.S. Dist. LEXIS 76533  
 (C.D. Cal. Apr. 25, 2022) .....19

*Rodriguez v. W. Publ’g Corp.*,  
 563 F.3d 948 (9th Cir. 2009) .....25

*Romero v. Producers Dairy Foods, Inc.*,  
 No. 1:05cv0484 DLB, 2007 WL 3492841, 2007 U.S. Dist. LEXIS  
 86270 (E.D. Cal. Nov. 13, 2007) .....13

*Santillan v. Verizon Connect, Inc.*,  
 No. 3:21-cv-1257-H-KSC, 2024 WL 627998, 2024 U.S. Dist.  
 LEXIS 25902 (S.D. Cal. Feb. 13, 2024) .....13, 14, 17

*Schmitt v. Kaiser Found. Health Plan of Wash.*,  
 No. 2:17-cv-1611-RSL, 2024 WL 1676754, 2024 U.S. Dist. LEXIS  
 71166 (W.D. Wash. Apr. 18, 2024).....passim

*Shames v. Hertz Corp.*,  
 No. 07-CV-2174-MMA (WMC), 2012 WL 5392159 (S.D. Cal. Nov.  
 5, 2012).....20

*Staton v. Boeing Co.*,  
 327 F.3d 938 (9th Cir. 2003) .....23

*Steiner v. Am. Broadcast. Co.*,  
 248 F. App’x 780 (9th Cir. 2007) .....22

*Sypherd v. Lazy Dog Rests., LLC*,  
 No. 5:20-cv-00921-FLA (KKx), 2023 WL 1931319, 2023 U.S.  
 Dist. LEXIS 23257 (C.D. Cal. Feb. 10, 2023) .....28

*Strawn v. Farmers Ins. Co.*,  
 353 Or. 210 (2013) .....10, 13

*Terraza v. Safeway Inc.*,  
 No. 16-cv-03994-JST, 2021 WL 11607173, 2021 U.S. Dist. LEXIS  
 266282 (N.D. Cal. July 29, 2021) .....18

*Tuttle v. Audiophile Music Direct, Inc.*,  
 No. C22-1081JLR, 2023 WL 8891575, 2023 U.S. Dist. LEXIS  
 229241 (W.D. Wash. Dec. 26, 2023).....29

*Vincent v. Hughes Air W., Inc.*,  
 557 F.2d 759 (9th Cir. 1977) .....9

*Vizcaino v. Microsoft Corp.*,  
 290 F.3d 1043 (9th Cir. 2002) .....10, 11, 14, 22

*Wilson v. Huuuge, Inc.*,  
 No. 18-cv-5276-RSL, 2021 WL 5122292021 U.S. Dist. LEXIS  
 26688 (W.D. Wash. Feb. 11, 2021).....28

*Zografos v. Qwest Comm'ens Co.*,  
No. 6:00-cv-06201-AA, 2013 WL 3766561, 2013 U.S. Dist. LEXIS  
99573 (D. Or. July 11, 2013) .....17

**Statutes**

ORS 646.638(3)-(4) .....26

**Rules**

FRCP 23 .....10  
FRCP 23(e) .....10  
FRCP 23(h) .....7, 9, 10  
FRCP 54(d)(2) .....7, 9  
ORCP 32 .....10  
ORCP 32 D .....10

**Other Authorities**

*Manual for Complex Litigation* .....22  
*Newberg on Class Actions* (4th ed. 2007) .....13  
*Newberg on Class Actions* (5th ed. 2011) .....11, 22

**L.R. 7-1 CERTIFICATION**

Pursuant to the parties' class action settlement agreement, Defendant WinCo Foods, LLC (defendant or WinCo) does not oppose the relief sought in this motion.

**MOTION**

Under FRCP 23(h) and FRCP 54(d)(2), and consistent with the parties' preliminarily-approved class action settlement agreement (Agreement), plaintiff respectfully requests and moves the Court to approve, as fair and reasonable: class counsel's request for fees in the amount of \$1,009,500 (30% of the common settlement fund), costs and expenses in the amount of \$96,240.35, and a class representative service award to plaintiff in the amount of \$10,000.

This motion is supported by the previous filings on the docket; the following memorandum; the declarations of Kelly D. Jones (Jones Decl.), Michael Fuller (Fuller Decl.), Daniel J. Nichols (Nichols Decl.); and Virginia Simonin (Simonin Decl.); and the exhibits attached and filed with the above-referenced declarations.

## INTRODUCTION

On March 29, 2024, plaintiff filed an unopposed Motion for Preliminary Approval of Class Settlement and Certification (preliminary approval motion) with supporting declarations and exhibits. Docs. 91-95. On April 5, 2024, the Court granted the preliminary approval motion. Doc. 98. Although there is no requirement or deadline to do so in the Agreement or in the Court's preliminary approval order, in the preliminary approval motion plaintiff and class counsel indicated their intent to file this application within 21 days of the order granting that motion. *See* Doc. 91 at 34 n.10.

Only after negotiating relief for the class members, by securing a \$3,365,000 common settlement fund, and an additional \$235,000 in administrative fees, to be paid by WinCo, did the parties agree that class counsel would request no more than 30% of the common settlement fund (\$1,009,500) for attorney fees and no more than \$150,000 for costs and expenses, and that plaintiff would request no more than \$10,000 for a class representative service award. Doc. 91-1 at 10-11, ¶ 2.9(a)-(d); Doc. 93 at 3, ¶ 4. The Agreement makes clear that the settlement and defendant's payment of the common settlement fund are in no way conditioned on the above-agreed upon amounts of the potential awards. Doc. 91-1 at 10-11, ¶ 2.9(a).

As discussed in more detail below, consistent with the Agreement and well-supported by the applicable caselaw, plaintiff and class counsel now file this fee, expense, and service award application respectfully requesting no more than the agreed-upon and fair and reasonable amounts, in advance of, and to be granted at or after,<sup>1</sup> the final approval hearing currently scheduled for August 8, 2024.

### GENERAL LEGAL STANDARDS

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement” and “a claim for an award claim for an award must be made by motion under Rule 54(d)(2).” FRCP 23(h). “The common fund doctrine provides that a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys’ fees.” *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). This prevents “unjust enrichment by distributing the costs of litigation among those who benefit from the efforts of the litigants and their counsel.” *Paul, Johnson, Alston, & Hunt v. Grauldy*,

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<sup>1</sup> This is necessary because gauging the class members’ reaction (objections or lack thereof) to these requested awards from the common fund is a critical factor in assessing the fairness and reasonableness of the amounts requested. The approved class notices and website will already include the (maximum) amounts of these requested awards. See 91-1 at 40 (¶ 6), 42 (¶ 16), 46. However, upon filing, class counsel will also promptly send a court-stamped copy of this application and supporting declarations to the class administrator (CPT) for posting on the class website (when it goes live), along with the other important filings in this case.

886 F.2d 268, 271 (9th Cir.1989); *see also Strawn v. Farmers Ins. Co.*, 353 Or. 210, 216 (2013)<sup>2</sup> (similarly recognizing, under Oregon law, that the common fund doctrine allows class counsel’s fees and expenses “to be shared among those who benefitted from the litigant’s efforts by allowing plaintiff’s lawyers to be paid from the common fund created or preserved by the litigation”).

“While attorneys’ fees and costs may be awarded in a certified class action where so authorized by law or the parties’ agreement, Fed. R. Civ. P. 23(h), courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount.” *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 941 (9th Cir. 2011); *Strawn*, 353 Or. at 217, (holding that whether under “a shifting statute or the common-fund doctrine, the touchstone for the amount of the award is the same — reasonableness”).

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<sup>2</sup> Plaintiff cites to parallel federal and Oregon caselaw governing class action fee and cost awards because Oregon “law governed [plaintiff’s class UTPA] claim, it also governs the award of fees.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). In turn, Oregon appellate caselaw refers to and relied on federal caselaw given that Oregon’s class action provision (ORCP 32) is modeled on FRCP 23. *See Strawn*, 353 Or. at 217-20; *see also Froeber v. Liberty Mut. Ins. Co.*, 222 Or. App. 266, 275 (2008) (noting the congruence between ORCP 32 D and FRCP 23(e) and the “universally applied standard” is to assess whether the terms of the settlement are “fundamentally fair, adequate and reasonable” (internal quotation marks omitted) (citing *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992))).

## ARGUMENTS IN SUPPORT OF APPLICATION

### 1. **Class Counsel’s Requested Fees Are Fair and Reasonable and Should Be Granted.**

“Where a class action settlement creates a common fund, as has been done here, the Court has discretion to choose either the percentage-of-the-fund or lodestar method in calculating the fee award.” *Schmitt v. Kaiser Found. Health Plan of Wash.*, No. 2:17-cv-1611-RSL, 2024 WL 1676754, 2024 U.S. Dist. LEXIS 71166, at \*9 (W.D. Wash. Apr. 18, 2024) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002)). “Typically, however, courts apply the percentage-of-the-fund method where the settlement involves a common fund.” *Id.*; see also *Campos v. Converse, Inc.*, No. EDCV 20-1576 JGB (SPx), 2022 WL 4099756, 2022 U.S. Dist. LEXIS 147715, at \*4 (C.D. Cal. Aug. 15, 2022) (“Whether to use one method over the other is in the Court’s discretion; however, the use of the percentage method in common-fund cases appears to be dominant.” (citing *Vizcaino*, 290 F.3d at 1047)); *In re M.D.C. Holdings Sec. Litig.*, No. CV 89-0090 E (M), 1990 WL 454747, 1990 U.S. Dist. LEXIS 15488, at \*24 (S.D. Cal. Aug. 30, 1990); *Newberg on Class Actions* § 1:18 (5th ed. 2011) (“The majority of state and federal courts use a percentage of fund method, with or without a lodestar cross-check, to calculate fee awards.”).

As an in-circuit district court has aptly explained:

Compensation of class counsel in common fund cases on a percentage of the recovery method makes eminently good sense. First, it is consistent with practice in the private marketplace where contingent fee attorneys are customarily compensated on a percentage of the recovery method. Second, it provides plaintiffs' counsel with a strong incentive to effectuate the maximum possible recovery in the shortest amount of time. Third, use of the percentage method decreases the burden imposed upon the court by other fee award procedures, especially the lodestar method, and assures that class members do not experience undue delay in receiving their share of the proceeds of the settlement due to protracted fee proceedings.

*In re M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, 1990 U.S. Dist. LEXIS 15488, at \*24; *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375-78 (N.D. Cal. 1989) (discussing at length the comparative advantages of the percentage-of-recovery method).

Here, consistent with the preliminarily approved Agreement, class counsel requests their fees be based on a percentage of the direct and substantial monetary benefits conferred through the settlement that class counsel helped secure through their efforts and advancement of litigation expenses. Plaintiff and class counsel believe use of the percentage method is appropriate for the reasons identified by the Ninth Circuit, myriad of in-circuit courts, and the leading class action treatises, and therefore respectfully request that the Court adopt this method of assessing class counsel's fees in this case.

More specifically, class counsel requests fees equating to 30% of the \$3,365,000 common settlement fund that WinCo will pay pursuant

to the Agreement. “With respect to the attorneys’ fees, the typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value, with 25% considered the benchmark in common fund cases.” *Santillan v. Verizon Connect, Inc.*, No. 3:21-cv-1257-H-KSC, 2024 WL 627998, 2024 U.S. Dist. LEXIS 25902, at \*27 (S.D. Cal. Feb. 13, 2024) (cleaned up); *see also Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCx), 2020 WL 5668935, 2020 U.S. Dist. LEXIS 177056, at \*23-24 (C.D. Cal. Sept. 18, 2020) (“An attorney fee of one third of the settlement fund is routinely found to be reasonable in class actions.”); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, 2007 U.S. Dist. LEXIS 86270, at \*10 (E.D. Cal. Nov. 13, 2007) (noting that “fee awards in class actions average around one-third of the recovery” (quoting *Newberg on Class Actions* § 14.6 (4th ed. 2007))); *Strawn*, 353 Or. at 229-30 (explaining that in “class actions that result in substantial economic recoveries, the normal fees tend to be between 20 to 30 percent of the recovered fund,” and that a “50 percent-of-fund fee remains the usual upward limit, so that the fee does not consume a disproportionate portion of the fund recovered”).

“The Ninth Circuit has identified several factors that may be relevant in determining if the award is reasonable, including: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens

carried by class counsel; and (6) the awards made in similar cases.” *Santillan*, 2024 WL 627998, 2024 U.S. Dist. LEXIS 25902, at \*28 (citing *Vizcaino*, 290 F.3d at 1048-50).

A detailed factual background and procedural history of this litigation is set forth in the preliminary approval motion (Doc. 91) and is confirmed by reviewing the docket and the filings and orders in the record. A review of the docket and submissions makes clear that the preliminarily approved class settlement—which is projected to provide each class member the maximum statutory relief<sup>3</sup>—was secured by the class representative plaintiff and class counsel only after a hard-fought, nearly four-and-a-half-year legal battle, through a global pandemic, multiple motions to dismiss, opposed class certification briefing, competing expert reports, pertinent fluctuations in the relevant caselaw, substitution and loss of multiple class representative plaintiffs, and the changing of the Judge assigned to this case. As explained in the preliminary approval motion, although plaintiff and class counsel are confident that plaintiff would have ultimately prevailed in obtaining

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<sup>3</sup> See Doc. 91 at 14 nn. 1 & 2 (explaining the provisional settlement fund remainder calculations, based on the maximum amounts of requested awards deducted from the settlement fund and CPT’s estimated 7% claims rate). Given class counsel’s request for less than the maximum agreed-upon amount (\$150,000) for litigation expenses, the provisional settlement fund remainder calculation will actually be higher. Given that these calculations are necessarily based on a projected (but uncertain) valid claims rate, plaintiff will be able to confirm that the settlement fund remainder will (or will not) allow for maximum (\$200) statutory relief for each class member that files a valid claim after the claims period closes and CPT provides the claims data. Plaintiff will include this information and update to the Court in the motion for final approval papers to be filed in advance of the final approval hearing.

certification and would have prevailed on the merits of the class UTPA claim at trial, these successes were far from certain. And even if achieved, WinCo may have likely appealed the rulings and verdict, meaning that class members would not have seen any monetary relief for multiple years down the road—if at all.

Especially in light of these real risks (and even without), securing a common settlement fund of \$3,365,000 that is projected to provide each valid claimant/class member the maximum \$200 available under the statute—and stopping WinCo’s unlawful pricing practices in the process—must be considered a great result achieved for the class. *See, e.g., Schmitt*, 2024 WL 1676754, 2024 U.S. Dist. LEXIS 71166, at \*10-11 (“The Settlement provides a substantial monetary benefit for the Class by creating a \$3 million fund for the reimbursement of class members’ claims and “provides a streamlined process for filing a claim, sending prior claimants pre-populated claim forms they can verify online.”).

The unique facts of this case and the complexities and fluctuations in the relevant caselaw required skilled treatment, many hours of work, and expert analysis and opinion. *See, e.g., id.* at \*11 (“This case is complex, turning on issues of first impression . . . [which] required a concomitant great deal of skill in achieving the settlement.”).

Moreover, throughout these nearly four and half years of litigation, class counsel expended significant time, effort, and expense litigating this case on a contingency basis—with no assurance of any compensation, reward, or reimbursement. Jones Decl. ¶ 3; Fuller Decl. ¶ 3; Nichols Decl. ¶ 3; *see also Schmitt*, 2024 WL 1676754, 2024 U.S. Dist. LEXIS 71166, at \*11 (“Class counsel undertook a significant risk in bringing this class action lawsuit on a contingent basis. The case was novel and unique and was heavily litigated by both parties for over six years, during which class counsel paid substantial expenses out of pocket and devoted similarly substantial work on the Class’s behalf, for which counsel would not be entitled to reimbursement absent a recovery.”); *Bell v. Consumer Cellular, Inc.*, No. 3:15-cv-941-SI, 2017 WL 2672073, 2017 U.S. Dist. LEXIS 95401, at \*32-33 (D. Or. June 21, 2017) (“In cases taken on contingency, courts tend to find above-market-value fee awards appropriate to encourage counsel to take on contingency-fee cases for plaintiffs who otherwise could not afford to pay hourly fees and to compensate counsel for the risk of non-payment that they assume. This is especially true when class counsel has significant experience in the particular type of litigation at issue; indeed, in such contexts, courts have awarded [a] 33 percent benchmark percentage.” (internal quotation marks and citations omitted; brackets in original)).

Especially given the satisfaction of these applicable factors, class counsel's request for an amount equal to (less than<sup>4</sup>) 30% of the common fund for their fees in securing that fund for the class is well-supported by (and is lower than) many other common fund fee awards in similar in-circuit class cases. *See, e.g., Schmitt*, 2024 WL 1676754, 2024 U.S. Dist. LEXIS 71166, at \*11 ("Based on these factors, the Court finds that a 33 1/3% allocation of funds from the common fund towards class counsel's attorney fees is reasonable."); *Santillan*, 2024 WL 627998, 2024 U.S. Dist. LEXIS 25902, at \*28-29 (awarding requested amount of fees equating to 33% of the total settlement fund because, although higher than Ninth Circuit's common fund lower 25% benchmark, "the overall award Class Counsel achieved for the class was quite favorable, and the risks of continuing to litigate this case were real and substantial," and "Class Counsel took this case on a contingent fee basis, bearing the entire risk and cost of litigation."); *Anthony Ayala v. U.S Xpress Enters., Inc.*, No. EDCV 16-137-GW-KKX, 2023 U.S. Dist. LEXIS 183259, 2023 WL 6559786, at \*7 (C.D. Cal. Sept. 15, 2023) (approving 33% fee award in wage and hour class action where class counsel took

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<sup>4</sup> In calculating the percentage of the common fund, courts consider all payments made by the defendant, including administrative costs. *See, e.g., Zografos v. Qwest Comm'cns Co.*, No. 6:00-cv-06201-AA, 2013 WL 3766561, 2013 U.S. Dist. LEXIS 99573, at \*6-7 (D. Or. July 11, 2013). Here, WinCo will separately pay up to \$235,000 of CPT's administrative expenses. Because plaintiff has not included that amount in calculating class counsel's request or 30% of the common settlement fund, the request equates to less than 30% the effective common fund.

the case on contingency and no class member objected or opted out of the settlement); *Ochinero v. Ladera Lending Inc.*, No. SACV191136JVSADSX, 2021 U.S. Dist. LEXIS 192403, 2021 WL 4460334, at \*8 (C.D. Cal. July 19, 2021) (approving 33% fee award from common fund settlement where counsel took the case on contingency and no class member objected); *Terraza v. Safeway Inc.*, No. 16-cv-03994-JST, 2021 WL 11607173, 2021 U.S. Dist. LEXIS 266282, at \*8-11 (N.D. Cal. July 29, 2021) (approving class counsel request for \$2,550,000, or 30% of the common fund, given “excellent results achieved for the Class,” in obtaining “approximately 20% of maximum potential damages,” and because “an attorney’s fee award should take into account the risk of representing plaintiffs on a contingency basis over a period of almost five years of litigation”).

Indeed, as explained *supra*, despite the lower 25% “benchmark” or starting point in the Ninth Circuit, “an attorney fee of one third of the settlement fund is routinely found to be reasonable in class actions.” *Marshall*, 2020 WL 5668935, 2020 U.S. Dist. LEXIS 177056, at \*23-24. Awards of 30% or more are especially common (and appropriate) where the settlement fund is not extremely large—in line with the settlement in this case. See *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1127 (C.D. Cal. 2008) (“Cases of under \$ 10 Million will often result in result in fees above 25%.”); *Cicero v. DirectTV, Inc.*, No. EDCV

07-1182, 2010 WL 2991486, 2010 U.S. Dist. LEXIS 86920, at \*17 (C.D. Cal. July 27, 2010) (explaining that in the Ninth Circuit 20 to 30% is the usual range in common fund cases where the recovery is between \$50 and 200 million, but 30-50% is commonly awarded in cases in which the common fund is relatively small; especially less than \$10 million); *Kelley v. City of San Diego*, No. 19-cv-622-GPC-BGS, 2021 WL 424290, 2021 U.S. Dist. LEXIS 23710, at \*25 (S.D. Cal. Feb. 8, 2021) (accord).

Some courts have found a “lodestar cross-check” helpful to evaluate the reasonableness of a percentage-of-the-fund fee request, although such an assessment is not required. *See Farrell v. Bank of Am. Corp., N.A.*, 827 F. App’x 628, 630 (9th Cir. 2020) (“This Court has consistently refused to adopt a crosscheck requirement, and we do so once more.”); *Craft*, 624 F. Supp. 2d at 1122 (“A lodestar cross-check is not required in this circuit, and in some cases is not a useful reference point.”); *Rivera v. W. Express Inc.*, No. EDCV 18-1633 JGB (SHKx), 2022 U.S. Dist. LEXIS 76533, at \*18 (C.D. Cal. Apr. 25, 2022) (“The Court finds no issue that would require further inquiry to determine whether a percentage below 30% would be a more appropriate award to counsel. Consideration of the foregoing factors supports Class Counsel’s request for attorney’s fees in the amount of 30% of the settlement fund, or \$453,012.00, and costs not to exceed \$9,530.65. The court is satisfied that a lodestar “cross-check” is not required.”).

In the event the Court does find it helpful to conduct an optional lodestar cross-check here, class counsel have proffered their estimated lodestar to date for the Court to do so. *See, e.g., Demmings v. KKW Trucking, Inc.*, No. 3:14-cv-0494-SI, 2018 WL 4495461, 2018 U.S. Dist. LEXIS 159749, at \*42 (D. Or. Sept. 19, 2018) (explaining that “[t]he cross check is performed at higher level, to ensure the percentage-of-recovery method does not result in a fee that is unreasonable” and “does not require spending the time that is required when performing the lodestar method of fee calculation—otherwise using the percentage-of-recovery method would not allow for the time-savings the Ninth Circuit anticipated when allowing the method ‘in lieu of the often more time consuming task of calculating the lodestar’” (quoting *In re Bluetooth*, 654 F.3d at 942)); *In re Apollo Grp. Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at \*7 n.2 (D. Ariz. Apr. 20, 2012) (“[A]n itemized statement of legal services is not necessary for an appropriate lodestar cross-check.”); *Shames v. Hertz Corp.*, No. 07-CV-2174-MMA (WMC), 2012 WL 5392159, at \*19 (S.D. Cal. Nov. 5, 2012) (“[D]etailed time sheets are not necessary given the Court’s intimate familiarity with this case and the sheer amount of work and effort it took for the case to proceed to this point.” (citing *Fox v. Vice*, 563 U.S. 826, 838 (2011))); *Khanna v. Intercon Sec. Sys., Inc.*, No. 2:09-CV-2214 KJM EFB, 2014 WL 1379861, at \*15 (E.D. Cal. Apr. 8, 2014) (only a “rough calculation”

of fees needed for lodestar as a cross-check); *In re Optical Disk Drive Prods. Antitrust Litig.*, No. 10-md-02143-RS, 2021 U.S. Dist. LEXIS 171405, at \*25 (N.D. Cal. Sept. 9, 2021) (“A lodestar cross-check does not require mathematical precision or bean-counting, and the court may rely on summaries submitted by the attorneys and need not review actual billing records.” (internal quotation marks and citation omitted)).

Set forth in more detail in the supporting declarations of class counsel, the following chart represents class counsel’s approximate lodestar to date.

<b>Counsel</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Micheal Fuller	389	\$565	\$219,785
Kelly D. Jones	496	\$525	\$260,400
Daniel J. Nichols	164	\$500	\$82,100
<b>TOTALS</b>	1049	N/A	<b>\$562,285</b>

See Jones Decl. ¶¶ 4-7; Fuller Decl. ¶¶ 4-6; Nichols Decl. ¶¶4-5. In summary, class counsel’s current estimated and combined lodestar total is \$562,285.<sup>5</sup>

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<sup>5</sup> This does not include the significant time spent by paralegals and legal assistants on this matter. Nor does this include the substantial amount of additional time that class counsel will have to devote to this case to continue to protect the interests of the class and to facilitate the settlement, including, *inter alia*, continued design and implementation of the notice plan and claims process, fielding questions from class members after notice is provided to them and after the claims period has passed, responding to queries from the class administrator, dealing with potential fraud or irregularities in the claims process, drafting the motion for final approval and supporting documents, preparing for and attending the final approval hearing, and

In a cross-check, the lodestar estimate is divided into the proposed fee, and the resulting figure represents the multiplier to be compared to multipliers used in other cases. *Manual for Complex Litigation* § 14.122. The Ninth Circuit has recognized that multipliers in class action cases generally range from 1 to 4. *See Vizcaino*, 290 F.3d at 1051 n.6; *see also Newberg on Class Actions* § 15:87 (explaining that courts typically approve percentage awards based on lodestar cross-checks of 1.9 to 5.1 or even higher).

Indeed, courts in this circuit have routinely approved multipliers well beyond five times the common fund. *See, e.g., Steiner v. Am. Broadcast. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007) (finding multiplier of 6.85 “falls well within the range of multipliers that courts have allowed” and citing cases with comparable or higher multipliers); *Vizcaino*, 290 F.3d at 1051-52 & Appendix (affirming multiplier of 3.65 and reporting multipliers of up to 19.6); *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, 2017 U.S. Dist. LEXIS 201108, at \*22 n.57 (N.D. Cal. Dec. 6, 2017) (collecting cases with multipliers of 3.41 to 9.3); *Craft*, 624 F. Supp. 2d at 1125 (approving cross-check multiplier of 5.2).

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other tasks required to see the settlement and case through to its final conclusion. Based on previous cases, counsel estimates that this additional work in this case will equate to approximately 50-70 hours, between class counsel. Jones Decl. ¶ 9.

If the court chooses to do so, a lodestar cross-check here indicates that class counsel's request for 30% of the \$3,365,000 common fund (\$1,009,500) results in a modest 1.795 multiplier of the approximated lodestar to date, at the bottom end of the typical and acceptable range approved by the Ninth Circuit and in-circuit district courts as surveyed *supra*. Therefore, although unnecessary, a lodestar cross-check further confirms that the 30 % of the common fund fee award requested by class counsel is fair and reasonable.

**2. Class Counsel's Requested Costs and Expenses Are Fair and Reasonable and Should Be Granted.**

“There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund.” *Bowen v. Jea Senior Living Health & Welfare Ben. Plan, LLC*, No. 2:20-cv-2318-KJN, 2023 WL 8527732, 2023 U.S. Dist. LEXIS 218839, at \*34 (E.D. Cal. Dec. 8, 2023) (internal quotation marks and citation omitted); *see also Schmitt*, 2024 WL 1676754, 2024 U.S. Dist. LEXIS 71166, at \*13 (“Litigation costs are recoverable in a class action settlement.” (citing *Staton v. Boeing Co.*, 327 F.3d 938, 974-75 (9th Cir. 2003))).

Class counsel “may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters.” *Id.* (citing *Harris v. Marhoefer*, 24 F.3d 16, 19-20 (9th Cir. 1994)). Applicable litigation expenses include, *inter alia*, deposition-related costs, expert

and consultant fees, mediation and mediator fees, research and investigation costs, class notice costs, and other administration fees. *See Marshall*, 2020 WL 5668935, 2020 U.S. Dist. LEXIS 177056, at \*25-27 (approving class counsel’s request for litigation expenses for these types, and others, in the amount of \$390,587 and finding that “[g]iven that the expenses sought are the type of costs typically recovered in similar cases, and based on the significant efforts expended by [class counsel] over the extended litigation, the Court finds their request of reimbursement of litigation expenses reasonable.”).

Here, as may be expected in this protracted class litigation, class counsel has advanced incurred similar types of litigation expenses on the way to securing the settlement for the class members. Most of the expenses were advanced and paid by class counsel Michael Fuller’s firm although Mr. Jones’s and Mr. Nichol’s firms did separately advance and incur some of the litigation expenses as well. As set forth in more detail in the supporting declarations of class counsel the total of these applicable and reasonably incurred costs and litigation expenses that class counsel is seeking reimbursement from the common fund for is **\$96,240.35**. Fuller Decl. ¶ 7, Exhibit 3 (\$82,824); Jones Decl. ¶ 8 (\$12,500); Nichols Decl. ¶ 6 (\$916.35).

Because all of these costs and litigation expenses were reasonably advanced and incurred to prosecute this action and to successfully

obtain the settlement on behalf of the class, and are less than the \$150,000 cap set forth in the Agreement, plaintiff and class counsel respectfully request that the Court find them to be fair and reasonable and that class counsel's costs and expenses in the amount of \$96,240.35 will be reimbursable from the common settlement fund. *See, e.g., Schmitt*, 2024 WL 1676754, 2024 U.S. Dist. LEXIS 71166, at \*13 ("The Settlement in this matter specifically authorizes the award of litigation costs, subject to court review and approval. Class counsel has provided a ledger of the costs they paid out of pocket on this litigation, amounting to \$374,137.63. The Court has reviewed the costs and finds them to constitute reasonable expenditures for the items and services on which they were incurred, as well as reasonable overall." (internal citations to the case docket omitted)).

**3. Plaintiff's Requested Service Award Is Fair and Reasonable and Should Be Granted.**

Class representative service (or incentive) awards are "fairly typical" in class action cases on the Ninth Circuit. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Incentive awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Id.* at 958-59. "The trial court has discretion to award incentives to the class representatives."

*Rausch v. Hartford Fin. Servs. Grp.*, No. 01-cv-1529-BR, 2007 WL 671334, 2007 U.S. Dist. LEXIS 14740, at \*8 (D. Or. Feb. 26, 2007).

Nonexclusive criteria courts have considered in determining the reasonableness of a requested incentive award include: (1) any risks to the class representative in maintaining the action; (2) any personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit or lack thereof enjoyed by the class representative as a result of the litigation. *Id.* at \*8-9.

In the Agreement the parties agreed that plaintiff would request no more than \$10,000 for an incentive award for the significant and time and effort she invested in this litigation and helping to secure the substantial benefits to be provided to the class members. Plaintiff now respectfully requests the Court award this \$10,000 to be paid from the common settlement fund as an incentive award, because it is fair and reasonable under the facts and circumstances of this case.

There was some degree of risk in plaintiff exposing herself to public ridicule in maintaining this action on behalf of the absent class members, as well as the potential for a judgment for defendant's attorney fees and costs if the class was not granted certification and had the Court agreed with defendant that plaintiff's claim should be dismissed. *See* ORS 646.638(3)-(4). Plaintiff estimates that she has

spent approximately 55-65 hours related to this litigation and proposed settlement, including reviewing documents, complying with written discovery obligations, consulting with class counsel, and preparing for and being deposed. Simonin Decl. ¶ 3. During her tenure as proposed class representative, plaintiff has been dealing with health and other personal issues that made the tasks she performed more challenging than they would be for many. Simonin Decl. ¶ 4.

Other than the requested service award, through the settlement, plaintiff will only receive the same maximum \$200 distribution as the other class members. There can be no doubt that plaintiff's efforts were critical in securing this settlement that will provide significant compensation for the class members<sup>6</sup> and that absent an adequate and well-deserved incentive award she will not be appropriately compensated for her contributions and the particular difficulties she faced, including being the sole remaining named plaintiff to represent all of the absent class members. *See Andrikos v. APM Terminals Pac., LLC*, No. CV 19-10421-GW-JCx, 2024 U.S. Dist. LEXIS 14768, at \*32 (C.D. Cal. Jan. 25, 2024) (granting the full amount recommended and requested of \$25,000 for each representative plaintiff "as a well-

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<sup>6</sup> This reality is bolstered by the fact that two other proposed representative plaintiffs Rachel Miller and David Maingot were unable or unwilling to continue providing these services and to see the litigation through, the latter apparently reaching out the defendant and negotiating an undisclosed settlement payment in exchange for his dismissal. *See* Doc. 57.

deserved service/incentive enhancement award” under the circumstances, although beyond the typical incentive award).

In the circumstances of this case, the recommended and requested service award of \$10,000 is fair and reasonable and is well-supported by analogous and recent incentive awards approved by courts in this district and circuit. *See Rausch*, 2007 WL 671334, 2007 U.S. Dist. LEXIS 14740, at \*9 (approving \$10,000 as a reasonable incentive award to the representative plaintiff); *Bentley v. United of Omaha Life Ins. Co.*, No. CV 15-7870-DMG (AJWx), 2020 WL 3978090, 2020 U.S. Dist. LEXIS 126603, at \*26 (C.D. Cal. Mar. 13, 2020) (denying request for \$25,000 incentive award but finding \$10,000 award to be reasonable); *Figueroa v. Capital One, N.A.*, No. 18cv692 JM(BGS), 2021 WL 211551, 2021 U.S. Dist. LEXIS 11962, at \*35 (S.D. Cal. Jan. 21, 2021) (finding \$10,000 incentive award for each of the two named plaintiffs “consistent with those typically awarded as incentive payments” and reasonable); *Reed v. Light & Wonder, Inc.*, No. 18-cv-565-RSL, 2022 WL 3348217, 2022 U.S. Dist. LEXIS 147185, at \*5 (W.D. Wash. Aug. 12, 2022) (approving \$10,000 incentive award to lead representative plaintiff as fair and reasonable); *Wilson v. Huuuge, Inc.*, No. 18-cv-5276-RSL, 2021 WL 5122292021 U.S. Dist. LEXIS 26688, at \*5 (W.D. Wash. Feb. 11, 2021) (\$10,000 incentive award reasonable for primary representative plaintiff’s services); *Sypherd v. Lazy Dog Rests., LLC*, No. 5:20-cv-00921-

FLA (KKx), 2023 WL 1931319, 2023 U.S. Dist. LEXIS 23257, at \*16 (C.D. Cal. Feb. 10, 2023) (“[T]he court finds the award of \$10,000 is consistent with reasonable and just service awards in the Ninth Circuit.”); *Tuttle v. Audiophile Music Direct, Inc.*, No. C22-1081JLR, 2023 WL 8891575, 2023 U.S. Dist. LEXIS 229241, at \*47-48 (W.D. Wash. Dec. 26, 2023) (approving \$10,000 service award for each of the two representative plaintiffs as reasonable, notwithstanding an objection to the requested awards).

### CONCLUSION

For the foregoing reasons, plaintiff respectfully moves the Court to grant the relief requested above in its order granting final approval to the settlement.

April 26, 2024

**RESPECTFULLY FILED,**

s/ Kelly D. Jones

**Kelly D. Jones, OSB No. 074217**

Of Attorneys for Plaintiff

Law Office of Kelly D. Jones

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kellydonovanjones@gmail.com

Direct 503-846-4329

**CERTIFICATE OF SERVICE**

I certify that this document was served on all necessary parties through this Court's ECF system.

April 26, 2024

s/ Kelly D. Jones  
**Kelly D. Jones, OSB No. 074217**  
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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VIRGINIA SIMONIN**  
individually, and on behalf of  
others similarly situated

Plaintiff

Case No. 3:19-cv-02094-AR

**DECLARATION OF  
KELLY D. JONES**

vs

**WINCO FOODS, LLC**

Defendant

## DECLARATION

I, Kelly D. Jones, declare the following under penalty of perjury:

1. I am one of the attorneys for plaintiff, appointed as co-class counsel, in this action and make this declaration based on my personal knowledge and if called to testify to the following facts I could and would competently do so.

2. I submit this declaration in support of the Class Action Settlement Fee, Expense, and Service Award Application.

3. All of the work that I and the other class counsel attorneys did on this case was done on a pure contingency basis, representing plaintiffs and seeking relief for absent class members who were harmed by unlawful trade practices and could not afford to advance funds or expenses for this litigation, presenting a substantial risk that I would never receive any compensation for the time I expended to help secure the settlement and common fund for the benefit of the class members.

4. I have been a practicing attorney in Oregon for over 16 years. Most of my career has been spent litigating consumer protection and civil rights litigation. I have helped obtain tens of millions of dollars of relief for thousands of Oregonians. I have been lead or co-counsel on at least 70 civil cases filed in this District—some of which are pending or certified and resolved class actions. I have been approved by numerous federal and state courts as class counsel in consumer protection related

class action cases, including the following cases: *Williamson v. Curaleaf, Inc.*, Case No. 3:22-cv-00782-IM; *Pauline Long, et al. v. Safeway Inc.*, Case No. 19CV45421 (2023); *Russell v. Ray Klein, Inc.*, No. 1:19-cv-00001-MC, 2022 US Dist LEXIS 92881 (D Or May 24, 2022); *Mueller v. Gordon, Aylworth & Tami, P.C.*, No. 3:18-cv-00568-AC, 2021 US Dist LEXIS 209175 (D Or Oct. 12, 2021); *Villanueva v. Liberty Acquisitions Servicing, LLC*, 319 FRD 307 (D Or 2017).

5. I have served as the chair of the Oregon State Bar Consumer Law Section Executive Committee. I have presented on a variety of consumer law topics as a speaker at legal education events and to the public, have authored numerous articles in legal publications and websites and Oregon BarBooks chapters, and have helped draft and pass critical consumer protection related legislation, including, most recently, SB 1595 (Oregon Family Financial Protection Act). On the national level, I was awarded the National Consumer Law Center's 2022 Rising Star Award.

6. My office is located in downtown Portland. The most recent Oregon State Bar Economic Survey (2022) lists the mean hourly rate for downtown Portland attorneys in the 16-20 years of practice range as \$445, and the 95th percentile hourly rate for attorneys in this bracket

as \$683<sup>1</sup>. Given my significant experience and recognition as a leading attorney in this area of law in Oregon (consumer class actions), \$525 is a reasonable hourly rate for my time spent on this case.

7. My review of my time records indicates that the total amount of hours that I have recorded for work performed on this matter through the date of this declaration is approximately 496 hours (rounded down). At the hourly rate of \$525 set forth above, my current lodestar I would request in this case through the date of this declaration is approximately 496 hours x \$525 per hour = \$260,400.

8. Although co-class counsel Micheal Fuller's firm advanced most of the costs and expenses in this litigation, I advanced one-half the costs for expert Redgrave Data, equating to \$12,500.

9. Based upon my previous experience as class counsel in numerous approved class settlements cases, after preliminary approval of the settlement, there will be a significant amount of additional time that class counsel will have to devote to this case to continue to protect the interests of the class and to facilitate the settlement, including *inter alia*, continued design and implementation of the notice plan and claims process, fielding questions from class members after notice is provided to them and after the claims period has passed, responding to queries

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<sup>1</sup> See page 43 of survey, which can be found at:  
[https://www.osbar.org/\\_docs/resources/Econsurveys/22EconomicSurvey.pdf](https://www.osbar.org/_docs/resources/Econsurveys/22EconomicSurvey.pdf)

from the class administrator, dealing with potential fraud or irregularities in the claims process, drafting the motion for final approval and supporting documents, preparing for and attending the final approval hearing, and other tasks required to see the settlement and case through to its final conclusion. Based on my previous experiences, I estimate that this additional work in this case will equate to approximately 50-70 hours, between myself and my fellow class counsel.

10. I know the facts I am testifying about based on my personal knowledge. Under 28 U.S.C. § 1746, I declare under penalty of perjury that this declaration is true and correct.

April 26, 2024

s/ Kelly D. Jones  
**Kelly D. Jones, OSB No. 074217**  
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Direct 503-847-4329

Of Attorneys for plaintiff

**CERTIFICATE OF SERVICE**

I caused this document to be served on all parties through the CM/ECF system.

April 26, 2024

s/ Kelly D. Jones  
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Of Attorneys for plaintiff

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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VIRGINIA SIMONIN**  
individually, and on behalf of  
others similarly situated

Plaintiff

vs

**WINCO FOODS, LLC**

Defendant

Case No. 3:19-cv-02094-AR

**DECLARATION OF  
MICHAEL FULLER**

## DECLARATION

I, Michael Fuller, declare the following under penalty of perjury:

1. I am the lead trial attorney for plaintiff, appointed as co-class counsel, in this action and make this declaration based on my personal knowledge and if called to testify to the following facts I could and would competently do so.

2. I submit this declaration in support of the Class Action Settlement Fee, Expense, and Service Award Application.

3. All of the work that I did on this case was done on a pure contingency basis, presenting a substantial risk that neither I nor my firm would receive any compensation for the time I expended to help secure the settlement and common fund for the benefit of the class members.

4. The document attached as Exhibit 1 is a true and correct copy of my biography and curriculum vitae. Over the past ten years I've taught consumer law as an adjunct professor, and for the past two years, I've taught students at all three Oregon law schools through a remote course jointly sponsored by the University of Oregon School of Law, Willamette University College of Law, and Lewis & Clark Law School. I'm the past chair of the Oregon State Bar consumer law section, past chair of the Oregon chapter of the National Association of Consumer Advocates, and the current chair of the Oregon Trial Lawyers Association consumer law

section. Over the past two years I've successfully tried multiple cases to jury verdict on behalf of consumers, including a recent \$1.2 million punitive damages verdict in Multnomah County. I have substantial experience litigating consumer cases, both on an individual and classwide basis.

5. The rate that I charge to clients that can afford to pay me by the hour in non-contingency cases is \$565 per hour. Earlier this week, Judge Brandon Thompson in Washington County, Oregon found my rate of \$565 per hour to be reasonable as the prevailing party in a consumer protection case, based on my experience, skill, and reputation. *See Capital One, N.A. vs. Healy*, Washington County Case No. 23CV42142. The document attached as Exhibit 2 is a true and correct copy of an expert declaration by S. Ward Greene attesting to the reasonableness of my rate of \$565 per hour for work performed in a recent in-district case (Case 3:21-cv-00517-SI ) where we prevailed in a jury trial on behalf of a consumer as court-appointed pro bono counsel.

6. I have incurred approximately 389 hours of work in this case over the past 54 months. At my hourly rate of \$565, the lodestar I would request in this case through the date of this declaration is approximately \$219,785.

7. As the lead trial attorney for plaintiff in this case, my firm advanced the vast majority of the costs and expenses in this case.

Attached as Exhibit 3 is a PDF printout of the Excel spreadsheet describing the taxable costs and expenses and corresponding amounts that my firm advanced and paid in this litigation to date. The total for these reasonably incurred costs and expenses is \$82,824 (rounded down).

8. I know the facts I am testifying about based on my personal knowledge. Under 28 U.S.C. § 1746, I declare under penalty of perjury that this declaration is true and correct.

April 26, 2024

/s/ Michael Fuller  
**Michael Fuller, OSB No. 09357**

**RESPECTFULLY FILED BY,**

/s/ Kelly D. Jones  
**Kelly D. Jones, OSB No. 074217**  
Of Attorneys for plaintiff  
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Direct 503-847-4329

**CERTIFICATE OF SERVICE**

I caused this document to be served on all parties through the CM/ECF system.

April 26, 2024

/s/ Kelly D. Jones

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Of Attorneys for plaintiff

# Michael Fuller

## BIOGRAPHY

**Michael Fuller** is an American trial lawyer, law professor, and motivational speaker.

In 2023, the *Portland Business Journal* put Michael on its '40 Most Influential Leaders under 40' list.

Michael worked for Senator Gordon Smith in Washington, DC prior to law school.

His cases have been covered by *The Today Show*, *ESPN*, *Fox News*, and *The New York Times*.

Called "Portland's underdog lawyer" by the *Portland Business Journal*, Michael fights for the little guy against Wall Street and Corporate America.

His private client list includes NFL players, UFC fighters, politicians, and journalists.

Michael has been recognized by *Super Lawyers Magazine* every year for the past decade. His Martindale-Hubbell rating is preeminent.

## EDUCATION

**Juris Doctor – Order of Barristers**  
Willamette University College of Law

**Bachelor of Science – Philosophy**  
Oregon State University

## PROFESSIONAL LICENSES

**Licensed Attorney**  
Oregon State Bar

**Licensed Substitute Teacher**  
Oregon TSPC

**Licensed Boxing Coach**  
USA Boxing

Exhibit 1- 1 of 3



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 team@underdoglawyer.com

 \$565 per hour

## MAIN PRACTICE AREAS

Class Actions

Civil Rights

Wrongful Death

Complex Civil  
Litigation Defense

# PHILANTHROPY

## BOARD OF DIRECTORS

Michael serves on the 2024 Oregon State Bar House of Delegates, the City of West Linn Historic Review Board, and the Odighizuwa Family Foundation Board of Directors.



He is the 2024 chair of the Oregon Trial Lawyers Association Consumer Law Section, and past chair of the Oregon State Bar Consumer Law Section.

## CLASSROOM GRANTS

Michael's annual classroom grants honor local public school teachers who go above and beyond for their students.

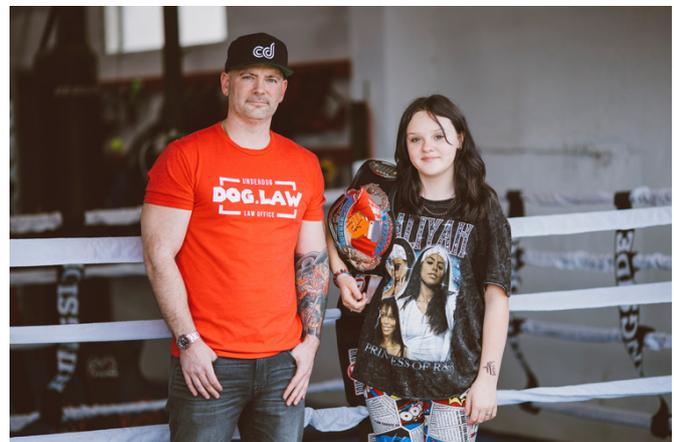


The teachers are given full authority to use their \$5,000 classroom grants as they see fit.

## BOXING COACH

In 2020, Michael sponsored the construction of a boxing gym in Portland for at-risk youth.

Michael is a volunteer licensed boxing coach with USA Boxing. His boxing scholarships provide free equipment, training, and travel stipends to the gym's high school fighters.



## SUBSTITUTE TEACHER

Michael was the first in his family to go to college. Now he gives back as a licensed substitute K-12 public school teacher.



Michael is a donor and past board member of the Hillsboro Schools Foundation.

# RECENT CASES

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## CLASS ACTIONS

Over the past decade, courts across the country have appointed Michael to represent the interests of millions of consumers in class action cases.

### **WinCo Foods (2024)**

Case No. 3:19-cv-02094-AR

- \$3.6 million settlement
- Lead class counsel

### **Safeway (2023)**

Case No. 19CV45421

- \$8.95 million settlement
- Lead class counsel

### **Professional Credit (2022)**

Case No. 1:19-cv-1-MC

- \$2 million settlement
- Lead class counsel

### **CenturyLink (2021)**

MDL No. 2795

- \$18.5 million settlement

### **Burgerville (2020)**

Case No. 18CV53295

### **Sonic Drive-In (2019)**

MDL No. 2807

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## JURY TRIALS

Michael loves civil jury trials, representing both plaintiffs and defendants in Oregon state and federal courts.

### **Hume v Guardian (2024)**

Federal Court Case No. 3:21-cv-00517-SI

- 8-person jury

### **Alarcon v Polo (2024)**

Mult. Co. Case No. 22CV10396

- 12-person jury

### **Smith v Pinestreet (2023)**

Mult. Co. Case No. 19CV20048

- 12-person jury

### **Summerville v Mult. (2022)**

Mult. Co. Case No. 21CV21482

### **Krech v Pacificap (2022)**

Mult. Co. Case No. 21CV09001

### **Bohorquez v Powe (2022)**

Mult. Co. Case No. 21CV04730

### **Boyd v Cascade (2022)**

Mult. Co. Case No. 19CV42308

### **Lanter v Cuniff (2021)**

Mult. Co. Case No. 20CV27653

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

MICHELLE HUME,  
Plaintiff,  
vs  
GUARDIAN MANAGEMENT, LLC *et seq.*,  
Defendants.

Case No. 3:21-cv-00517-SI  
DECLARATION OF S. WARD GREENE  
IN SUPPORT OF PLAINTIFF’S MOTION  
FOR ATTORNEY FEES

I, S. Ward Greene, hereby declare as follows:

- 1. I am senior counsel at Farleigh Wada Witt. The statements in this declaration are based on my personal knowledge.
- 2. I have participated and testified as an expert witness in numerous hearings regarding attorney fees. I also managed a law firm in Portland for over thirty-five years. I was responsible for approving the hourly rates of numerous attorneys during that time.
- 3. I have known Michael Fuller for over 10 years. During the course of that time, I have worked with him on volunteer programs for the bar and have conferred with him about numerous legal issues and proceedings.
- 4. I am familiar with the Oregon State Bar’s 2022 Economic Survey. A copy of the relevant billing rate sections are attached as Exhibits A and B.
- 5. I am also familiar with the 2020 Morones Survey of Commercial

1 Litigation Fees.

2 6. In the course of my practice, I have frequently submitted attorney fee  
3 petitions both in state and federal court, including the bankruptcy court, and have reviewed  
4 countless fee petitions from other attorneys. I am familiar with hourly rates routinely charged by  
5 experienced litigation attorneys in the Portland metropolitan area.

6 7. Especially when adjusted for inflation, the 2022 Economic Survey  
7 suggests an hourly rate for someone with Mr. Fuller's years of experience in the range of \$450  
8 per hour to \$700 per hour.

9 8. When considering an appropriate hourly rate, I also consider the  
10 attorney's demonstrated skill, reputation, and success. When those factors are included, Mr.  
11 Fuller's rate of \$565 per hour is clearly a reasonable rate.

12 9. I reviewed plaintiff's motion for attorney's fees in this case, along with all  
13 of the declarations and supporting documents. I also interviewed Mr. Fuller to get a clearer  
14 understanding of the events leading up to trial and the challenges his office faced.

15 10. I also considered the factors set forth in ORS 20.075 with respect to the  
16 award of attorney's fees. I concluded that all of the factors set forth in ORS 20.075 (2) supported  
17 a substantial award of attorney fees to Mr. Fuller's office.

18 11. In particular, I am of the opinion that, given the contentiousness of the  
19 case; the time pressure to prepare for trial; the experience, reputation and ability of Mr. Fuller;  
20 the fact that the fee was, for all intents and purposes, contingent; and the fact that an award of  
21 attorney fees will promote access to justice in similar cases; the fees sought by Mr. Fuller are  
22 extremely reasonable.

23 12. In my opinion, \$82,232.25 is a reasonable award for attorney fees, costs  
24 and expenses to be awarded to plaintiff in this action.

25 ///

26 ///

1 I hereby declare that the above statement, including the information contained in  
2 this declaration and the exhibits to this statement, is true to the best of my knowledge and belief,  
3 and I understand it is made for use as evidence in court and is subject to penalty for perjury.

4  
5 DATED this 19<sup>th</sup> day of March, 2024.

6  
7  
8 By:   
9 S. Ward Greene, OSB #774131  
10 Farleigh Wada Witt  
11 121 SW Morrison Street, Suite 600  
12 Portland, Oregon 97204  
13 (503) 228-6044  
14 [wgreene@fwwlaw.com](mailto:wgreene@fwwlaw.com)

## Billing Rate

Table 35 presents the 2021 hourly billing rate for private practice lawyers, regardless of level of employment (i.e., full-time, part-time by choice, and part-time due to lack of legal work). The mean hourly rate was \$344 statewide, and ranged from \$269 to \$401 regionally.

**Table 35: 2021 Hourly Billing Rate – Private Practice**

	Oregon (n=1,613)	Downtown Portland (n=597)	Tri-County (n=500)	Upper Willamette Valley (n=151)	Lower Willamette Valley (n=134)	Southern Oregon (n=69)	Eastern Oregon (n=122)	Oregon Coast (n=40)
Mean Hourly Rate	\$344	\$401	\$329	\$293	\$306	\$281	\$288	\$269
Median Hourly Rate	\$325	\$380	\$325	\$300	\$300	\$270	\$288	\$250
Low Hourly Rate	\$75	\$125	\$75	\$105	\$75	\$100	\$75	\$175
95 <sup>th</sup> Percentile	\$575	\$686	\$500	\$415	\$459	\$405	\$399	\$399
High Hourly Rate	\$1,375	\$1,150	\$1,375	\$500	\$754	\$600	\$500	\$650

Q14: When you charged on an hourly basis, what was your usual billing rate per hour in 2021?

Q6: Which type of employment represented 50% or more of your practice as of 12/31/2021? [*private practice only*]

## Total Years Admitted to Practice

Table 36 presents the 2021 hourly bill rate data by total years admitted to practice for all private practice lawyers, regardless of level of employment. Statewide, the mean hourly billing rate increased as the number of years admitted to practice increased (aside from a small decrease in the 16-20 year range), reaching a mean of \$384 for lawyers admitted to practice for Over 30 Years. Slight variations occurred regionally.

**Table 36: 2021 Hourly Billing Rate by Total Years Admitted to Practice – Private Practice**

	Oregon (n=148)	Downtown Portland (n=69)	Tri-County (n=32)	Upper Willamette Valley (n=15)	Lower Willamette Valley (n=12)	Southern Oregon (n=6)	Eastern Oregon (n=12)	Oregon Coast (n=n/a)
<b>0-3 Years</b>								
Mean Rate	\$273	\$310	\$257	\$232	\$223	\$194	\$255	n/a
Median Rate	\$250	\$300	\$250	\$225	\$230	\$180	\$243	n/a
95 <sup>th</sup> Percentile	\$459	\$538	\$425	n/a	n/a	n/a	n/a	n/a
	Oregon (n=165)	Downtown Portland (n=62)	Tri-County (n=48)	Upper Willamette Valley (n=20)	Lower Willamette Valley (n=13)	Southern Oregon (n=10)	Eastern Oregon (n=11)	Oregon Coast (n=n/a)
<b>4-6 Years</b>								
Mean Rate	\$285	\$312	\$281	\$276	\$234	\$241	\$276	n/a
Median Rate	\$275	\$308	\$263	\$250	\$230	\$250	\$295	n/a
95 <sup>th</sup> Percentile	\$468	\$495	\$464	\$498	n/a	n/a	n/a	n/a
	Oregon (n=160)	Downtown Portland (n=58)	Tri-County (n=51)	Upper Willamette Valley (n=18)	Lower Willamette Valley (n=14)	Southern Oregon (n=n/a)	Eastern Oregon (n=14)	Oregon Coast (n=n/a)
<b>7-9 Years</b>								
Mean Rate	\$308	\$339	\$316	\$272	\$261	n/a	\$264	n/a
Median Rate	\$300	\$350	\$325	\$275	\$245	n/a	\$275	n/a
95 <sup>th</sup> Percentile	\$449	\$486	\$450	n/a	n/a	n/a	n/a	n/a
	Oregon (n=173)	Downtown Portland (n=72)	Tri-County (n=51)	Upper Willamette Valley (n=17)	Lower Willamette Valley (n=11)	Southern Oregon (n=7)	Eastern Oregon (n=10)	Oregon Coast (n=5)
<b>10-12 Years</b>								
Mean Rate	\$334	\$379	\$312	\$289	\$339	\$281	\$271	\$253
Median Rate	\$325	\$370	\$320	\$300	\$325	\$250	\$275	\$250
95 <sup>th</sup> Percentile	\$547	\$567	\$450	n/a	n/a	n/a	n/a	n/a

**Table 36: 2021 Hourly Billing Rate by Total Years Admitted to Practice – Private Practice**

	Oregon (n=150)	Downtown Portland (n=66)	Tri-County (n=44)	Upper Willamette Valley (n=11)	Lower Willamette Valley (n=13)	Southern Oregon (n=n/a)	Eastern Oregon (n=7)	Oregon Coast (n=5)
<b>13-15 Years</b>								
Mean Rate	\$366	\$416	\$348	\$310	\$336	n/a	\$305	\$248
Median Rate	\$350	\$400	\$350	\$315	\$300	n/a	\$300	\$250
95 <sup>th</sup> Percentile	\$586	\$733	\$490	n/a	n/a	n/a	n/a	n/a
	Oregon (n=187)	Downtown Portland (n=66)	Tri-County (n=69)	Upper Willamette Valley (n=15)	Lower Willamette Valley (n=11)	Southern Oregon (n=9)	Eastern Oregon (n=14)	Oregon Coast (n=n/a)
<b>16-20 Years</b>								
Mean Rate	\$359	\$445	\$320	\$290	\$314	\$303	<b>\$314</b>	n/a
Median Rate	\$350	\$425	\$315	\$300	\$305	\$280	\$285	n/a
95 <sup>th</sup> Percentile	\$600	\$683	\$463	n/a	n/a	n/a	n/a	n/a
	Oregon (n=317)	Downtown Portland (n=103)	Tri-County (n=109)	Upper Willamette Valley (n=27)	Lower Willamette Valley (n=26)	Southern Oregon (n=18)	Eastern Oregon (n=29)	Oregon Coast (n=5)
<b>21-30 Years</b>								
Mean Rate	\$371	\$447	\$351	<b>\$342</b>	\$315	<b>\$312</b>	\$306	\$250
Median Rate	\$350	\$450	\$350	\$350	\$313	\$300	\$320	\$250
95 <sup>th</sup> Percentile	\$600	\$697	\$550	\$477	\$422	n/a	\$450	n/a
	Oregon (n=313)	Downtown Portland (n=101)	Tri-County (n=96)	Upper Willamette Valley (n=28)	Lower Willamette Valley (n=34)	Southern Oregon (n=12)	Eastern Oregon (n=25)	Oregon Coast (n=17)
<b>Over 30 Years</b>								
Mean Rate	<b>\$384</b>	<b>\$483</b>	<b>\$364</b>	\$304	<b>\$349</b>	\$308	\$292	<b>\$302</b>
Median Rate	\$350	\$425	\$350	\$308	\$325	\$313	\$275	\$275
95 <sup>th</sup> Percentile	\$722	\$798	\$600	\$408	\$571	n/a	\$435	n/a

Q14: When you charged on an hourly basis, what was your usual billing rate per hour in 2021?

Q2: What year were you first admitted to a state bar other than Oregon? and year admitted to OSB from database [converted to years]

Q6: Which type of employment represented 50% or more of your practice as of 12/31/2021? [private practice only]

**Area of Practice**

Table 37 presents the 2021 hourly billing rate data by area of practice for all private practice lawyers, regardless of level of employment. The highest hourly billing rate was for Business/Corporate – Litigation (mean=\$408) statewide, with variations across the regions.

**Table 37: 2021 Hourly Billing Rate by Area of Practice – Private Practice**

	Oregon (n=33)	Downtown Portland (n=16)	Tri-County (n=10)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=5)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
<b>Administrative Law</b>								
Mean Rate	\$331	\$337	\$309	n/a	<b>\$379</b>	n/a	n/a	n/a
Median Rate	\$300	\$288	\$275	n/a	\$325	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$629	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Oregon (n=34)	Downtown Portland (n=15)	Tri-County (n=12)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
<b>Bankruptcy</b>								
Mean Rate	\$383	\$432	\$364	n/a	n/a	n/a	n/a	n/a
Median Rate	\$370	\$400	\$375	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$631	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Table 37: 2021 Hourly Billing Rate by Area of Practice – Private Practice**

<b>Business/Corporate – Litigation</b>	Oregon (n=189)	Downtown Portland (n=108)	Tri-County (n=37)	Upper Willamette Valley (n=19)	Lower Willamette Valley (n=13)	Southern Oregon (n=5)	Eastern Oregon (n=6)	Oregon Coast (n=n/a)
Mean Rate	<b>\$408</b>	<b>\$474</b>	\$349	\$284	\$311	\$314	\$294	n/a
Median Rate	\$375	\$450	\$350	\$290	\$300	\$325	\$302	n/a
95 <sup>th</sup> Percentile	\$730	\$774	\$503	n/a	n/a	n/a	n/a	n/a
<b>Business/Corporate – Transactional</b>	Oregon (n=216)	Downtown Portland (n=79)	Tri-County (n=63)	Upper Willamette Valley (n=19)	Lower Willamette Valley (n=23)	Southern Oregon (n=10)	Eastern Oregon (n=18)	Oregon Coast (n=n/a)
Mean Rate	\$359	\$430	\$343	\$284	\$293	\$318	\$313	n/a
Median Rate	\$350	\$395	\$350	\$280	\$300	\$360	\$317	n/a
95 <sup>th</sup> Percentile	\$550	\$710	\$470	n/a	\$440	n/a	n/a	n/a
<b>Civil Litigation – Defendant (excludes insurance defense)</b>	Oregon (n=193)	Downtown Portland (n=108)	Tri-County (n=36)	Upper Willamette Valley (n=15)	Lower Willamette Valley (n=9)	Southern Oregon (n=11)	Eastern Oregon (n=10)	Oregon Coast (n=n/a)
Mean Rate	\$381	\$442	\$335	\$259	\$288	\$281	\$286	n/a
Median Rate	\$350	\$415	\$350	\$260	\$300	\$300	\$285	n/a
95 <sup>th</sup> Percentile	\$655	\$743	\$475	n/a	n/a	n/a	n/a	n/a
<b>Civil Litigation – Insurance Defense</b>	Oregon (n=118)	Downtown Portland (n=67)	Tri-County (n=29)	Upper Willamette Valley (n=12)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	\$232	\$232	\$222	\$243	n/a	n/a	n/a	n/a
Median Rate	\$225	\$220	\$200	\$235	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$350	\$340	\$413	n/a	n/a	n/a	n/a	n/a
<b>Civil Litigation – Plaintiff (excludes personal injury)</b>	Oregon (n=240)	Downtown Portland (n=99)	Tri-County (n=81)	Upper Willamette Valley (n=26)	Lower Willamette Valley (n=15)	Southern Oregon (n=11)	Eastern Oregon (n=6)	Oregon Coast (n=n/a)
Mean Rate	\$374	\$419	\$363	\$305	\$364	\$297	\$286	n/a
Median Rate	\$350	\$410	\$350	\$300	\$345	\$300	\$298	n/a
95 <sup>th</sup> Percentile	\$580	\$685	\$525	\$498	n/a	n/a	n/a	n/a
<b>Civil Litigation – Plaintiff Personal Injury</b>	Oregon (n=157)	Downtown Portland (n=37)	Tri-County (n=77)	Upper Willamette Valley (n=20)	Lower Willamette Valley (n=9)	Southern Oregon (n=n/a)	Eastern Oregon (n=6)	Oregon Coast (n=n/a)
Mean Rate	\$368	\$393	<b>\$367</b>	<b>\$355</b>	\$329	n/a	<b>\$388</b>	n/a
Median Rate	\$350	\$400	\$350	\$350	\$350	n/a	\$393	n/a
95 <sup>th</sup> Percentile	\$550	\$619	\$503	\$498	n/a	n/a	n/a	n/a
<b>Criminal Law, Prosecution</b>	Oregon (n=n/a)	Downtown Portland (n=n/a)	Tri-County (n=n/a)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Median Rate	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

**Table 37: 2021 Hourly Billing Rate by Area of Practice – Private Practice**

<b>Criminal Law, Defense – 95% or more court- appointed clients</b>	Oregon (n=25)	Downtown Portland (n=n/a)	Tri-County (n=7)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	\$226	n/a	\$177	n/a	n/a	n/a	n/a	n/a
Median Rate	\$240	n/a	\$200	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$490	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Criminal Law, Defense – 50% - 94% court-appointed clients</b>	Oregon (n=23)	Downtown Portland (n=7)	Tri-County (n=5)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	\$250	\$258	\$240	n/a	n/a	n/a	n/a	n/a
Median Rate	\$255	\$300	\$250	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$392	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Criminal Law, Defense – Less than 50% court-appointed clients</b>	Oregon (n=38)	Downtown Portland (n=14)	Tri-County (n=6)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=7)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	\$357	\$400	\$341	n/a	\$355	n/a	n/a	n/a
Median Rate	\$350	\$400	\$350	n/a	\$350	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$535	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Family Law</b>	Oregon (n=219)	Downtown Portland (n=61)	Tri-County (n=64)	Upper Willamette Valley (n=22)	Lower Willamette Valley (n=19)	Southern Oregon (n=17)	Eastern Oregon (n=29)	Oregon Coast (n=7)
Mean Rate	\$299	\$338	\$284	\$287	\$319	\$253	\$280	\$252
Median Rate	\$300	\$350	\$278	\$293	\$310	\$250	\$275	\$250
95 <sup>th</sup> Percentile	\$400	\$450	\$400	\$389	n/a	n/a	\$375	n/a
<b>Real Estate/Land Use/Environmental Law</b>	Oregon (n=196)	Downtown Portland (n=59)	Tri-County (n=54)	Upper Willamette Valley (n=18)	Lower Willamette Valley (n=18)	Southern Oregon (n=14)	Eastern Oregon (n=21)	Oregon Coast (n=12)
Mean Rate	\$350	\$409	\$365	\$295	\$305	<b>\$326</b>	\$295	<b>\$267</b>
Median Rate	\$325	\$400	\$350	\$293	\$300	\$338	\$300	\$263
95 <sup>th</sup> Percentile	\$603	\$675	\$513	n/a	n/a	n/a	\$445	n/a
<b>Tax/Estate Planning</b>	Oregon (n=281)	Downtown Portland (n=50)	Tri-County (n=92)	Upper Willamette Valley (n=33)	Lower Willamette Valley (n=39)	Southern Oregon (n=20)	Eastern Oregon (n=34)	Oregon Coast (n=13)
Mean Rate	\$309	\$385	\$309	\$285	\$281	\$296	\$288	\$248
Median Rate	\$300	\$358	\$300	\$285	\$275	\$285	\$275	\$250
95 <sup>th</sup> Percentile	\$450	\$740	\$437	\$433	\$400	\$410	\$428	n/a
<b>Workers' Compensation</b>	Oregon (n=42)	Downtown Portland (n=15)	Tri-County (n=23)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	\$294	\$275	\$308	n/a	n/a	n/a	n/a	n/a
Median Rate	\$220	\$200	\$235	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$596	n/a	\$635	n/a	n/a	n/a	n/a	n/a

**Table 37: 2021 Hourly Billing Rate by Area of Practice – Private Practice**

<b>General</b> (no area over 50%)	Oregon (n=93)	Downtown Portland (n=15)	Tri-County (n=30)	Upper Willamette Valley (n=7)	Lower Willamette Valley (n=8)	Southern Oregon (n=9)	Eastern Oregon (n=13)	Oregon Coast (n=11)
Mean Rate	\$303	\$389	\$324	\$276	\$286	\$253	\$261	\$246
Median Rate	\$295	\$420	\$313	\$250	\$305	\$250	\$275	\$275
95 <sup>th</sup> Percentile	\$458	n/a	\$480	n/a	n/a	n/a	n/a	n/a
<b>Other</b>	Oregon (n=177)	Downtown Portland (n=61)	Tri-County (n=71)	Upper Willamette Valley (n=12)	Lower Willamette Valley (n=17)	Southern Oregon (n=n/a)	Eastern Oregon (n=9)	Oregon Coast (n=n/a)
Mean Rate	\$355	\$413	\$329	\$299	\$334	n/a	\$302	n/a
Median Rate	\$340	\$400	\$325	\$295	\$300	n/a	\$295	n/a
95 <sup>th</sup> Percentile	\$600	\$638	\$560	n/a	n/a	n/a	n/a	n/a
<b>Employment</b>	Oregon (n=34)	Downtown Portland (n=17)	Tri-County (n=10)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	\$369	\$407	\$355	n/a	n/a	n/a	n/a	n/a
Median Rate	\$355	\$420	\$350	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$518	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Juvenile</b>	Oregon (n=8)	Downtown Portland (n=n/a)	Tri-County (n=n/a)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	\$258	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Median Rate	\$250	n/a	n/a	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Landlord/Tenant</b>	Oregon (n=6)	Downtown Portland (n=n/a)	Tri-County (n=n/a)	Upper Willamette Valley (n=n/a)	Lower Willamette Valley (n=n/a)	Southern Oregon (n=n/a)	Eastern Oregon (n=n/a)	Oregon Coast (n=n/a)
Mean Rate	\$314	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Median Rate	\$313	n/a	n/a	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Q14: When you charged on an hourly basis, what was your usual billing rate per hour in 2021?

Q6: Which area(s) of practice represented 50% or more of your practice as of 12/31/2021? [select all that apply]

Q5: Which type of employment represented 50% or more of your practice as of 12/31/2021? [private practice only]

## Case Costs for Winco CA

19-11-25	Multomah County	Filing Fee	\$ 281.00
20-03-05	Snyder Investigations	Investigation	\$ 350.00
21-05-25	M&M Court Reporting	Court Reporting Grant Haag	\$ 337.40
21-05-25	M&M Court Reporting	Court Reporting Jennifer Bennett	\$ 369.40
21-05-28	M&M Court Reporting	Audio Transcript Laura Cox	\$ 83.20
21-06-01	M&M Court Reporting	Audio Transcript Isaac Kimball	\$ 107.70
21-06-01	M&M Court Reporting	Audio Transcript Brian Anttonen	\$ 131.20
21-06-01	M&M Court Reporting	Audio Transcript Grant Haag	\$ 410.00
21-06-01	M&M Court Reporting	Video Transcript Kirby Sandberg	\$ 241.10
21-06-01	M&M Court Reporting	Video Transcript Jennifer Bennett	\$ 353.70
21-06-01	M&M Court Reporting	Video Transcript Alice Mothershead	\$ 104.80
21-08-25	Sperry Law	Deposition Office Space	\$ 300.00
21-09-01	Probity Investigations	Investigation	\$ 200.00
21-09-08	Cornerston Investigative Services	Investigation	\$ 264.00
21-09-08	Facebook	Ad	\$ 600.00
21-09-20	M&M Court Reporting	Video Transcript/Mobile Conf Melissa Vander	\$ 709.10
21-09-28	PI Services	Locate Rachel Miller	\$ 937.50
21-12-09	M&M Court Reporting	Video Technician Melissa Vanderberg	\$399.20
21-12-17	Veritext	Virginia Simonin Depo Transcript	\$384.73
22-03-01	Veritext	David Maingot Depo Transcript	\$398.91
22-03-07	Synergy	Depo Delbert Ririe	\$861.50
22-05-13	Redgrave Strategic Data Solutions	Analysis of Data/Drafting of Report	\$12,500.00
23-05-31	Top Class Actions	Class Members Marketing Campaign	\$7,500
23-06-06	Hogan Mediation	Mediation Session on 23-04-18	\$5,000
24-04-22	Mediator Henry Kantor	Mediation Services 7/26/23-1/4/24	\$50,000
<b>Total</b>			<b>\$ 82,824.44</b>

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**Daniel J. Nichols, OSB No. 101304**

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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VIRGINIA SIMONIN**  
individually and on behalf of  
others similarly situated

Plaintiff

vs

**WINCO FOODS, LLC**

Defendant

Case No. 3:19-cv-02094-AR

**DECLARATION OF  
DANIEL J. NICHOLS**

## DECLARATION

I, Daniel J. Nichols, declare the following under penalty of perjury:

1. This declaration sets forth facts as would be admissible in evidence, and I am competent to testify to the matters stated.

2. I am one of the attorneys for plaintiff and have been approved as co-class counsel in this action and submit this declaration in support of the Class Action Settlement Fee, Expense, and Service Award Application.

3. All of the work that I and the other class counsel attorneys did on this case was done on a pure contingency basis, presenting a substantial risk that neither I nor my firm would never receive any compensation for the time I expended to help secure the settlement and common fund for the benefit of the class members.

4. The document attached as Exhibit 1 is a true and correct copy of my biography. I have experience handling class actions, including defending class actions. In this case in particular, I primarily served as lead discovery counsel. I have years of experience in the fields of information law and discovery. I have taught the Electronic Discovery course at Lewis & Clark Law School for seven years. I have represented and advised Fortune 100 companies on information law topics and previously served as National Discovery Counsel for one of the largest telecommunications companies. My clients have paid hourly rates

between \$500 and \$800. I believe that a fair and reasonable hourly rate for the work that I have performed in this case is \$500.

5. In this matter, I have recorded 164.2 hours, principally in discovery work and data-intensive settlement discussions. At \$500 per hour, my estimated lodestar to date would be \$82,100. This does not include 4.7 hours that my paralegals recorded working on this case at the rate of \$150 per hour.

6. I have advanced \$916.35 in data hosting costs related to discovery work.

7. I know the facts I am testifying about based on my personal knowledge or, where stated, upon information and belief. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

April 26, 2024

/s/ Daniel J. Nichols  
**Daniel J. Nichols, OSB No. 101304**

**RESPECTFULLY FILED,**

s/ Kelly D. Jones  
**Kelly D. Jones, OSB No. 074217**  
Of Attorney for Plaintiff  
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Portland, Oregon 97214  
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Direct 503-847-4329

**CERTIFICATE OF SERVICE**

I caused this document to be served on all parties through the CM/ECF system.

April 26, 2024

s/ Kelly D. Jones  
**Kelly D. Jones, OSB No. 074217**  
Of Attorney for Plaintiff  
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## Daniel J. Nichols

Dan is a seasoned litigator, serving clients in large and small matters and through all aspects of legal disputes. Dan's extensive experience guiding matters from inception through all phases of discovery, motions practice, settlement negotiations, and trial provides him with a practical understanding of how to find the right strategy to meet his client's needs.



Dan has a diversity of practice areas, including complex civil litigation, class actions, environmental, professional liability, commercial, and consumer protection. Dan has practiced extensively in the field of Information Law, and he teaches Electronic Discovery at Lewis & Clark Law School as an adjunct professor.

Prior to joining the firm, Dan was a partner at the AmLaw 100 firm of Gordon Rees Scully & Mansukhani LLP, focusing his practice on complex litigation, and he was a partner at Redgrave LLP, the country's leading firm in Information Law, focusing his practice on electronic discovery and information governance.

## Admissions

- Oregon
- Washington
- California
- U.S. District Court for the District of Oregon
- U.S. District Court for the Western District of Washington
- U.S. District Court for the Northern District of California
- U.S. Court of Appeals for the Ninth Circuit

## Work History

- JurisLaw LLP, Lake Oswego, Oregon, formerly known as Harris Berne Christensen LLP (March 2021 to the Present)
- Redgrave LLP, San Francisco, California, Partner (September 2018 – February 2021), Of Counsel (April 2016 – August 2018)
- Lewis & Clark Law School, Portland, Oregon, Adjunct Professor of Law (August 2017 – present)
- Gordon & Rees LLP, Portland, Oregon and San Francisco, California, Partner (December 2013 – March 2016), Senior Counsel (December 2012 – December 2013), Associate (December 2009 – December 2012)
- Filice Brown Eassa & McLeod LLP, Oakland, California, Associate (August 2005 – December 2009)

## Professional Experience (selected)

- *Long, et al. v. Safeway, Inc.* (Or. Cir. Ct.): Approved as class counsel in settled consumer Oregon UTPA class action.
- *Johnson v. Maker Ecosystem Growth Holdings, Inc., et al.* (N.D. Cal.): Approved as class counsel in settled consumer cryptocurrency class action.
- Served as National Discovery Counsel for a Fortune 200 company in state and federal courts across the United States, as well as assisting the client with privacy and information governance issues.
- Led a team for a Fortune 100 company addressing discovery strategy and disputes in state and federal courts across the United States as well as in connection with various state and federal government inquiries and investigations, addressing issues such as preservation, search, format of production, privilege, and protective orders regarding confidentiality.
- Preparing key witnesses for a Global 100 company in multi-district litigation addressing contentious discovery issues including large data collections, spoliation, and document destruction allegations.
- Led a team for a Fortune 100 company addressing the complex intersection of rules, laws, and best practices guiding the timely

destruction of information with the rules and laws requiring retention and preservation, ultimately developing a strategy to enable a client to better manage large volumes of data across the enterprise.

## Education

- J. Reuben Clark Law School, Brigham Young University (J.D. 2005), magna cum laude
- Southern Oregon University (B.A. 2002), magna cum laude

## Thought Leadership (selected)

- “Cost, Confidence, and Control with an End-to-End Platform and Process,” Xchange Conference, Moderator, September 19-21, 2023.
- “Legal Hold Revisited: Notification, Compliance, and Collaboration,” ACEDS/Zapproved Webinar, Moderator, October 20, 2022.
- “Legal Hold Notification: Revisited,” PREX Conference, Moderator, September 19-21, 2022.
- “Getting the Greenlight: How to Secure Legal Project Funding,” PREX Conference, Moderator, September 28, 2021.
- “Assessing Your Data Maps in a Newly Distributed World,” PREX Summit Series, Moderator, July 21, 2020.
- “Rule 30(b)(6) Depositions in Litigation: Deposing or Defending Corporate Witness Depositions,” Thomson Reuters, Panelist, June 11, 2020.
- “Responding to Civil Investigative Demands (DID) and Subpoenas,” Government Investigations & Civil Litigation Institute, Moderator, October 8-10, 2018.
- Speaker and panelist on various eDiscovery topics at PREX 2018 and PREX 2019.
- “Technology Disruption in the Ethical Practice of Law,” Oregon Association of Defense Counsel, Panelist, June 16, 2018.
- “E-Discovery 2018: Key Issues and Practical Guidance on E-Discovery for Corporate and Outside Counsel,” Thomson Reuters, Panelist, May 10, 2018.

- “eDiscovery Overview or How I Learned to Stop Worrying and Love ESI,” Inns of Court, Southern Oregon, Speaker, April 12, 2018.
- “Authentication of Evidence 2.0,” Legalweek West Coast, Panelist, June 12, 2017.
- “Proportionality, Early Preservation, Production and Sanctions Under the New Rules Developing New Techniques Early in the Matter to Avoid Costly Missteps,” Innovation in E-Discovery Conference presented by Sandpiper LLC, Moderator, February 15, 2017.
- “New Rules of E-Discovery: Everything You Need to Know,” Thompson Reuters, Panelist, January 23, 2017.
- “Making the Business Case for Defensible Disposition,” Co-author, Information Law Journal, Summer 2016.

**Kelly D. Jones, OSB No. 074217**

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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VIRGINIA SIMONIN**  
individually, and on behalf of  
others similarly situated

Plaintiff

Case No. 3:19-cv-02094-AR

**DECLARATION OF  
VIRGINIA SIMONIN**

vs

**WINCO FOODS, LLC**

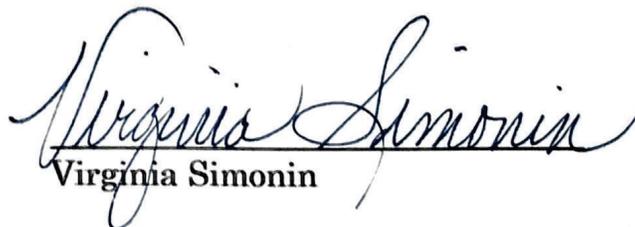
Defendant

**DECLARATION**

I, Virginia Simonin, declare the following under penalty of perjury:

1. I am the plaintiff and class representative in this action and make this declaration based on my personal knowledge and if called to testify to the following facts I could and would competently do so.
2. I submit this declaration in support of the Class Action Settlement Fee, Expense, and Service Award Application.
3. Since I became involved in this case in early 2020, I estimate that I have spent approximately 55-65 hours related to this litigation and proposed settlement, including reviewing documents, complying with written discovery obligations, consulting with my attorneys, and preparing for and being deposed.
4. I have dealt with health and other personal issues that has made the above-listed tasks more challenging than they would be for many.
5. I know the facts I am testifying about based on my personal knowledge. Under 28 U.S.C. § 1746, I declare under penalty of perjury that this declaration is true and correct.

April 25, 2024

  
Virginia Simonin

**CERTIFICATE OF SERVICE**

I caused this document to be served on all parties through the CM/ECF system.

April 26, 2024

s/ Kelly D. Jones  
**Kelly D. Jones, OSB No. 074217**  
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