

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MATTHEW TRAXLER, ANGIE)
BANYAS, ALEX KINSFATHER, CHRIS)
MORRISON, NANCY KRESS,)
RICHARD CONWAY, DAVID NAEGER,)
SANDRA HOWARD, JOHN)
SCHUBACH, PAULA SULPIZIO and)
EDITH LACEY, individually and on behalf)
of all others similarly situated,)

CASE NO.: 1:15-cv-00912-DAP
JUDGE DAN AARON POLSTER

Plaintiffs,)

v.)

PPG INDUSTRIES, INC., PPG)
ARCHITECTURAL FINISHES, INC., and)
PPG ARCHITECTURAL COATINGS,)
LLC,)

Defendants.)

**PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS**

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I. INTRODUCTION

Class Counsel undertook substantial risk in bringing and prosecuting the instant action for over two years on a purely contingent basis with no guarantee of recovery, and ultimately secured a very favorable settlement that confers substantial benefits on a class of tens of thousands of consumers. Accordingly, Plaintiffs respectfully request that the Court enter an Order that awards (a) one-third of the Settlement Fund to Class Counsel for attorneys' fees and reimbursement of costs and expenses pursuant to Section 9.1 of the Settlement Agreement, and (b) incentive awards of \$2,000.00 to each Plaintiff as provided for by Section 9.4 of the Settlement Agreement.¹

The parties engaged in four mediation sessions, on December 13 and 14, 2016 before Niki Z. Schwartz of Schwartz Downey & Co., L.P.A., and on February 1 and 2, 2017 before the Honorable James R. Epstein (Ret.) of JAMS in Chicago, and reached agreement regarding the payment of attorneys' fees and expenses and class representative incentive awards only after they had agreed upon all other material terms of the Settlement. PPG does not oppose Plaintiffs' motion. *See* SA ¶¶ 9.1, 9.4.

Moreover, while the Notice provided to Settlement Class Members pursuant to the Notice Program and posted to the Settlement Website informed Class Members' of Plaintiffs' intent to seek fees, expenses, and incentive awards in the amounts requested herein, Class Members have not objected.²

As discussed below, given the amount of work performed by Class Counsel, the

¹ The Settlement Agreement ("Settlement" or "SA") was submitted with Plaintiffs' Unopposed Motion for Preliminary Approval. (ECF No. 64, Exhibit 1-A.) The capitalized terms used in this Memorandum are defined in Section 1 of the SA.

² *See* <http://www.rescueitsettlement.com/pdf/Notice.pdf> (last visited July 6, 2017).

outstanding results achieved and the other applicable factors, Plaintiffs' fee and expense requests are reasonable and should be approved. The incentive awards requested by Plaintiffs also are within the range approved by this Court, and are warranted here to recognize the substantial time and effort Plaintiffs committed to this case, which were indispensable to its successful resolution. In light of the foregoing, Plaintiffs respectfully request that the Court enter the proposed Order.

II. FACTUAL BACKGROUND

A. History of the Litigation

Plaintiffs commenced this action on May 8, 2015 and brought causes of action for breach of express and implied warranties, and for violations of the Magnuson-Moss Warranty Act and the consumer protection laws of various states. (ECF No. 1.) On August 17, 2015, Plaintiffs filed a First Amended Complaint that added named Plaintiffs and corresponding causes of action. (ECF No. 24.) On October 1, 2015, Defendants moved to dismiss Plaintiffs' First Amended Complaint, (ECF No. 26), which the Court denied in almost every respect in a January 27, 2016 Order and opinion. (ECF No. 44.) Plaintiffs filed a Second Amended Complaint on March 15, 2016, (ECF No. 48), and Defendants answered on April 13, 2016. (ECF No. 52.)

The parties exchanged considerable discovery prior to agreeing to mediate their claims. Plaintiffs served interrogatories and document requests on March 28, 2016, and the parties then negotiated, *inter alia*, a protocol for the production of electronically stored information and search terms. (ECF Nos. 53, 54.) Defendants began producing documents on June 10, 2016, and made a total of four productions. Defendants later served interrogatories and document requests on Plaintiffs, and Plaintiffs responded and produced documents on September 16, 2016.

The Parties also negotiated a protocol for the inspection of Plaintiffs' properties. Throughout June and early July 2016, Defendants and their experts inspected Plaintiffs' homes

and obtained wood and chip samples from their outdoor decks. Plaintiffs also secured samples at that time. Both Plaintiffs and Defendants had their respective samples evaluated by various chemistry and materials experts, the results of which ultimately informed settlement discussions and the Settlement reached by the parties.

B. Settlement Negotiations

Following completion of the property inspections and initial discovery, the parties appeared for a status conference on August 8, 2016, at which time the Court suggested the parties agree to mediation. In connection with the mediation, the parties agreed from that point onward to focus discovery on information essential to the mediation, including but not limited to sales and claims data, and technical documents needed to prepare summary expert reports.

The parties then participated in a mediation on December 13 and 14, 2016, before Niki Z. Schwartz of Schwartz Downey & Co., L.P.A., and resumed talks on February 1 and 2, 2017, before the Honorable James R. Epstein (Ret.) of JAMS in Chicago. At the second mediation, the Parties agreed on the principal terms of the Settlement and, through numerous follow-up telephone conferences, ultimately reached the proposed Settlement.

C. Terms of the Settlement Agreement

If finally approved, the proposed Settlement will confer substantial benefits on the Settlement Class: all persons or entities in the United States and its territories who purchased, not for resale, a Rescue It! Product during the Class Period.³ The Settlement Agreement, through which PPG has agreed to create a Settlement Fund of \$6.5 million, provides to the Class three

³ The Class explicitly excludes: (i) all persons and entities who filed a claim concerning a Rescue It! Product in any court, if that claim has been resolved with a final judgment or order; (ii) PPG, any entity in which PPG has a controlling interest, any person or entity which has a controlling interest in PPG, and PPG's legal representatives, assigns, and successors; and (iii) the judge to whom the Action is assigned and any member of the judge's immediate family.

different types of relief that squarely address the issues raised in this litigation.

First, Settlement Class Members can submit claims for reimbursement of the price paid for any Rescue It! Product purchased during the Class Period. Settlement Class Members need only submit proof that they purchased the Rescue It! Products and proof of a Qualifying Problem in order to recover. Settlement Class Members also may seek reimbursement for Rescue It!-brand cleaning products subject to the same proof requirements.

Second, Settlement Class Members can submit claims for compensation for costs related to removal of Rescue It! Products. Class Members who submit proof that they experienced a Qualifying Problem requiring removal will receive, at minimum, \$2 per square foot of affected surface area. In addition, if at least sixty-five percent (65%) of the deck or substrate to which the purchased Rescue It! Product was applied was damaged by a Qualifying Problem requiring removal, the Settlement Class Member will receive compensation of \$2 per square foot for the entire surface area of the deck or substrate. Settlement Class Members need only submit proof that because of a Qualifying Problem they will incur costs to remove the Rescue It! Product, and document the percentage of the surface area of the deck or substrate to which a Rescue It! Product was applied that was damaged.

Third, Settlement Class Members can submit claims for compensation for costs related to replacing or repairing their deck or other substrate due to a Qualifying Problem. Eligible Class Members will be compensated at a rate of \$6 per square foot multiplied by the square footage of the area to which the Rescue It! Product was applied, multiplied by the percentage of the area damaged. To qualify, Settlement Class Members must submit proof that because of a Qualifying Problem he or she did or will incur costs to replace his or her deck or other substrate, and document the percentage of the surface area to which a Rescue It! Product was applied that was damaged and requires replacement or repair. In addition, if sixty-five percent (65%) or more of

the surface area to which the purchased Rescue It! Product was applied requires repair or replacement of the deck or other substrate, the Settlement Class Member will receive compensation of \$6 per square foot for the entire surface area.

If the Settlement Fund is insufficient to pay all Eligible Claims, the Claims Administrator shall propose a *pro rata* reduction of Eligible Claim payments under which all Settlement Class Members submitting Eligible Claims will receive an equal proportion of their Eligible Claim from monies remaining in the Settlement Fund after payment of all other obligations payable from the Fund pursuant to the Settlement Agreement.

D. Notice to Settlement Class Members

The Settlement contains a comprehensive notice plan to be paid for by PPG from the Total Settlement Fund, and which has been successfully administered by the Angeion Group (“Angeion”). (*See* ECF No. 66). Angeion is an experienced administrator of class action settlements that also published and delivered the notice of the Settlement to the Settlement Class Members. Angeion effected Notice through: (a) publication of the Summary Notice; (b) mailing and emailing of the Summary Notice to the physical and email address of each Settlement Class Member where such information was available in PPG’s records; (c) a toll-free telephone facility; and (d) a dedicated website. Angeion promptly logged each Notice returned as undeliverable and provided copies of the log to Class Counsel and Defense Counsel. Angeion has, and will continue to, take reasonable steps to re-mail all undeliverable Summary Notices to updated addresses.

Settlement Class Members will have one year from the Final Order and Judgement to submit valid claims. For those who wish to opt-out of or object to the Settlement, Opt Out Requests and objections must be received by Angeion by July 24, 2017, which is 30 days before the Final Approval Hearing.

E. The Preliminary Approval Order and Response by Settlement Class Members

On April 27, 2017, the Court entered an order preliminarily approving the Settlement and directing that notice be executed pursuant thereto. (*See* ECF No. 65.) On May 31, 2017, Plaintiffs' submitted a Report of Notice of Class Settlement informing the Court that the Court-ordered notice had been completed other than a mistake made by *People Magazine*, which has since been rectified.⁴

As of the date of this filing, Class Counsel has not received a single objection to Class Counsel's fee request⁵ and only one objection related to the documentary evidence requirement of the Settlement.⁶

III. ARGUMENT

Rule 23(h) of the Federal Rules of Civil Procedure provides that in connection with a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "When awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). District courts have the discretion to select the particular method of calculation, but must articulate the "reasons for 'adopting a particular

⁴ *See* ECF No. 66. On May 30, 2017, Angeion learned that *People* had mistakenly published a notice for a different class-action settlement (not administered by Angeion) in the space reserved for the notice in this case in the June 5, 2017 issue. (*See* ECF No. 66, Exhibit E (email from *People* acknowledging its error).) Time Inc., which owns *People*, agreed to fix its error with no additional charge to the Settlement Fund. The notice was included in the June 19 issue.

⁵ In the event any objections to the Class Counsel's fee request are filed, Class Counsel reserve the right to respond.

⁶ Class Counsel will address the merit of this objection, and any other objections to the terms of the Settlement, in their motion for final approval.

methodology and the factors considered in arriving at the fee.” *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009) (citation omitted); *see also Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269 (6th Cir. 2016).

Pursuant to the above rule and the terms of the Settlement, Plaintiffs now apply for a total fee and expense award of \$2,166,666.67, which accounts for both the collective attorneys’ fees incurred by all law firms representing Plaintiffs (and which have amassed a collective lodestar of \$2,108,442.25), and the reimbursement of over \$78,313.43 in cumulative litigation expenses. Plaintiffs also request Court approval of an additional \$22,000.00 to be distributed as a \$2,000.00 incentive award to each of the eleven Plaintiffs. These requests are reasonable considering the work performed and the results achieved, and are well in line with similar awards recently approved by this Court. The Settlement is the product of Class Counsels’ strenuous and efficient efforts throughout the difficult phases of investigation, discovery, and adversarial litigation, in a case involving complex issues of fact and law. For the reasons that follow, these requests should be approved.

A. The Fee Request Should Be Evaluated Under the Percentage of the Fund Method

A court has available “two methods for calculating [common benefit] attorney’s fees: the lodestar and the percentage-of-the-fund.” *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 Fed. Appx. 496, 498 (6th Cir. 2011). “District courts have discretion ‘to select the more appropriate method for calculating attorney’s fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them.’” *Rawlings*, 9 F.3d at 516. “The lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved.” *Id.*

The percentage of the fund method is appropriate in cases where, as here, “there is a single pool of money and each class member is entitled to a share (*i.e.*, a ‘common fund’).”

Lonardo v. Travelers Indem. Co., 706 F. Supp. 2d 766, 789 (N.D. Ohio 2010); *see also* *Connectivity Sys. Inc. v. Nat'l City Bank*, No. 08-1119, 2011 WL 292008, at *13 (S.D. Ohio Jan. 26, 2011) (the percentage-of-the-fund method “most closely approximates how lawyers are paid in the private market and incentivizes lawyers to maximize class recovery, but in an efficient manner”). In addition, “the percentage-of-the-fund method avoids the need for highly-detailed examinations and calculations required when fact-checking the lodestar.” *See In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 1010 (N.D. Ohio 2016) (citing *In re Cardinal Health Inc. Sec. Litigs.*, 528 F. Supp. 2d 752, 761 (S.D. Ohio 2007) (“The lodestar method has been rightly criticized for . . . burdening district judges with the tedious task of auditing time records.”)). However, “most courts adopting the percentage approach [also] conduct a ‘lodestar cross-check’ to prevent counsel from receiving a windfall. The cross-check requires the Court to calculate the lodestar multiplier in the case and ensure that the fee award is still roughly aligned with the amount of work the attorneys contributed.” *In re Cardinal Health*, 528 F. Supp. 2d at 764.

While the requested fee is reasonable regardless of the methodology employed, Plaintiffs respectfully submit that the Court should use the percentage of the fund method in this case.

B. Class Counsel’s Request is Reasonable and Falls Squarely within the Range of Awards in Similar Class Action Settlements

“[T]hroughout the Sixth Circuit, attorneys’ fees in class actions have ranged from 20%–50%.” *Manners v. American General Life Ins. Co.*, No. 98-0266, 1999 WL 33581944 at *29 (M.D. Tenn. Aug.11, 1999); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 910 (S.D. Ohio 2001) (“typically, the percentage awarded ranges from 20 to 50 percent of the common fund created”); *New. Eng. Health Care Empl. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 633 (W.D. Ky. 2006) (range for common fund cases is “20 to 50 percent”); *see also In re*

Nat. Century Fin. Enterprises, Inc. Inv. Litig., No. 2:03-MD-1565, 2009 WL 1473975, at *3 (S.D. Ohio May 27, 2009) (citing *Manners* and finding 30% of common fund reasonable); *Chesher v. Neyer*, No. 1:01-cv-566, 2007 WL 4553908, at *2 (S.D. Ohio Dec. 19, 2007) (noting that, in the Sixth Circuit, “the percentage awarded typically rang[es] from 20 to 50 percent of the common fund”). In *Swigart v. Fifth Third Bank*, an Ohio district court awarded class counsel 33% of the common fund. No. 11-cv-88, 2014 U.S. Dist. LEXIS 94450, *15, 19 (S.D. Ohio July 11, 2014). It, too, noted that “[a]n award of 33% of the total settlement fund is well within the range of fees requested in class and collective actions in Ohio federal district courts. *Id.* at *19, citing *Johnson v. Midwest Logistics Sys.*, 2013 U.S. Dist. LEXIS 74201 (S.D. Ohio May 25, 2013) (awarding attorney fees and expenses to class counsel in an amount of 33% of the settlement funds in class-action case), *Kritzer v. Safelite Solutions, LLC*, 2012 U.S. Dist. LEXIS 74994, *9-10 (S.D. Ohio May 30, 2012) (awarding attorney’s fees and costs up to \$235,000 out of a settlement of \$455,000 (52% of total recovery)). Likewise, the Northern District has awarded 33% (or more) to class counsel. *Waggoner v. U.S. Bancorp*, 2016 U.S. Dist. LEXIS 179843, *5 (N.D. Ohio Dec. 29, 2016) (awarding counsel in collective action “one-third of the \$1,150,000.00 gross amount, plus reimbursement of reasonable out-of-pocket costs and expenses.”); *Dillworth v. Case Farms Processing, Inc.*, 2010 U.S. Dist. LEXIS 20446 (N.D. Ohio March 8, 2010) (33% of fund “is fair and reasonable”), *vacated in part*, 2010 U.S. Dist. LEXIS 20446 (N.D. Ohio March 8, 2010) (only vacating order stating that Ohio’s overtime statute allows only an opt-in action) (citing *Jackson v. Papa John’s*, 2008 U.S. Dist. LEXIS 107650 (N.D. Ohio 2008), *Fincham v. Nestle Prepared Foods Co.*, No. 1:08-cv-73 (N.D. Ohio 2008), *McGhee v. Allied Waste Indus.*, No. 1:07-cv-1110 (N.D. Ohio 2007)); *Rotuna v. West Customer Mgmt. Group, LLC*, 2010 U.S. Dist. LEXIS 58912, *23 (N.D. Ohio June 15, 2010) (33% of fund “is fair and reasonable”) (citations omitted); *see also In re Oral Sodium Phosphate*

Solution-Based Prods. Liab. Action, 2010 Dist. LEXIS 128371 (N.D. Ohio Dec. 6, 2010).

Class Counsel requests that the Court award them \$2,166,666.67, which represents one-third of the \$6.5 million Settlement Fund and falls well within the range of fee petitions routinely granted by the courts in this Circuit. *See, e.g., Hainey v. Parrott*, No. 1:02-cv-733, 2007 WL 3308027, at *3 (S.D. Ohio Nov. 6, 2007) (approving award of attorneys' fees of 30% of the common fund); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 803 (N.D. Ohio 2010) (recognizing that 26.4 percent is well within the acceptable range for a fee award in a class action); *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 528 (E.D. Ky. 2010), *aff'd sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011) (finding 30% attorney fee reasonable and declining to reduce fee to 21% because it "would result in an award of attorneys' fees that is less than what is typically awarded in similar class actions. Such a result is unwarranted in light of Class Counsel's successful efforts in the face of the significant risks in prosecuting this litigation."); *Clevenger v. Dillard's, Inc.*, No. C-1-02-558, 2007 WL 764291, at *3 (S.D. Ohio Mar. 9, 2007) (awarding 29% of settlement fund); *In re CMS Energy ERISA Litig.*, No. 02-72834, 2006 WL 2109499, at *3 (E.D. Mich. June 27, 2006) (awarding attorneys' fees in the amount of 28.5% of the cash settlement fund); *In re Southern Ohio Corr. Facility*, 173 F.R.D. 205, 218 (S.D. Ohio 1997), *rev'd on other grounds*, 24 F. App'x 520 (6th Cir. 2001) (requested amount of 34% of the total amount of the common fund was within the range of reasonableness).

C. The Ramey Factors Support Class Counsel's Request

In addition to determining the method of calculating the fee award, the court is tasked with ensuring the fee awarded is "reasonable under the circumstances." *Moulton*, 581 F.3d at 352.

The Sixth Circuit has promulgated a series of non-exhaustive factors for district courts to consider in evaluating the reasonableness of the requested fee:

(1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.

Id. (quoting *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974)).

1. Value of the benefit rendered to Plaintiffs and the Class

The substantial value the Settlement provides to the Class is the most important factor, and weighs heavily in favor of granting Plaintiffs' fee request. *Godec v. Bayer Corp.*, No. 1:10-cv-224, 2013 WL 1089549, at *3 (N.D. Ohio Mar. 14, 2013); *see also In re Cardinal Health Inc. Securities Litigation*, 528 F. Supp. 2d 752, 756 (S.D. Ohio 2007); *Basile v. Merrill Lynch, Pierce, Fenner & Smith*, 640 F. Supp. 697, 700 (S.D. Ohio 1986).

The Settlement makes substantial relief available to tens of thousands of Settlement Class Members and establishes a Settlement Fund of \$6.5 million for reimbursement of the price paid for any Rescue It! Products purchased during the class period, for compensation to cover costs related to the removal of the Rescue It! Products, and compensation to cover costs related to repairing or replacing decks or other substrates. This relief will compensate Class Members for the harms they suffered due to the alleged defects in the Rescue It! Products.

In addition, after a successful Notice campaign, only one Class Member has objected to the Settlement, further demonstrating the value Settlement Class Members believe the Settlement will provide.⁷ *See Godec*, 2013 WL 1089549, at *3 (“[N]o objections were levied to

⁷ The sparse objection relates to the Settlement Class Member's lack of proof reflecting the purchase of a Rescue It! Product and/or a Qualifying Problem.

proposed settlement. Given the constraints of the action—compensating retail consumers who purchased vitamin bottles years ago—this factor weighs in favor of approval.”).

2. *Value of the services on an hourly basis*

Under this factor, “the Court must examine the value of the attorneys’ services on an hourly basis by performing the lodestar cross-check.” *In re Cardinal Health*, 528 F. Supp. 2d at 767.

The cross-check requires the Court to calculate the lodestar multiplier in the case and ensure that the fee award is still roughly aligned with the amount of work the attorneys contributed. The lodestar cross-check does not supplant the court’s detailed inquiry into the attorneys’ skill and efficiency in recovering the settlement, but instead acts as simply another factor required by the Sixth Circuit and many others to ensure that attorneys’ fees accurately reflect the work of counsel.

Id. (citation omitted).

To calculate the lodestar, “the proven number of hours reasonably expended on the litigation [are multiplied] by a reasonable hourly rate.” *Lonardo*, 706 F. Supp. 2d at 793. In addition, the lodestar figure is “typically further multiplied by a ‘multiplier’ to account for the cost and risk inherent in advancing fees, the complexity of the case, and the size of the recovery.” *Newberg on Class Actions*, at § 12.55 (3d ed.); see also *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). “In contrast to employing the lodestar method in full, when using a lodestar cross-check, ‘the hours documented by counsel need not be exhaustively scrutinized by the district court.’” *In re Cardinal Health*, 528 F. Supp. 2d at 767 (citing *In re WorldCom Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005)).

Plaintiffs’ Counsel billed their time at their current billing rates charged to their clients, and all of the billable time was necessary to secure the results obtained. The following represents Plaintiffs’ Counsel’s fees and costs in this matter from inception until June 30, 2017.

The law firm of McCune Wright Arevalo billed 1067.2 hours at a total lodestar of

\$625,370.00. The firm's total expenses are \$32,253.36. *See* Declaration of Joseph G. Sauder ("Sauder Dec.") at ¶¶ 7, 17.

The law firm of Cafferty Clobes Meriwether & Sprengel billed 1317.30 hours at a total lodestar of \$901,228.00. The firm's total expenses are \$34,488.04. *See* Sauder Dec. at ¶¶ 7, 17.

The law firm of Karon LLC billed 214.2 hours at a total lodestar of \$118,371.00. The firm's total expenses are \$3,023.17. *See* Sauder Dec. at ¶¶ 7, 17.

The law firm of Lite DePalma Greenberg billed 370.1 hours at a total lodestar of \$187,285. The firm's total expenses are \$5,276. *See* Sauder Dec. at ¶¶ 7, 17.

The Muzilla Law Firm billed 140.2 hours at a total lodestar of \$74,959.50. The firm's total expenses are \$240.00. *See* Sauder Dec. at ¶¶ 7, 17.

The law firm of Chimicles & Tikellis billed 431.80 hours at a total lodestar of \$201,378.75. The firm's total expenses are \$3,032.86. *See* Sauder Dec. at ¶¶ 7, 17.

The combined lodestar of Plaintiffs' Counsel is \$2,108,442.25. They have incurred 75,280.57 in unreimbursed expenses, and have billed over 3,500 contingency fee hours in this litigation. All of these fees and expenses will be paid from the \$2,166,666.67 requested.

Courts within the Sixth Circuit regularly find multipliers of one to four times counsel's lodestar fair and reasonable. *See Lowther v. AK Steel Corp.*, No. 1:11-cv-877, 2012 WL 6676131, at *5 (S.D. Ohio Dec. 21, 2012) (finding 3.06 multiplier "very acceptable" and collecting cases awarding multipliers between 3 and 8.74); *In re Cardinal Health*, 528 F. Supp. 2d at 767 (typical lodestar in securities class actions ranges from 1.3 to 4.5); *Newberg on Class Action* § 14.6 (4th ed.) ("Multiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied."). The 1.03 multiplier sought here is at the lowest end of this range, is reasonable, and should be approved.

3. *Whether the services were undertaken on a contingent fee basis*

Class Counsel prosecuted this litigation on a wholly contingent fee basis. Class Counsel had no guarantee they would be compensated for their time and substantial out-of-pocket expenses. *Lowther*, 2012 WL 6676131, at *3 (finding contingent fee factor weighed in favor of approval of requested fee because plaintiffs' counsel "assumed a substantial risk of nonpayment"). Thus, this factor also supports Class Counsel's request.

4. *Society's stake in rewarding attorneys who produce benefits*

Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling small claimants to pool their claims and resources. *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001); *see also Lonardo*, 706 F. Supp. 2d at 795 ("As noted above, the Court must ensure that Class Counsel is fairly compensated in order to facilitate the goal of class actions—*i.e.*, to provide a vehicle for collective action to pursue redress for tortious conduct that it is not feasible for an individual litigant to pursue."). Private lawsuits, such as this, help effectuate the underlying public policy goals of the various state consumer protection statutes. *See, e.g., Lowther*, 2012 WL 6676131, at *3 (observing private lawsuits helped effectuate remedial purposes of federal pension laws). Moreover, the Settlement will confer substantial benefits on Settlement Class Members even though Defendant maintained throughout the litigation that Rescue It! Products are not defective and that Plaintiffs' claims are not suitable for class treatment.

5. *Complexity of the litigation*

This complex class action litigation lasted nearly two years, and Class Counsel's substantial litigation efforts (including lengthy motion practice, contentious discovery, deck inspections around the country, and two in-person mediations) produced a very successful conclusion. Class Counsel also retained experts in wood sciences and the chemical composition

of consumer decking products, both of which prepared summary expert reports that helped inform settlement negotiations. Thus, the complexity of the case supports Class Counsel's request. *See, e.g., Dick v. Sprint Comms. Co. L.P.*, 297 F.R.D. 283, 295, 301 (W.D. Ky. 2014) (observing that issues in litigation were not clearly in the class members' favor and that "resolution of such matters would have presented a significant risk to the class, who would be subject to the continued fees and costs associated with ongoing litigation"); *Lowther v. AK Steel Corp.*, No. 1:11-cv-877, 2012 WL 6676131, at *3 (S.D. Ohio Dec. 21, 2012) (observing case involved numerous difficult legal and factual issues that supported counsel's fee request).

6. *Professional skill and standing of counsel involved on both sides*

As previously acknowledged by the Court both when appointing Interim Class Counsel (ECF No. 18) and Class Counsel (ECF No. 65), Class Counsel are nationally recognized in class action litigation and have settled numerous class actions that have conferred substantial benefits on consumers, as does the Settlement achieved here. *See, e.g., Lowther*, 2012 WL 6676131 at *3 ("The settlement represents a favorable result for the Class, attributable to the diligence, determination, hard work, and reputation of Plaintiffs' counsel."); *Godec*, 2013 WL 1089549 at *3 ("This Court finds that there is little question that its efforts through the duration of this litigation was of a quality exceeding the requested fees."). In addition, counsel for PPG was represented by sophisticated counsel at a large international law firm headquartered in Atlanta who vigorously contested Plaintiffs' allegations. *Lowther*, 2012 WL 6676131 at *4 (The action was vigorously contested, and Defendant was represented by highly regarded lawyers. The quality of opposing counsel is important in assessing the quality of the services rendered by Plaintiffs' counsel."). Thus, this factor also strongly supports Class Counsel's request.

D. Class Counsel's Expenses Should Be Approved

There is little question that "class counsel is entitled to reimbursement of all reasonable

out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel and other litigation-related expenses.” *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D. Mich. 2003); *see also Dick*, 297 F.R.D. at 283 (same). In determining whether the requested expenses are compensable, the Court has considered “whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases.” *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. at 535.

In this case, Class Counsel have incurred \$78,313.43 in properly documented expenses for the common benefit of Settlement Class Members. The requested expenses will be paid from the total \$2.166 million fee and expense request. Class Counsel incurred these out-of-pocket expenses without assurance they would ever be repaid. The requested amount is reasonable and Class Counsel respectfully requests the Court’s approval.

E. The Requested Incentive Awards Should Be Approved

The service provided by the Plaintiffs in this action should not go without financial recognition. While service as a representative plaintiff is not a profit-making position, it is appropriate to make modest payments to recognize the services that such plaintiffs perform in successful class litigation. *See Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003) (“Numerous courts have authorized incentive awards [as] efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class.”); *see also Lonardo*, 706 F. Supp. 2d at 787 (“Courts within the Sixth Circuit . . . recognize that, in common fund cases . . . where the settlement agreement provides for incentive awards, class representatives who have had extensive involvement in a class action litigation deserve compensation above and beyond amounts to which they are entitled by virtue of class membership alone.”); *In re Polyurethane Foam*, 135 F. Supp. 3d at 694 (“[d]istrict courts in this

Circuit routinely grant incentive awards to representative plaintiffs in antitrust matters, when the representative plaintiff actively participates in the litigation”).

The Settlement Agreement here recognizes this principle by providing for incentive awards in the amount of \$2,000 to each of the eleven Plaintiffs. These Plaintiffs were the principal catalysts in helping achieve this result for the Class. They participated in numerous court conferences and meetings with their attorneys, searched for and produced documents relevant to their claims in the litigation, responded to interrogatories, were present during deck inspections, and stayed abreast of significant developments in the case. Incentive awards are therefore appropriate here and well within a reasonable range. *See, e.g., In re: Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at *24-25 (N.D. Ohio Sept. 23, 2016) (approving \$4,000 incentive award to each of the 29 class representatives who responded to written discovery and either were deposed or had their Class Washers inspected by a defense expert).

IV. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court grant Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses and Incentive Awards.

DATED: July 14, 2017

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Interim Co-Lead Class Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MATTHEW TRAXLER, ANGIE) BANYAS, ALEX KINSFATHER, CHRIS) MORRISON, NANCY KRESS,) RICHARD CONWAY, DAVID NAEGER,) SANDRA HOWARD, JOHN) SCHUBACH, PAULA SULPIZIO and) EDITH LACEY, individually and on behalf) of all others similarly situated,) Plaintiffs,) v.) PPG INDUSTRIES, INC., PPG) ARCHITECTURAL FINISHES, INC., and) PPG ARCHITECTURAL COATINGS,) LLC,) Defendants.)	CASE NO.: 1:15-cv-00912-DAP JUDGE DAN AARON POLSTER
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**DECLARATION OF JOSEPH G. SAUDER IN SUPPORT OF PLAINTIFFS’ UNOPPOSED
MOTION FOR ATTORNEYS’ FEES, EXPENSES AND INCENTIVE AWARDS**

I, Joseph G. Sauder, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a member in good standing of the bar of the Commonwealth of Pennsylvania, and I am admitted to this Court and am co-Class Counsel for Plaintiffs and the Settlement Class. I respectfully submit this declaration in further support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses and Incentive Awards. The following is based on my personal knowledge, and if called upon to do so, I could and would competently testify to the statements set forth below.

2. I am a partner at McCune Wright Arevalo, LLP. My firm is a twelve-attorney firm located in Berwyn, Pennsylvania and Ontario, California, representing plaintiffs in consumer fraud class actions, product liability, and other complex class action litigations in

California, Pennsylvania, and across the United States. I obtained my J.D. from Temple University in June 1987.

3. Since 2012, I have been selected by the National Trial Lawyers Association as one of the Top 100 Trial Lawyers in Pennsylvania. Since 2011, I have been selected as a Pennsylvania SuperLawyer, a distinction held by the top 5% of attorneys in PA, as chosen by their peers and through the independent research of Law & Politics. The American Lawyer Media, publisher of The Legal Intelligencer and the Pennsylvania Law Weekly, named me as one of the “Lawyers on the Fast Track” a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community.

4. I have an extensive background in litigation on behalf of consumers, and I am currently serving as lead or co-lead counsel in many class actions in federal courts across the country, including product defect cases similar to this one. This experience, coupled with the experience of our co-counsel, enabled our firms to undertake this matter and to successfully combat the resources of Defendant and its capable and experienced counsel.

5. In the prosecution of this case, McCune Wright Arevalo and our Co-Class Counsel, Cafferty Clobes Meriwether & Sprengel LLP, Karon LLC, Lite DePalma Greenberg, Chimicles & Tikellis (my former firm), and the Muzilla Law Firm worked together to divide assignments equally, avoid duplication of effort and accomplish all tasks in the most efficient manner possible.

6. Since this case was filed in 2015, Plaintiffs’ counsel reviewed tens of thousands of pages of documents and data that were produced, fully engaged in extensive motion practice, and participated in numerous and intense settlement negotiations, and two separate in-person mediations before two well-respected mediators, Niki Z. Schwartz of Schwartz Downey & Co.,

L.P.A. and the Honorable James R. Epstein (Ret.) of JAMS in Chicago, which finally resulted in a Settlement Agreement with a Settlement Fund of \$6.5 million. PPG's counsel vigorously represented their client throughout the litigation and mediation process.

COUNSEL'S LODESTAR

7. As of June 30, 2017, Plaintiffs' counsel have spent approximately 3,540 hours working on this case, for a total lodestar amount of \$2,108,442.25. Each firm has provided me with their lodestar in this case as set forth in the charts below.

McCune Wright Arevalo

Name	Position	Hours	Rate	Lodestar
Richard McCune	Partner	19.4	\$750	\$14,550.00
David Wright	Partner	175	\$750	\$131,250.00
Joseph Sauder	Partner	365	\$700	\$255,500.00
Matthew Schelkopf	Partner	113	\$600	\$67,800.00
Michele Vercoski	Partner	46.8	\$500	\$23,400.00
Daniel Chang	Associate	36.9	\$650	\$23,985.00
Emily Kirk	Associate	29.8	\$350	\$10,430.00
Joseph Kenney	Associate	281.3	\$350	\$98,455.00
TOTAL				\$625,370.00

Cafferty Clobes Meriwether & Sprengel

Name	Position	Hours	Rate	Lodestar
Bryan Clobes	Partner	528.20	\$775	\$409,355.00
Jennifer Sprengel	Partner	2.50	\$775	\$1,937.50
Nyran Rasche	Partner	6.30	\$700	\$4,410.00
Dom J. Rizzi	Partner	22.40	\$900	\$20,160.00
Daniel Herrera	Associate	714.30	\$625	\$446,437.50
Christopher Sanchez	Associate	20.80	\$625	\$13,000.00
Kelly McDonald	Paralegal	16.20	\$260	\$4,212.00
Sharon Nyland	Paralegal	3.50	\$260	\$910.00
Avis Steward	Paralegal	3.10	\$260	\$806.00
TOTAL				\$901,228.00

Karon LLC

Name	Position	Hours	Rate	Lodestar
Dan Karon	Partner	96.90	\$695	\$63,345.50
Beau Hollowell	Associate	117.30	\$435	\$51,025.50
TOTAL				\$118,371

Lite DePalma Greenberg

Name	Position	Hours	Rate	Lodestar
Katrina Carroll	Partner	57.3	\$750	\$42,975.00
Katrina Carroll	Partner	0.5	\$800	\$400.00
Susan Hodge	Partner	4.2	\$675	\$2,835.00
Kyle Shamberg	Associate	77	\$475	\$36,575.00
Kyle Shamberg	Associate	1.9	\$525	\$997.50
Ismael T. Salam	Associate	2.7	\$375	\$1,012.50
Ismael T. Salam	Associate	0.1	\$425	\$42.50
Danielle Alvarez	Associate	194.3	\$475	\$92,292.50
Danielle Alvarez	Associate	0.2	\$525	\$105.00
Erik Sardinia	Associate	15.4	\$375	\$5,775.00
Eric Henley	Paralegal	16.5	\$250	\$4,125.00
TOTAL				\$187,135.00

Muzilla Law

Name	Position	Hours	Rate	Lodestar
Tom Muzilla	Partner	140.2	\$540	\$26,197.50
Tom Muzilla	Partner	140.2	\$525	\$48,762.00
TOTAL				\$74,959.50

Chimicles & Tikellis

Name	Position	Hours	Rate	Lodestar
Joseph Sauder	Former Partner	202.25	\$700	\$141,575.00
Matthew Schelkopf	Former Partner	17.50	\$600	\$10,500.00
Benjamin Johns	Partner	0.85	\$625	\$531.25
Andrew Ferich	Associate	39.25	\$375	\$14,718.75
Joseph Kenney	Former Associate	51.75	\$300	\$15,525.00
David Birch	Paralegal	1.5	\$200	\$300.00
Justin Boyer	Paralegal	16.95	\$175	\$2,966.25
Jesse Royer	Paralegal	101.75	\$150	\$15,262.50
TOTAL				\$201,378.75

8. Due to the amount of privileged information contained in the hourly billing records, those detailed records are not attached here, but can be provided in camera should this Court wish to review them.

9. The hourly rates for the partners, associates and professional staff are the same as the rates that would be charged for these services by our firms in non-contingent matters (excluding pro bono or other special considerations).

10. Class Counsel made significant efforts toward the efficient allocation of work between them and the other firms appointed to the Executive Committee by the Court on June 29, 2015. *See* ECF No. 18. Partners in the firms coordinated their work assignments on a regular basis to prevent unnecessary duplication of work across the firms.

11. In doing so, Class Counsel generally assigned initial drafting of the complaint, briefs and motions to associates, with editing done by partners. The bulk of the interviews performed by Class Counsel were also conducted by associates and paralegals, with supervision by the partners. Overall, Class Counsel assigned as much work as they could to attorneys with lower billing rates when feasible and appropriate to protect the interests of the Class.

12. Having the firms serving as Class Counsel work on the case together added substantial value to the case, as borne out by the ultimate relief achieved for the Class. Class Counsel were able to work together to develop sophisticated and effective strategies for pursuing the claims of Plaintiff and the Classes.

13. Moreover, the arrangement between the Class Counsel firms also reflects the reality of large consumer product class actions where, because of the great risk involved, multiple firms with national practices work together to spread the risk.

14. The work performed in this case was reasonable and necessary to the prosecution and settlement of this case. Class Counsel conducted a significant factual investigation during

the prosecution of this action. Because of their comprehensive evaluation of the facts and law, Class Counsel was able to settle this case for a very substantial sum. Class Counsel provided Class Members with substantive and certain relief much sooner than if litigation of this matter had continued.

15. As settlement administration is ongoing, and based on my experience in previous product defect cases, the lodestar figures reported herein will meaningfully increase by the time the settlement is completely and finally administered.

COUNSEL'S EXPENSES

16. This litigation required Class Counsel to advance costs. Where corporate defendants and their attorneys are well funded, as was true here and in most national consumer products cases, this type of litigation can prove to be expensive and risky. Because the risk of advancing costs in this type of litigation is significant, doing so is often cost prohibitive to many attorneys.

17. As of June 30, 2017, Plaintiffs' counsel expended costs of approximately \$75,280.57. These expenses are reflected in the books and records of each firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. All of the expenses incurred were reasonable and necessary to the prosecution of this case.

18. On behalf of Plaintiffs and Class Counsel, I respectfully request that the Court award the requested attorneys' fees and costs.

I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Dated: July 14, 2017

/s/ Joseph G. Sauder
Joseph G. Sauder

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MATTHEW TRAXLER, ANGIE) BANYAS, ALEX KINSFATHER, CHRIS) MORRISON, NANCY KRESS,) RICHARD CONWAY, DAVID NAEGER,) SANDRA HOWARD, JOHN) SCHUBACH, PAULA SULPIZIO and) EDITH LACEY, individually and on behalf) of all others similarly situated,) Plaintiffs,) v.) PPG INDUSTRIES, INC., PPG) ARCHITECTURAL FINISHES, INC., and) PPG ARCHITECTURAL COATINGS,) LLC,) Defendants.)	CASE NO.: 1:15-cv-00912-DAP JUDGE DAN AARON POLSTER
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**[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED
MOTION FOR ATTORNEYS’ FEES, EXPENSES, AND INCENTIVE AWARDS**

WHEREAS, Plaintiffs and Defendant PPG Industries, Inc. (“PPG”) executed an agreement to settle this matter, subject to Court approval, on April 19, 2017;

WHEREAS, the Court reviewed the parties’ Settlement Agreement and issued an order granting preliminary approval to it on April 27, 2017. *See* ECF No. 65;

WHEREAS, Section 9.1 of the Settlement Agreement provides that Plaintiffs shall request up to one-third of the Settlement Fund, or \$2,166,666.67, to Plaintiffs’ counsel for their attorneys’ fees and expenses;

WHEREAS, the Settlement Agreement also provides, in Section 9.4, that Plaintiffs shall request an award of \$2,000 payable to each of the eleven Plaintiffs (\$22,000 total) for their work and contributions in the case;

WHEREAS, after considering Plaintiffs' motion, memorandum of law, and supporting materials (including the declaration from counsel) as well as any material(s) that may be filed in opposition thereto, the Court having concluded that Plaintiffs' request for fees, expenses, and the payment of incentive awards is reasonable, permissible under the applicable law, and in accordance with the Settlement Agreement.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Incentive Awards to Plaintiffs is **GRANTED**.

2. The Claims Administrator shall pay Class Counsel \$_____ for their attorneys' fees and expenses in accordance with the Settlement Agreement.

3. The Claims Administrator shall also make an additional payment of \$_____ to Class Counsel for the incentive awards for the Plaintiffs, which amounts shall then be remitted by Class Counsel to the Plaintiffs in accordance with the Settlement Agreement.

4. All other payments and costs shall be borne as set forth in the Settlement Agreement or as agreed to by the parties.

IT IS SO ORDERED.

Dated: _____

HON. DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE