UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

In re POLYURETHANE FOAM ANTITRUST LITIGATION	MDL Docket No. 2196 Index No. 10-MD-2196 (JZ)
This document relates to: ALL DIRECT PURCHASER CLASS ACTIONS	

THE DIRECT PURCHASER CLASS PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES, FOR REIMBURSEMENT OF EXPENSES, AND FOR AN INCENTIVE AWARD TO THE DIRECT PURCHASER CLASS REPRESENTATIVES

PLEASE TAKE NOTICE THAT the Direct Purchaser Class Plaintiffs ("Plaintiffs") respectfully move this Court for an award of attorneys' fees, for reimbursement of expenses, and for an incentive award to the Direct Purchaser Class Representatives. As support for this motion, Plaintiffs rely on the concurrently-filed Memorandum of Law and any additional materials the Court deems proper.

DATED: July 17, 2015

Respectfully submitted,

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Co-Lead Counsel for the Direct Purchaser Class

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2015, the foregoing DIRECT PURCHASER CLASS PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES, FOR REIMBURSEMENT OF EXPENSES, AND FOR AN INCENTIVE AWARD TO THE DIRECT PURCHASER CLASS REPRESENTATIVES and accompanying memorandum of law were filed electronically using the Court's ECF system, which will send notification of such filing to counsel of record.

/s/ Melissa Felder Zappala
Melissa Felder Zappala

UNITED STATES DISTRICT COURT
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In re POLYURETHANE FOAM ANTITRUST LITIGATION	MDL Docket No. 2196 Index No. 10-MD-2196 (JZ)
This document relates to: ALL DIRECT PURCHASER CLASS ACTIONS	

MEMORANDUM OF LAW IN SUPPORT OF THE DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, FOR REIMBURSEMENT OF EXPENSES, AND FOR AN INCENTIVE AWARD TO THE DIRECT PURCHASER CLASS REPRESENTATIVES

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I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Direct Purchaser Class representatives ("Plaintiffs"), through Quinn Emanuel Urquhart & Sullivan, LLP and Boies, Schiller & Flexner LLP (together, "Co-Lead Counsel"), as well as the Direct Purchaser Class Executive Committee (Co-Lead Counsel and the Executive Committee together, "DPP Counsel"), respectfully move for an award of attorneys' fees and reimbursement of litigation expenses from the settlements with Defendants (i) FFP Holdings, LLC, (ii) Foamex Innovations, Inc., (iii) Future Foam, Inc., (iv) Hickory Springs Manufacturing Company, (v) Mohawk Industries, Inc., and (vi) Woodbridge Foam Corporation, Woodbridge Sales & Engineering, Inc., and Woodbridge Foam Fabricating, Inc. (collectively, the "Final Settlements").

It is respectfully submitted that these settlements – providing $275.5 million in cash, the large majority immediately – will provide extraordinary relief to the proposed Settlement Classes. Combined with the Direct Purchaser Plaintiffs' prior settlements, these new settlements will bring the total cash recovery for the direct purchasers to over $430 million – representing more than 50 percent of the direct purchaser economic expert's "best case" damages estimate, and more than 80 percent of his alternative estimate.

It is also respectfully submitted that these results were only possible, in very large part, because of the dedication, effort, industry and skill of DPP Counsel, as well as the huge investment of time and money (for expenses) that DPP Counsel invested on behalf of the Class without guarantee of compensation or reimbursement. Over the course of more than four years, DPP Counsel investigated and developed the claims; engaged in extensive and wide-ranging discovery; defeated multiple motions to dismiss on a range of issues; prevailed on class certification following extensive briefing, expert reports, and discovery, and a hearing featuring live expert testimony;

defeated the Defendants' Rule 23(f) petition to the Sixth Circuit and subsequent certiorari petition to the Supreme Court (results that DPP Counsel recognize also reflected the rigorous analysis embodied in the Court's class certification ruling); briefed, argued, and defeated Defendants' summary judgment motions; and undertook tremendous effort to prepare this case for trial (only to receive the final settlement offers largely on the eve of trial).

Moreover, while the Justice Department did investigate the conduct at issue here, after the amnesty application by Defendant Vitafoam only one other defendant – Woodbridge – was ever charged in the US with participation in the conspiracy, and Woodbridge entered a guilty plea that was very narrow in terms of both the time period and conduct covered. It was DPP Counsel that developed a factual record sufficient to pursue successfully the claims against all of the Defendants, and for conduct spanning the full decade-long alleged conspiracy period.

DPP Counsel do not take lightly this Court's prior guidance that DPP Counsel should not simply assume they will receive a full 30 percent of all settlement funds, notwithstanding the Court's awards of that amount to date. Dkt. 1534 at 13. Under all the circumstances here, however, DPP Counsel respectfully submit that a 30 percent fee award for these new Final Settlements is highly justified. Even with the prior fee awards, DPP counsel have never to date recovered their full lodestar in this litigation. *Id.* at 12. As of this application that total lodestar is $65,091,177.65. And a 30 percent fee award for the new settlements, combined with the earlier fee awards to DPP Counsel in this action, would provide DPP Counsel with only a 2.01 multiplier on their total lodestar. This is well within the appropriate range courts have recognized for lodestar multipliers, and all the more so here given the risks borne by DPP Counsel and the successes achieved in this action.

DPP Counsel also respectfully seek reimbursement of $315,325.12 in expenses that have

not been reimbursed through prior settlements, but which were necessary for trial preparation.

Finally, it is respectfully proposed that the Court provide "incentive awards" to each of the named plaintiffs that served as a Court-appointed representative of the Direct Purchaser Class. The class representatives here were subjected to extensive document, written, and deposition discovery from Defendants, including downstream discovery beyond what is typical (and often is wholly disallowed) in antitrust class actions. The class representatives also prepared for trial, reflecting Defendants' demands that they each be made available. Again, the proposed incentive awards are with the range that Courts have deemed appropriate in major class actions.

II. BACKGROUND

A. DPP Counsel's Vigorous Prosecution of the Case.

As set forth more fully in the Declaration of Co-Lead Counsel ("Co-Lead Decl.") submitted this same day and in the concurrently filed motion for final approval of the settlements, DPP Counsel expended an tremendous amount of time and resources over the past four and a half years litigating Plaintiffs' claims, while being cognizant of the need to work efficiently, avoid duplication, and prudently manage expenses. As this Court recognized, "with the exception of certain information gained early in this litigation from government investigations, this is certainly not a case where class counsel have simply piggy-backed on a government investigation or the work of others." Dkt. 1534 at 12 (February 26, 2015 Order Finally Approving Carpenter and Leggett & Platt Settlements) (quotations omitted).

Of particular note, DPP Counsel's efforts since the last settlements with Carpenter and L&P have included briefing and argument on Defendants' summary judgment motions; defeating Defendants' repeated attempts to seek an interlocutory appeal of the Court's class certification order (including a petition for a writ of certiorari to the Supreme Court); and all pretrial

preparations, which involved months of work preparing trial exhibits, trial demonstratives, deposition designations, pretrial motions, mock trials, and actual trial presentation preparation. These efforts are set forth in detail in the Co-Lead Decl.

B. Notice to the Class.

After this Court preliminarily approved the Final Settlements (Dkt. 1703), the claims administrator directly mailed the Notice to approximately 47,473 unique addresses. Co-Lead Decl. ¶ 60; Dowd Decl.¶ 10. The Notice advised Class Members of the material terms of the proposed Final Settlements, including the intent of DPP Counsel to apply to the Court for an award of attorneys' fees and expenses. The Notice further stated that DPP Counsel could seek up to 30% of the settlement fund, as well as expenses. Co-Lead Decl. ¶ 60. The Classes are composed of thousands of entities nationwide, many of which are sophisticated companies with their own in-house legal counsel. As of the date of this brief, no Class member has made any objection to the proposed settlements or anticipated fee and expense request. *Id.* ¶ 5.

Likewise, after the Court granted preliminary approval to the Final Settlements, counsel for the Final Settling Defendants sent notice of the proposed settlements to the appropriate State and Federal Officials. Dkt. 1730 (Mohawk); 1732 (Woodbridge); 1733 (FFP); 1735 (Hickory Springs); 1815 (Future Foam).[1] To date, those entities have not lodged any objections to the settlement. *Id.*

III. DESIGNATED COUNSEL SHOULD BE AWARDED THE REQUESTED FEES AND REIMBURSEMENT OF LITIGATION EXPENSES.

DPP Counsel respectfully request that the Court award to them 30% of each of the Final Settlement Funds as fees, for a collective total of $82.65 million, as well as a final distribution of $315,325.12 in non-previously reimbursed expenses incurred while preparing this case for trial.

[1] FXI has confirmed that it distributed similar notices as well.

This will result in an award of $82,965,325.12, total, on this application.

The proposed award would be well within the range previously approved by this Court. Dkt. 1534 (awarding 30% share of Carpenter and Leggett & Platt settlement funds); Dkt. 598 at 3 (awarding 30% share of Vitafoam settlement fund). This proposed award would also be consistent with so-called "megafund" cases, where the total collection for the class extends into the hundreds of millions of dollars. *See, e.g., In re TFT-LCD Antitrust Litig.*, No. 07-md-01827, Dkt. 4436 (N.D. Cal. Dec. 27, 2011) (awarding 30% of $405 million settlement as attorneys' fees); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-cv-00340, Dkt. 543 ¶ 11 (D. Del. Apr. 23, 2009) (approving 33% fee on $250 million settlement).

Plaintiffs respectfully submit that the requested fees and expense reimbursement are particularly appropriate, given (a) the nature and extent of DPP Counsel's efforts in creating settlements beneficial to the Class in this hard-fought litigation, (b) the substantial risks DPP Counsel assumed in prosecuting this complex matter with no guarantee of recovery, and (c) the near unprecedented results DPP Counsel achieved for the Class, particularly for a case of this size and complexity. Notably, as of the date of this application, no Class member has objected to the potential for this fee award or expense reimbursement.

A. Plaintiffs' Request for Attorneys' Fees Falls Within The Range of Approval.

As this Court has previously noted, "[i]n a common-fund case like this one, this Court's award of attorneys' fees need only be 'reasonable under the circumstances.'" Dkt. 1534 at 6 (quoting *In re Sulzer Orthopedics, Inc.*, 398 F.3d 778, 780 (6th Cir. 2005)). This Court has also noted that "the normal range of fee recovery in antitrust suits is twenty to thirty percent of the common fund." Dkt. 598 at 2. *See also In re TFT-LCD Antitrust Litig.*, No. 07-md-01827, Dkt. 4436 (N.D. Cal. Dec. 27, 2011) (awarding 30% of $405 million settlement as attorneys' fees); *In re*

Tricor Direct Purchaser Antitrust Litig., No. 05-cv-00340, Dkt. 543 ¶ 11 (D. Del. Apr. 23, 2009) (approving 33% fee on $250 million settlement).

The factors the Court may consider in assessing the fee request include "(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." Dkt. 1534 at 6-7 (quoting *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996)). DPP Counsel respectfully submit that the application of these factors to this case supports the fee request.[2]

1. DPP Counsel secured significant benefits for the Class.

The result achieved is a major factor to consider in making a fee award. *See Hensley v. Eckhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 55 (2d Cir. 2000) ("the quality of representation is best measured by results").

The results achieved here fully support the requested fee. The proposed $275.5 million in settlements, plus accrued interest, from just this round are substantial in both absolute terms and in light of the circumstances of this litigation. Moreover, when combined with the previous settlements and even assuming DPP Counsel receives its full requested 30% of the common fund,

[2] As with the Vitafoam, Carpenter, and Leggett & Platt Settlements, Co-Lead Counsel also requests the Court's authorization to distribute the fees in a manner that, in the judgment of Co-Lead Counsel, fairly compensates each firm for its contribution to the prosecution of Plaintiffs' claims. This is consistent with the Co-Lead Counsel's duties (Dkt. 29) to "[c]oordinat[e] the activities of Plaintiffs' counsel and implement[] procedures to ensure that schedules are met and avoid[] unnecessary expenditures of time and funds," and to "[c]ollect[] time and expense reports on a periodic basis, endeavor[] to keep attorneys' fees reasonable, and choos[e] appropriate levels of staffing for the tasks required." Dkt. 1534 at 13; Dkt. 598 at 4 (granting the same request in connection with the Vitafoam settlement).

the Class will recover over $300 million, which is a huge sum that goes far toward remunerating class members for Defendants' collusion. In addition, the Final Settling Defendants have each offered cooperation at trial. If ever necessary, this cooperation will help Plaintiffs introduce critical evidence against any Defendants that would go to trial because the settlements are not consummated or for some other reason.

As noted in Plaintiffs' motion for preliminary approval and concurrently-filed motion for final approval, $430 million is more than 52% of the "best case" single damages estimate calculated by Plaintiffs' economic expert, Dr. Leitzinger, and more than 80% of the alternative single damages estimate. This is a remarkable result that is exceptional in antitrust class actions of similar size and scope. *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013) (settlement representing "approximately 50% of the potential recovery" was an "***exceptional***" result for the class) (emphasis added); *In re Lease Oil Antitrust Litig. (No. II)*, 186 F.R.D. 403, 446 (S.D. Tex. 1999) (recognizing that a recovery of 53% of damages was "[c]ompared to other settlements in commercial litigation … ***a high figure***") (emphasis added).

2. <u>The value of DPP Counsel's services compared to the settlement.</u>

DPP Counsel litigated this case for over four and a half years. Thousands of hours were spent developing and prosecuting the case against Defendants, the details of which are discussed in the accompanying Co-Lead Decl. As this Court acknowledged, "work in this case caused [DPP Counsel] to turn away billable hours from other clients, who would have been willing to pay Class Counsel's full hourly rates on a rolling basis." Dkt. 1534 at 12. A lodestar cross-check confirms that, to date, DPP Counsel have incurred fees of $65,091,177.65. As discussed below, the requested fee award would result, for the entire litigation, in a lodestar multiple of 2.01, which is well within the accepted range of fee awards, even for "megafund" cases such as this. And this is a

case where Plaintiffs' counsel put huge amounts of lodestar at risk. Since there is no question that DPP Counsel's efforts led to an excellent result for the Class, this factor weighs in favor of the requested fee award.

3. DPP Counsel's efforts significantly benefit society.

The Supreme Court has repeatedly recognized the importance of private antitrust litigation as a necessary and desirable tool to assure the effective enforcement of the antitrust laws. *See*, *e.g.*, *Pillsbury Co., v. Conboy*, 459 U.S. 248, 262–63 (1983); *Reitner v. Sonotone Corp.*, 442 U.S. 330, 344 (1979); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 265–66 (1972); *Minnesota Min. & Mfg. Co. v. New Jersey Wood Finishing Co.*, 381 U.S. 311, 317–18 (1965).

Through their efforts, Plaintiffs have substantially contributed to enforcement of the antitrust laws and have helped restore market efficiency in an important segment of the U.S. economy that yields such everyday products as mattresses, packaging, and carpet underlay. In this case, the private prosecution went far beyond what has been disclosed through the limited public activity in the government's investigation. In addition, the Final Settlements send a clear message that direct purchasers of flexible polyurethane foam will not tolerate collusive and conspiratorial behavior – a message that we hope will deter foam manufacturers from similar future misconduct.

4. DPP Counsel undertook their services on a contingent fee basis.

DPP Counsel undertook this action on a wholly contingent basis, assuming significant risk with the possibility of no recovery whatsoever, when they could have taken other hourly work (which is much less risky). Over the course of the litigation, DPP Counsel almost always had tens of millions of dollars of attorney lodestar at risk, as they did when the Final Settlements were reached shortly before trial. In addition, DPP Counsel advanced significant expenses over the past four and a half years that, absent a successful result, would not be reimbursed. All of this supports an award to DPP Counsel from the common fund. *See In re Sulzer Hip Prosthesis and Knee*

Replacement Liability Litig., 268 F. Supp. 2d 907, 936–38 (N.D. Ohio 2003).

5. The complexity of the litigation.

It is no exaggeration to say that this case represents multidistrict litigation at its most complex. As is evident from the summary of DPP Counsel's efforts provided in the accompanying Co-Lead Decl., this case has involved a large expenditure of time and effort against up to fourteen different Defendant groups. Moreover, "[a]n antitrust class action is arguably the most complex action to prosecute … The legal and factual issues involved are always numerous and uncertain in outcome." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350 at *10 (E.D. Pa. June 2, 2004) (quotations omitted). This case presents no exception.

6. DPP Counsel have exhibited professional skill and standing.

The benefit conferred on Class members here is the result of the skill, industry, dedication and efficiency of Co-Lead Counsel and other DPP Counsel. Without these efforts, the entities that will benefit from this settlement may never have seen any recovery for what Plaintiffs allege was a nationwide price-fixing conspiracy causing significant overcharge damages to flexible polyurethane foam purchasers. DPP Counsel submit that they exhibited the highest levels of "skill, efficiency, and efficacy." Dkt. 598 at 3-4. Throughout this litigation, DPP counsel faced a coterie of preeminent defense counsel from large, national law firms and with decades of experience litigating antitrust actions.

B. DPP Counsel Has Not "Piggybacked" On A Government Investigation.

As this Court previously noted, "[w]ith the exception of certain information gained early in this litigation from government investigations, this is certainly not a case where class counsel have simply 'piggybacked' on a government investigation or the work of others." Dkt. 1534 at 12 (internal quotations omitted). And to the extent there was a single U.S. guilty plea, by Defendant Woodbridge, since the time that Vitafoam cooperated with the government, that Woodbridge plea

was far narrower, in terms of time period and conduct covered, than the claims pursued here that formed the basis for the Final Settlements. All of this warrants a higher attorneys' fee, given the heightened risk DPP Counsel faced without the aid that an active governmental investigation or set of indictments brings. *See, e.g., In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 104-05 (E.D. Pa. 2013).

C. The Requested Fee Is Reasonable Because It Falls Within The Well-Accepted Range For Lodestar Success Multipliers.

The reasonableness of the total fees DPP Counsel request—a number that includes previous fee awards—is further confirmed by a lodestar cross-check. As reflected in Exhibit 2 to the Co-Lead Decl., DPP Counsel's total lodestar from inception through June 2015 is $65,091,177.65. This lodestar reflects substantial efforts through the years, including preparation up to the eve of trial against well-funded Defendants that fought nearly every issue within their power, and even tried to reverse the Court's class certification order before the Supreme Court.

Including previous fee awards, DPP Counsel requests a grand total of $130.59 million in attorneys' fees, which is a 2.01 multiplier on the total lodestar over the past four and a half years. This "lodestar multiplier" is appropriate and warranted here.

As this Court has noted, a "lodestar cross-check" is often used to assess the reasonableness of a fee request. *See* Dkt. 1534 at 12-13 (finding 30% fee reasonable in light of, *inter alia*, DPP Counsel's lodestar cross-check); *Bowling*, 102 F.3d at 780 (6th Cir. 1996) (affirming district court's methodology which based the fee award on a percentage of the fund and then cross-checked the fee against class counsel's lodestar); *Connectivity Sys. Inc. v. Nat'l City Bank*, 2:08-CV-1119, 2011 WL 292008 at *13 (S.D. Ohio Jan. 26, 2011) ("In this Circuit, the lodestar figure is used to confirm the reasonableness of the percentage of the fund award.").

Where a fee request exceeds counsel's lodestar, courts assess the reasonableness of the request based on the "lodestar multiplier" that the request represents. Typical lodestar multipliers—particularly in cases where counsel expended substantial amounts of time, effort, and resources pursuing the defendants—range from two to five, and are determined on a case-by-case basis. *See In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 750-51 (E.D. Pa. 2013) (awarding fees equal to 2.99 lodestar multiplier); *Bailey v. AK Steel Corp.*, 2008 WL 553764, at *7 (S.D. Ohio Feb. 28, 2008) (awarding multiplier of 3.04, noting that "[c]ourts typically ... increas[e] the lodestar amount by a multiple of several times itself and identifying a "normal range of between two and five"); *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at *93 (M.D. Tenn. Aug 11, 1999) (3.8 multiplier); *In re Cardinal Health Sec. Litig.*, 528 F. Supp. 2d. 752, 770 (S.D. Ohio 2007) (5.9 multiplier); *Cardizem*, 218 F.R.D. at 533 (3.7 multiplier); *Meijer, Inc. v. 3M*, 2006 WL 2382718, at *24 (E.D. Pa. Aug. 14, 2006) (4.77 multiplier in case that settled after one year). As the foregoing citations show, courts seek to reward class counsel for taking the risks of bringing successful class actions such as this.

Plaintiffs' fee request is thus well within the accepted range, even for cases (like here) with large and extremely successful resolutions for the class. *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013) (awarding $308 million in attorneys' fees in indirect purchaser antitrust class action, which represented a 2.4-2.6x multiplier to counsel's lodestar); *Tricor*, No. 05-cv-00340, Dkt. 543 ¶ 11 (approving 33% fee, equaling approximately $83 million and 3.93 lodestar multiplier, on $250 million settlement); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 524 (E.D.N.Y. 2003) (awarding $220 million in attorneys' fees, which equated to 3.5 lodestar multiplier); *see also In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *4-5 (E.D. Tenn. May 17, 2013) ($101 million in total

attorneys' fees where counsel obtained $303 million for the class and where total fees represented 1.9x lodestar multiplier, which was "clearly within, but in the bottom half of, the range of typical lodestar multipliers"); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at **47-48 (D.N.J. Nov. 9, 2005) (1.86 multiplier is on the "low end of the spectrum").

Plaintiffs submit that this multiplier is particularly warranted here because of the uniquely successful results DPP Counsel obtained and the risks they undertook while pursuing the case against the Defendants that settled last. It is not every antitrust class action that proceeds through dispositive motions, up to the Supreme Court, and to the near-eve of trial. Moreover, not every class counsel is able to obtain, at the most conservative estimate, settlements representing more than 50% of the class's "best case" damages estimate.

D. DPP Counsel's Requested Expenses Were Reasonably Incurred.

"Class counsel in common fund cases are entitled to be reimbursed for 'all reasonable out-of-pocket expenses and costs in the prosecution of claims and in obtaining settlement." Dkt. 598 at 4. The appropriate analysis for deciding whether expenses are compensable in a common fund case is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. Dkt. 1534 at 13 (citing *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. at 535).

Excluding amounts that have already been reimbursed on prior fee applications, DPP Counsel have incurred $315,325.12 in expenses preparing this case for trial. These expenses included, among other things, costs for experts, trial exhibits, practice for trial, document management, electronic hosting for Defendants' document productions, travel, photocopying, overnight mail, process service fees, long distance telephone, electronic research, and contributions to the common expense litigation fund. Co-Lead Decl. ¶¶ 63-65. The expenses now to be reimbursed also cover certain work from Dr. Leitzinger that was necessitated by preparation for the

summary judgment hearing, calculating the Class' final damages numbers (*i.e.*, once the parties determined the final list of opt outs), and preparing for trial and Dr. Leitzinger's own planned trial testimony. The expenses to be reimbursed now also include fees for the Class' accounting experts, who analyzed and advised on certain Defendants' claims of inability to pay large settlement amounts. The other large categories of expenses include DPP Counsel's preparation of the extensive conspiracy timelines they planned to submit to the jury. These timelines required experts to sift through and condense thousands of trial exhibits, which was a herculean task. Finally, still other expenses include the more mundane aspects of trial preparation, such as deposits for trial services and hotel lodging, and fees to rental companies for trial equipment. A spreadsheet detailing these expenses, the amounts incurred and the method by which DPP Counsel calculated the amount that remains unreimbursed is attached as Exhibit 3 to the Co-Lead Decl.

DPP Counsel respectfully submit that these categories of expenses are the type routinely charged to hourly-fee paying clients in preparation for a modern day case of this size and scope. For this reason, the expenses were all reasonably incurred and should be reimbursed in full.

IV. CLASS REPRESENTATIVES SHOULD RECEIVE INCENTIVE AWARDS

Finally, Plaintiffs request a $35,000 incentive award to each of the six Direct Purchaser Class representatives (paid *pro rata* out of each Final Settlement Fund). In total, this request equals $210,000 in incentive awards to the Class representatives.

"Incentive awards are typically awards to class representatives for their often extensive involvement with a lawsuit. Numerous courts have authorized incentive awards." *Hadix v. Johnson*, 322 F.3d 895, 898 (6th Cir. 2003). As their name applies, such awards are meant to help incentivize members of a class to take on the case and pursue the defendants for the greater whole. *Id.* at 897. They are also meant to reward personal involvement in a case where inaction is fully permitted by law. *Id.*; *see also Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 787

(N.D. Ohio 2010) ("Courts within the Sixth Circuit … recognize that, in common fund cases and 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 to by virtue of class membership alone.") (citing *Hadix*, 322 F.3d at 898). Payment of incentive awards to class representatives is a reasonable use of settlement funds. *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 351 (6th Cir. 2009).

Although the Sixth Circuit has not identified the specific situations in which incentive awards are justified, district courts typically focus on the level of the representatives' involvement, whether or not they are institutional entities (that typically have greater burdens in litigation than individual/consumer plaintiffs), and the amount of the requested award in comparison to the total amount obtained on behalf of the class. *See Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 2015 WL 1498888, at *18-19 (E.D. Mich. Mar. 31, 2015) (applying these factors when assessing incentive award request); *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473, at *5 (E.D. Mich. Jan. 20, 2015) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 1:05-md-01720, Dkt. 6169 (E.D.N.Y. Jan. 10, 2014) (same); *see also In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) (class representative's institutional nature warranted higher incentive award). Based on these factors, several district courts have awarded equivalent or much higher incentive awards to class representatives based on settlements much lower than in this case *See, e.g., Shane Grp.*, 2015 WL 1498888, at *18-19 (approving, *inter alia*, $35,000 incentive awards for institutional class representatives as part of $30 million settlement); *Prandin*, 2015 WL 1396473, at *5 (approving $50,000 incentive awards on $19 million settlement); *In re Skelaxin Antitrust Litigation*, No. 12-cv-00083, Dkt. 747 (E.D. Tenn. June 30, 2014) (awarding a $50,000 incentive award to each class

representative on $73 million settlement); *Cardizem*, 218 F.R.D. at 535–36 (awarding $75,000 each to the corporate class representatives on an $80 million settlement); *Meijer, Inc., et al. v. Barr Pharma., Inc.*, No. 05-cv-2195, Dkt. 210 (Order and Final Judgment) ¶ 17 (D.D.C. Apr. 20, 2009) (awarding $50,000 to five class representatives—a total of $250,000—on $22 million settlement)

For the past four and a half years, each of the Direct Purchaser Class representatives has dutifully represented the Class in all matters related to this action. Plaintiffs have been subject to extensive discovery from the Defendants and aided DPP Counsel with both understanding and prosecuting the case. Plaintiffs have also stayed informed regarding the settlement negotiations and given their consent once DPP Counsel reached what Plaintiffs felt were appropriate numbers for each of the settling Defendants. In all, through DPP Counsel and Plaintiffs' coordinated efforts, the Class has obtained an outstanding result that helps put to right over a decade of collusion in the flexible polyurethane foam industry. Given all of this, Plaintiffs respectfully submit that all factors support the requested $35,000 incentive awards.

V. CONCLUSION

For the reasons set forth herein, it is respectfully submitted that this Court should award 30 percent of each of the Final Settlement Funds to DPP Counsel, plus expenses of $315,325.12, and also award each class representative a $35,000 incentive award.

DATED: July 17, 2015

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