IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

SHANA GUDGEL and CRAIG WOOLARD, individually and on behalf of all others similarly situated, Plaintiffs, v. REYNOLDS CONSUMER PRODUCTS INC. and REYNOLDS CONSUMER PRODUCTS LLC, Defendants.	Case No. 23LA00000486

MEMORANDUM IN SUPPORT OF THE CLASS REPRESENTATIVES' MOTION FOR PAYMENT OF ATTORNEYS' FEES AND COSTS TO THEIR COUNSEL; PAYMENT OF SERVICE AWARDS TO THE CLASS REPRESENTATIVES; AND PAYMENT OF THE CLAIMS ADMINISTRATOR'S COSTS

INTRODUCTION

In this class action, Class Representatives[1] Shana Gudgel and Craig Woolard allege that Defendants Reynolds Consumer Products Inc. and Reynolds Consumer Products LLC made material misrepresentations in the labeling and marketing of Defendants' Great Value and Hefty Recycling Bags. After both litigation and negotiations, the Parties agreed to the Settlement whereby Defendants agreed to implement changes to the label of the Products and fund up to $3,000,000 to pay valid claims made by Class Members. Settlement Agreement ¶¶ 2.38, 3.1-3.14. In addition, Defendants shall separately pay (1) the costs of notice and claims administration; (2) $975,000 for the fees and costs of the Class Representatives' counsel; and (3) $10,000 in Service Awards to the two Class Representatives (who shall each receive $5,000). *Id.* ¶¶ 3.14, 4.7, 5.1, 5.2. These payments by Defendants – the costs of notice and claims administration; the fees and costs of the Class Representatives' counsel; and the Service Awards – do not in any way diminish the $3,000,000 available to compensate Class Members for their claims. *Id.* ¶ 2.38.

The Class Representatives now respectfully request that the Court grant payment of $975,000 to their counsel for their fees and costs. This amount represents 25% of the cash value of the Settlement, which is well within the range permitted. They also respectfully request the Court grant payment of Service Awards of $5,000 each to Plaintiffs Gudgel and Woolard. As detailed below, the requested payments are appropriate under governing Illinois law and fairly compensate Class Counsel and the Class Representatives for the work they performed and the commendable result they achieved in this high-risk litigation. Finally, they also seek approval of the payment to the Claims Administrator for the important work it performed in this matter, providing notice to the Class and administrating the claims, which will be paid by Defendants.

[1] All capitalized terms herein have the same meaning as the capitalized terms defined in the Settlement Agreement previously filed with the Court on August 18, 2023.

FACTUAL AND PROCEDURAL BACKGROUND

In this class action, Plaintiffs allege that Defendants made material misrepresentations and omissions regarding the labeling and marketing of the Products in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. §§ 505, *et seq*. *See generally*¸ Class Action Complaint filed on July 20, 2023.

After motion practice, discovery, and extensive negotiations with the assistance of an esteemed mediator, the Parties reached agreed to a settlement whereby Defendants agreed to make changes to the label of the Products and establish a Settlement Fund of up to $3,000,000 to pay Class Members' claims. *See* Declaration of Michael Reese dated October 11, 2023 ("Reese Decl.") at ¶¶ 3-10; Declaration of William Wright dated October 11, 2023 ("Wright Decl.") at ¶¶ 6-11.[2] Defendants also shall separately pay the costs of notice; claims administration; the $975,000 in fees and costs to the Class Representatives' counsel; and the $10,000 in total for the Class Representatives' Service Awards.

The Parties engaged in settlement discussions with the assistance of the Honorable Wayne Andersen (Ret.) of JAMS, who served both as a former Illinois Circuit Court judge and Northern District of Illinois judge, and who now serves as a mediator at JAMS Illinois. In order to competently assess their relative negotiating positions, the Parties exchanged discovery, including, but not limited to, information related to the strengths and weaknesses of Plaintiffs' case and Defendants' defenses. Given the data exchanged, the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses as well as the risks of continued litigation. Reese Decl. at ¶¶ 6-7; Wright Decl. at ¶ 10.

[2] The Reese and Wright Declarations contain a fulsome description of the work performed in this matter and are an integral part of this submission. Plaintiffs respectfully refer the Court to these Declarations for a detailed description of the history of the litigation, the work Class Counsel performed, the settlement negotiations, and the numerous risks the litigation presented.

The initial mediation took place on December 14, 2022, and lasted the entire day. While the Parties engaged in good faith negotiations, which were at arm's length at all times, they failed to reach an agreement that day but continued the mediation. On April 13, 2023, the Parties held an additional day of mediation and reached an agreement in substance. The Parties then worked on the Settlement Agreement, which was ultimately filed with the Court on August 18, 2023. Reese Decl. at ¶¶ 8-10; Wright Decl. at ¶ 11.

Plaintiffs filed their Unopposed Motion for Preliminary Approval on August 18, 2023. On August 30, 2023, the Court preliminarily approved the Settlement.

To date, the response of the Class to the Settlement has been overwhelmingly positive. As of October 10, 2023, 434,056 claims have been filed. In stark contrast, no Class Member has objected to the Settlement, and no one has opted out. *See* Declaration of Cameron R. Azari. Esq. Regarding Implementation and Adequacy of Notice Plan dated October 10, 2023 filed with this memorandum of law ("Azari October 10th Decl.") at ¶¶ 24, 26.

SUMMARY OF THE SETTLEMENT

The Settlement provides an exceptional result for the class. Defendants will fund up to $3,000,000 to pay all valid claims made by Class Members. Each Class Member who submits a claim will be eligible to receive $2.00 per Product purchased, up to 25 Products for $50 with Proof of Purchase. A Settlement Class Member does not have to provide Proof of Purchase for the first six (6) Products claimed for a total of twelve dollars ($12.00). Proof of Purchase is required for every Product claimed over six (6) Products up to 25 Products in total for $50.00. Separate and apart from the $3 million dedicated to pay claims, Defendants are separately paying (1) the costs of notice and claims administration incurred by the Settlement Administrator; (2) $975,000 for the fees and costs of the Class Representatives' counsel; and (3) $5,000 to each of the Class Representatives (for a total of $10,000) as Service Awards for their work done on this matter.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

"If a statute or contractual agreement expressly authorizes an award of attorney fees, the court may award fees 'so long as they are reasonable.'" *McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 404 (4th Dist. 2008) (citing and quoting *Career Concepts, Inc. v. Synergy, Inc.*, 372 Ill. App. 3d 395, 405 (1st Dist. 2007)).[3] Here, the Parties have entered into a contractual agreement – the Settlement Agreement – that expressly authorizing an award of attorney fees and costs of $975,000. Settlement Agreement ¶ 5.1. Additionally, the applicable statute here - 815 Ill. Comp. Stat. §§ 505 – has a provision that authorizes payment of fees to the prevailing parties' counsel, which in this case is Class Counsel who have achieved this significant result on behalf of Class Members. 815 Ill. Comp. Stat. §§ 505/10a(c) ("the Court may grant…reasonable attorney's fees and costs to the prevailing party.").

A. The Court Should Apply The Percentage-of-the-Fund Method

"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." *Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235, 244 (1995). The preferred method is to calculate fees as a percentage of the value of the settlement. *McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶¶ 24-26. Moreover, the Court is not required to perform a lodestar cross-check on Class Counsel's fees. *Id.* (holding that there is no requirement to perform lodestar cross-check and awarding class counsel fees totaling 35% of the fund); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58, 52 N.E.3d 427, 441 (citing *Brundidge*, 168

[3] *See also* William B. Rubenstein, 5 NEWBERG ON CLASS ACTIONS § 15:12 (5th ed. 2019) (parties to suit may have agreements concerning fees which may include agreement between class counsel and defendant whereby defendant agrees to pay a certain fee requested by class counsel).

Ill.2d at 246) ("The class representatives argue that the trial court did not abuse its discretion by approving the award based on the percentage method. We agree with the class representatives."). Indeed, the "[p]ercentage analysis approach eliminates the need for additional major litigation and further taxing of scarce judicial resources." *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 924–25 (1st Dist. 1995).

In class action litigation, state courts in Illinois are in near unanimous agreement that "the percentage approach is likely what the class members and counsel would have negotiated when counsel agreed to take on the case." *McCormick*, 2022 IL App (1st) 201197-U, ¶ 26; *Ryan*, 274 Ill. App. 3d at 923 (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel"); *see also, e.g., Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (explaining that where "a class suit produces a fund for the class," as is the case here, "it is commonplace to award the lawyers for the class a percentage of the fund," and affirming fee award of 38% of $20 million recovery to class); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 794 (N.D. Ill. 2015) ("[T]he court agrees with Class Counsel that the fee award . . . should be calculated as a percentage of the money recovered for the class."). *Williams v. Gen. Elec. Capital Auto Lease*, 1995 WL 765266, *9 (N.D. Ill. Dec. 26, 1995) (noting that "[t]he approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class").

This Court should apply the percentage-of-the-fund method here. The percentage-of-the-fund method aligns Class Counsel's interests with those of the Settlement Class because it bases the fee on the results the lawyers achieved for their clients rather than on the number of motions they file, documents they review, or hours they work. The percentage-of-the-fund method avoids some of the problems the lodestar-times-multiplier method can foster (such as encouraging attorneys to delay resolution of the case when an early resolution may be in their clients' best

interests). *McCormick*, 2022 IL App (1st) 201197-U, ¶ 26 (holding that"[the lodestar] method…is disfavored in class actions… [Any argument that it] should have been used at least for a cross-check of the fee award is an argument for inefficiency" and quoting the Illinois Supreme Court in *Brundidge* for its criticism of the lodestar methodology since "[e]valuating the hours actually expended is a laborious, burdensome, and time-consuming task that may be biased by hindsight"); *Brundidge*, 168 Ill.2d at 242. The percentage-of-the-fund method is also simpler to apply. *Id*. Accordingly, the Court should apply the percentage-of-the-fund method.

B. The Requested Attorneys' Fees and Costs Are Reasonable As A Percentage Of The Class Benefit

In class action settlements, Illinois courts typically award attorneys' fees based on one-third (33.33%) of the total settlement. *See, e.g., McCormick*, 2022 IL App (1st) 201197-U, ¶ 29 (awarding 35% and citing *"*Illinois state and federal court cases in which attorney fees were awarded in the 30-to-39% or higher range*"*); *Sabon, Inc.*, 2016 IL App (2d) 150236, at ¶ 59 (upholding an attorneys' fees award of one-third of a reversionary fund recovered in light of the "substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted"). "[T]he percentage of the fund method…reflects the results achieved." *Brundidge*, 168 Ill. at 244.

Here the fee request of 25% of the settlement value is far below the benchmark approved by courts in Illinois. Accordingly, payment of the fee request should now be granted.

1. The Total Value Of The Settlement Is In Excess of $3,985,000

To calculate attorneys' fees based on the percentage of the benefit, the Court must first determine the value of the Settlement. In doing so, the Court should consider the *entire benefit* conferred by the Settlement, including the benefit fund, agreed on attorneys' fees and costs, cost of notice and claims administration, and the service awards to Plaintiffs. *See, e.g.*, *Brundidge*, 168 Ill.2d at 238; *Scholtens v. Schneider*, 173 Ill. 2d 375, 385 (1996) ("It is now well established that 'a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole.'"); *Ryan*, 274 Ill. App. 3d at 924-25 (approving one third fee award in $33 million settlement).

Here, the value of the Settlement amounts to more than $3,985,000 [$3,000,000 for claims made by Class Members + $975,000 in attorneys' fee and costs +$10,000 for Service Awards], plus the cost of notice and claims administration.

2. The Requested 25% Of The Settlement Fund Is Reasonable

Here, the requested $975,000 in attorneys' fee and costs, is approximately 25% of the value of the Settlement generated on behalf of the Settlement Class, which falls far below the range awarded in class actions by courts in Illinois. *McCormick,* 2022 IL App (1st) 201197-U, ¶ 29 (awarding 35% and citing *"*Illinois state and federal court cases in which attorney fees were awarded in the 30-to-39% or higher range.*"*). The requested fee of 25% of the value of the Settlement is reasonable in light of the substantial monetary relief obtained by Class Counsel here.

"When assessing the reasonableness of fees, a trial court may consider a variety of factors, including the nature of the case, the case's novelty and difficulty level, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges for similar work, and the connection between the litigation and the fees charged." *McNiff,* 384 Ill. App. 3d at 407.

a. *Nature of Case, and Its Novelty and Difficulty - Plaintiffs' Claims Carried Substantial Litigation Risk*

This case presented substantial litigation risk. In addition to the typical risks associated with class action litigation, such as certifying a class, there have been very few of these types of cases filed regarding recyclability. Nonetheless, despite knowing the risks, Class Counsel took on the case, expended time and money on the case, and even undertook a significant financial risk, with no upfront payment, and no guarantee of payment absent a successful outcome.

A motion to dismiss was fully briefed in the Gudgel matter pending in Florida before settlement and the filing of the action with this Court. Surviving Defendants' motion to dismiss was far from guaranteed. Further, class certification, summary judgment, and trial were also huge hurdles for Class Members. Those later stages of the litigation would present additional risks.

In addition to the legal complexities, the case also involved factual complexities, including identifying the myriad versions of recycling streams in various locations throughout the United States. This factor favors the requested fee.

b. *The Skill and Standing of the Attorneys Support the Requested Fee*

Class Counsel are well-respected attorneys with significant experience litigating consumer class action cases in state and federal courts across the country. *See* Reese Decl, at ¶ 2; Wright Decl. at ¶¶ 2-5. Furthermore, "[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance." *In re MetLife Demutalization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). Here, Defendants were represented by a prominent and well-respected law firm. Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel. *See Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement.").

c. *Degree of Responsibility Required - The Settlement Was the Result of Extensive Arms'-Length Negotiations Between the Parties After a Significant Exchange of Information*

This action required considerable skill and experience to bring it to such a successful conclusion. The case required investigation of factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. In taking on this case, Class Counsel undertook the large responsibility of pursuing claims on behalf of a class of consumers against a multi-billion dollar corporation and experienced defense counsel. Class Counsel also undertook the large responsibility of funding this case, without any assurance that they would recover those costs. Class Counsel not only took on the obligation to act on behalf of the Plaintiffs, but also the class as a whole.

Class Counsel worked to gather critical information, including the size of the putative class and approximate time-period of the alleged violations, and engaged in lengthy settlement negotiations. Reese Decl. at ¶¶ 3-9; Wright Decl. at ¶¶ 9-11. Through the undertaking of a thorough investigation and substantial arm's-length negotiations, Class Counsel obtained a settlement that provides a real and significant monetary benefit to the Class. Since that time, Class Counsel has drafted and negotiated the Settlement Agreement, moved for and obtained preliminary approval, and diligently monitored the successful notice program and claims administration process. Reese Decl. at ¶¶ 10-13; Wright Decl. at ¶¶ 13, 15-16.

Defendants are represented by highly experienced attorneys who have made clear that, absent a settlement, they were prepared to continue their vigorous defense of this case and oppose class certification. Even assuming a class was certified, and summary judgment defeated, the case would then have moved on to pretrial briefing, a pretrial conference, and then a jury trial, which would have been costly, time-consuming, and very risky for Class Members and for counsel. Class Counsel undertook this representation despite all these risks.

d. *The Connection Between the Litigation and Fee Charged - The Usual And Customary Charges For Similar Work*

During the course of this litigation, Class Counsel devoted significant time and resources to succeed in this case. Further, as detailed above, the requested fees and costs of 25% of the settlement value is well within the range of awards routinely granted in this jurisdiction. *See, e.g.*, *McCormick*, 2022 IL App (1st) 201197-U, ¶ 29 (awarding 35% and citing *"*Illinois state and federal court cases in which attorney fees were awarded in the 30-to-39% or higher range.*"*); *see also In Re Broiler Chicken Antitrust Litig*., 2021 WL 5709250, at *4 (N.D. Ill. 2021) ("There is simply little to no precedent recommending anything other than an award of 33 percent. With the only real evidence of the 'market rate' being one-third, that is what the Court will award."). *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599-600 (7th Cir. 2005) (noting class actions in courts in Illinois have awarded fees of 30-39% of the settlement fund).

II. THE REQUESTED SERVICE AWARDS ARE REASONABLE AND SHOULD BE APPROVED

Service Awards of $5,000.00 each (for a total of $10,000) for Class Representatives Gudgel and Woolard are appropriate here. Defendants have agreed to pay Service Awards to the two Class Representatives in these amounts. Settlement Agreement ¶ 5.2. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of class action litigation. *See* 299 F.R.D. 160, NACA Guideline 5 (West 2014) ("Consumers who represent an entire class should be compensated reasonably when their efforts are successful and compensation would not present a conflict of interest."); *see also Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998) (value of settlement was $ 14 million; incentive award to class representative of $25,000). "Many cases note the public policy reasons for encouraging individuals with small personal stakes to serve as class plaintiffs in meritorious cases." 299 F.R.D. 160, Guideline 5 Discussion (citing cases).

This case is no different. The Class Representatives' participation was instrumental in the prosecution and ultimate settlement of this action. Here, the Class Representatives spent substantial time, including by: (i) assisting with the investigation of this action and reviewing the drafts of the complaint, (ii) being in contact with counsel frequently, (iii) and staying informed of the status of the action, including settlement. *See* Reese Decl. at ¶¶ 23-25; Wright Decl. at ¶¶ 26-28.

III. THE COURT SHOULD ALSO GRANT APPROVAL OF PAYMENT THE CLAIM'S ADMINISTRATOR'S COSTS

Integral to any class action settlement is the provision of notice to the class so that the class members are aware of the settlement and can make claims. Likewise, claims administration is integral so that the claims can be processed and class members receive their settlement funds. Here, the Court has appointed Epiq Class Action & Claims Solutions, Inc. ("Epiq") to perform these important duties.

Significantly, Defendants have agreed to pay all the costs of notice and claims administration as part of the Settlement Agreement. This amount to be paid to Epiq for its important work in providing notice to the Class and administrating the claims will be determined at the conclusion of the claims administration and is separate and apart from the $3,000,000 that Defendants have committed to pay for valid claims from Class Members. Epic's costs thus in no way reduces the amount that Class Members will receive. Accordingly, the costs incurred by Epiq for its work in this case should now be approved.

CONCLUSION

For the foregoing reasons, the Class Representatives and Class Counsel respectfully request that the Court grant their motion for: (1) payment of fees and costs to the Class Representatives' counsel in the amount of $975,000; (2) payment of the Service Awards to the two Class Representatives of $5,000 each (for a total of $10,000); and (3) payment of the costs incurred by Epiq for the work it performed in providing notice and claims administration. These payments would both adequately and reasonably compensate the Class Representatives, their attorneys, and the Claims Administrator for their respective work on this matter.

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Respectfully submitted,

s/ Gary M. Klinger
Gary M. Klinger (6303726)
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
227 W. Monroe Street, Suite 2100
Chicago, Illinois 60606
(866) 252-0878
gklinger@milberg.com

Local Counsel

Michael R. Reese (admitted pro hac vice, ARDC # 6319869)
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025
(212) 643-0500
mreese@reesellp.com

William Wright (admitted pro hac vice, ARDC # 6344824)
THE WRIGHT LAW OFFICE, P.A.
515 N. Flagler Drive, Suite P-300
West Palm Beach, Florida 33401
(561) 514-0904
willwright@wrightlawoffice.com

Co-Lead Class Counsel