IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIM SEGEBARTH and SUSAN STONE, individually and on behalf of all others similarly situated, Plaintiffs, v. CERTAINTEED LLC, Defendant.	Case No. 19-cv-5500

PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD OF SERVICE AWARDS

Plaintiffs hereby move for an award of attorneys' fees, expenses, and service awards as follows: (i) $1,561,071.03 for Class Counsel's attorneys' fees, (ii) $113.928.97 for Class Counsel's litigation expenses, and (iii) $7,500 Service Awards to each of the two Class representatives, totaling $15,000. Plaintiffs hereby incorporate the attached Memorandum of Law as if fully set forth herein. For the reasons stated in Plaintiffs' Memorandum of Law, the Motion should be granted.

Dated: November 1, 2022

Respectfully submitted,

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD OF SERVICE AWARDS

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Plaintiffs Kim Segebarth and Susan Stone ("Plaintiffs"), by and through counsel, hereby submit this Memorandum of Law in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Award of Service Awards. For the reasons set forth below, Plaintiffs' motion should be granted.

I. INTRODUCTION

After litigating this case for close to three years now, on a wholly contingency fee basis—and after successfully negotiating a Settlement that creates substantial benefits for a class of approximately 600,000 building owners with CertainTeed Fiberglass Shingles—pursuant to Fed. R. Civ. P. 23(h)(1) and this Court's order granting preliminary approval of the proposed settlement (ECF No. 56 § 4), Plaintiffs respectfully seek an Order approving payment of $1.69 million to be allocated as follows: (i) $1,561,071.03 for Class Counsel's attorneys' fees, (ii) $113.928.97 for Class Counsel's litigation expenses, and (iii) $7,500 Service Awards to each of the two Class representatives, totaling $15,000.

Under the terms of the Amended Settlement Agreement, CertainTeed has agreed to pay $1.69 million, subject to Court Approval. (*See* Joint Declaration of Charles E. Schaffer, Charles J. LaDuca and Michel McShane in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses and Service Awards ("Joint Decl.") ¶ 4). The payment by CertainTeed will not reduce any settlement benefits made available to the Class. (Joint Decl. ¶ 4).

Plaintiffs, with the assistance of mediator Honorable Diane Welsh (ret.), negotiated a proposed settlement ("Settlement") that provides substantial benefits to a nationwide class of approximately 600,000 building owners with allegedly defective Horizon brand asphalt fiberglass shingles ("Shingles") that were manufactured and distributed by CertainTeed. (Joint Decl. ¶ 26-30); (Declaration of Michael McShane in Support of Plaintiffs Supplemental Memorandum in

Support of Preliminary Approval of Class Action Settlement ¶ 4 ("McShane Decl."); *see also* ECF No. 48, 52).

The proposed claims-made settlement (1) extends existing Settlement Class Members' warranties five years, (2) increases the amount of money to be paid to class members though an improved proration schedule, (3) provides reimbursement for non-damaged Shingles when five percent or more of the Shingles are damaged on a given roof plane, and (4) assures the use of a straightforward written claims procedure going forward, which includes an appeal process overseen by an independent third party. (Joint Decl. ¶ 34-42).

The amount of the requested award was arrived at with the assistance of the mediator, the Honorable Diane Welsh (ret.), and was agreed to only after the Parties reached agreement on all other material terms of the Settlement. (Joint Decl. ¶ 27-29). The enforceability of the Settlement Agreement is not contingent on the amount of attorneys' fees or costs awarded. (Joint Decl. ¶ 27).

The attorney fees sought here of $1,561,071.03, (*see* Class Counsel's Joint Declaration filed contemporaneously for details) are reasonable under the lodestar method, the percentage-of-the-benefit cross check, and the *Gunter* and *Prudential* factors used in the Third Circuit. The proposed fee represents a **negative multiplier of 0.73** based on Class Counsel's lodestar of $2,131,175.01 incurred as of September 30, 2022. This negative multiplier will only increase as Class Counsel continues to administer the settlement over the seven (7) year claims period. In addition, the fee also corresponds to less than 1% of the $900 million overall value of the settlement, 1.6% of the estimated $99 million value of the enhanced warranty benefits to be paid out over the seven years claims period, and 8.7 % of $18 million value of the enhanced warranty afforded by the Settlement.

The $113,928.97 expense reimbursement request is reasonable in an amount and consistent in type with expense awards commonly approved in the Third Circuit. The expenses were necessary to effective prosecution of this action, as discussed below and in Class Counsel's Joint Declaration.

The proposed Service Awards are reasonable in light of the time and effort contributed by the Class Representative Plaintiffs to pursue this action on behalf of the Class. The $7,500 amount of the Service Award is consistent with service awards commonly approved in the Third Circuit and other similar cases nationwide, as discussed below and in Class Counsel's Joint Declaration.

In light of these factors, among others discussed below, Class Counsel respectfully request that the Court approve an award to Class Counsel for attorneys' fees, litigation expenses and Service Awards.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Plaintiffs' Allegations, Pre-Litigation Investigation and Discovery Conducted.

This case is a putative class action filed on November 21, 2019 by Plaintiff Kim Segebarth in which Plaintiff asserted claims on behalf of a nationwide class of building owners who had CertainTeed Fiberglass Horizon Shingles (the "Shingles") installed between 1995 and 2010 that are covered by CertainTeed limited warranties applicable to the Shingles.[1] The claims relate to the premature failure of the Shingles, all of which were sold with either a 25 or 30 year limited warranty. Plaintiffs allege that the Shingles are defective, that they failed before the expiration of the applicable limited warranty, and that, as a result, Plaintiffs have suffered economic loss

[1] Later, Susan Stone joined the class action as a second named plaintiff, and Kathryn Eloff, as personal representative of the Estate of Kim Segebarth, replaced Mr. Segebarth following his death. (ECF No. 25, 28, 29)

damages. Plaintiffs allege the Shingles' premature failure included loss of granules, cracking or splitting, curling, fishmouthing, and leaking. (ECF No. 1) (Joint Decl. ¶ 21).

Prior to the filing of this action on November 21, 2019, and throughout the litigation, Plaintiffs' Counsel undertook an extensive investigation into the Shingles' failure, issues resulting from the Shingles' failure and prepared for protracted litigation. Among other things, Plaintiffs' Counsel investigated the causes of the Shingles' failure, the applicable legal standards for product defect cases involving construction materials, relevant class action standards, interviewed class members, reviewed class members' documents, interviewed builders and installers and inspected Shingles on buildings in various parts of the country. Plaintiffs' Counsel has substantial experience in prosecuting class actions, in particular, class actions involving residential construction and roofing materials. As part of their investigation, Plaintiffs' Counsel assembled a uniquely qualified team of experts in construction materials, in particular, roofing shingles, to assist them in the investigation of the facts, assessment of the viability and strength of the claims and prosecution of the action on behalf of homeowners across the nation. (Joint Decl. ¶ 22-23). Prior to and during the pendency of this action, inspections were conducted of the class representative plaintiffs' shingles and homes, as well as other class members' homes and shingles. (Joint Decl. ¶ 25).

In addition, Plaintiffs conducted substantial discovery enabling Class Counsel to fully investigate the underlying facts supporting Plaintiffs' and Class members' claims alleged in the complaint, assess the viability of the alleged defect, liability and damage theories and reach the Proposed Settlement on behalf of the Class. The parties were diligent in their ongoing discovery efforts. Both parties produced initial disclosures identifying individuals with knowledge regarding claims and defenses in the litigation. After their investigation and research Plaintiffs' Counsel prepared initial disclosures identifying amongst others builders/developers, installers and class

members whom shingles prematurely deteriorated. Plaintiffs' Counsel also investigated and researched the individuals identified by CertainTeed in their initial disclosures in preparation of conducting discovery including depositions. Plaintiffs responded to CertainTeed's interrogatories and document requests including a production of documents on behalf of the class representative plaintiffs as well as a preparation of a privilege log. CertainTeed produced, among other things, historical product design specifications, including changes thereto, third-party audit and testing data, product brochures and marketing materials, warranties for all products, sales data and information, pricing data and information, warranty claim data and information, and additional product information. Not only did Plaintiffs' counsel review and analyze thousands of pages of documents obtained during discovery and the warranty claims data spreadsheets, but, they also engaged in consultations and analysis with their experts regarding these documents and their impact on Plaintiffs' alleged defect and claims in the litigation. (Joint Decl. ¶ 24).

In addition to the documents and information produced and analyzed by Plaintiffs' Counsel, CertainTeed conducted electronic data collection for 43 custodians and reviewed over 100,000 documents from these custodial files. After Plaintiffs' Counsel investigated the custodians proposed by defendant, the parties conducted several meet and confer sessions, during which they negotiated the custodian list and relevant search terms for the electronic data set to be produced. The parties also negotiated an inspection protocol for warranty shingle returns and exemplar shingles which required input for Plaintiffs' Experts, and CertainTeed produced shingle samples which Plaintiffs' experts analyzed and tested. In addition to the forensic testing of the shingle samples provided by CertainTeed, Plaintiffs' Counsel and their roofing experts conducted field inspections of Plaintiffs' and class members' roofs and shingles around the country. Before, during and after the field inspections, Plaintiffs' counsel interviewed Plaintiffs and class members

regarding the installation of the shingles, premature failure of the shingles. damage to the home from shingle failure, repairs/replacement of shingle, warranty claims as well as reviewing records provided. Plaintiffs' counsel consulted with their roofing experts regarding the information and documents obtained from Plaintiffs and class members. The roofing experts also removed shingles from the Plaintiffs' and class members' roofs and analyzed and tested those shingles to determine if the shingles were defectively designed and/or manufactured, as well as the cause of the failures. Furthermore, Plaintiffs' Counsel retained a warranty valuation expert who conducted an analysis of the warranty claims data, warranty(s) and other information and assessed the warranty benefits including determining a value of the enhanced warranty benefits achieved through the Settlement. (Joint Decl. ¶ 25).

B. Settlement Discussions and Mediation

As the litigation progressed through discovery, the parties commenced settlement negotiations, taking into account the case's strengths and weaknesses. These negotiations—which included the exchange of information and data, written offers and counteroffers, in-person meetings in Philadelphia, and numerous telephone conversations—were conducted prior to and contemporaneously with the ongoing discovery process and expert inspections and testing. In early 2021, the parties determined that an experienced mediator was necessary to resolve the claims in this litigation. Accordingly, the parties sought the assistance of the Honorable Diane Welsh (ret.). (Joint Decl. ¶ 26-30).

The parties actively engaged in a hard-fought mediation session before Judge Welsh on March 24, 2021. The parties made significant progress during the mediation session. Following the formal mediation session, the parties continued to work through Judge Welsh and ultimately agreed upon the material terms of the settlement, which were memorialized in a memorandum of

understanding. Thereafter the parties methodically set about negotiating the specifics of the settlement, including fleshing out all key terms, establishing a mutually agreeable claims process and protocol, selecting the notice provider, and working with the notice provider to develop a notice plan. This process required many months of back-and-forth negotiation between counsel for both sides, as well as between defense counsel and their respective client representatives. In addition, it necessitated Plaintiffs to consult with their experts about their firsthand observations in the field of the deterioration of the Shingles as well as laboratory testing results. With the assistance of Judge Welsh, the parties then negotiated and reached agreement on the amount of the lump sum amount that CertainTeed would pay for attorneys' fees, costs and incentive awards.[2] All of the material terms of the settlement were agreed upon with the assistance of Judge Welsh before there was any discussion of attorneys' fees. (Joint Decl. ¶ 29).

C. Preliminary Approval of the Settlement and Settlement Terms.

On November 24, 2021, Plaintiffs filed a Motion for Preliminary Approval of the Settlement along with a Memorandum of Law and Declaration of Charles E. Schaffer setting forth and explaining the history of the ligation, the settlement negotiations and meetings with mediator, the Honorable Diane Welsh (ret.), the provisions of the settlement, the claims process, the notice plan, that the settlement is fair, reasonable and adequate, and that a settlement class should be certified pursuant to Federal Rule 23. (ECF No. 31-1). CertainTeed filed a response and joined in the request for preliminary approval of the Settlement and certification of the settlement class. (ECF No. 32). (Joint Decl. ¶ 31).

[2] Pursuant to the Settlement CertainTeed is also responsible for and is paying all costs for notice and claims administration. (Joint Decl. ¶ 55).

On March 4, 2022, during the hearing (the "Hearing") on the Plaintiffs' Motion for Preliminary Approval, the Court asked counsel to submit supplemental briefing responding to various questions it raised about the proposed Settlement. In response to the Court's questions, Plaintiffs submitted a Supplemental Memorandum in Support of Motion for Preliminary Approval of the Class Action Settlement. (ECF No. 45), and for the reasons previously articulated in their briefing, respectfully submit that the Settlement is fair, adequate, reasonable, and will satisfy final approval requirements. (Joint Decl. ¶ 32).

On August 2, 2022, the Court granted Plaintiffs' Motion for preliminary of Approval of Class Action Settlement, directed that the notice be implemented and set various deadlines for implementation of the proposed settlement prior to the final approval hearing. (ECF No. 53). On August 16, 2022, the parties filed a Joint Motion to modify the Preliminary approval order (ECF No. 53), requesting *inter alia*, that the Court modify the Preliminary Approval Order to provide a date by which the parties file an Amended Settlement Agreement and provide notice under the Class Action Fairness Act, 28 U.S.C. § 1715(b). The Court granted the Motion on August 18, 2022. (ECF No. 46). Thereafter, Plaintiffs' Counsel in conjunction with CertainTeed's counsel revised the settlement agreement and filed it with the Court on September 2, 2022. (ECF No. 57). In addition, Plaintiffs' Counsel in conjunction with CertainTeed's counsel and the notice provider revised amongst other things the claim forms, notice forms, press release, settlement webpage and then implemented the notice plan as directed by the Court. Since notice has been issued to the Class, Plaintiffs' Counsel has responded to class members' inquiries regarding the proposed settlement including benefits available and the claims process.[3] (Joint Decl. ¶ 61).

[3] Throughout the pendency of the litigation, Plaintiffs' Counsel received inquiries from class members regarding the class action and the warranty offer received from CertainTeed. Class Members were primarily concerned with losing out on the opportunity to participate in the class

III. THE SETTLEMENT

A. Summary of Settlement Benefits

If finally approved, the Settlement will provide substantial benefits to approximately 600,000 class members in the following class: all individuals or entities that own a building in the United States on which the Shingles were installed between 1995 and 2010 that are eligible for relief under the Limited Warranty applicable to the Shingles installed on their building. (Joint Decl. ¶ 34).

Each class member who submits a claim within the claims period will receive $40 per square of roofing shingles subject to the revised proration schedule as reimbursement for the material cost of the shingles qualifying under the settlement. (ECF No. 31-2, Ex. 1, § 5.2.5) (Joint Decl. ¶ 37).

The Settlement establishes a claims process whereby owners of Shingles will obtain extended warranties providing compensation for valid claims as follows: Claimants with Shingles installed between 1995 and 2003 have limited warranties with twenty-five (25) years of warranty coverage from the date of installation. (*Id*.) This term will be extended to thirty (30) years from the date of installation. (*Id*.) Claimants with Shingles installed between 2004 and 2010 have limited warranties with thirty (30) years of warranty coverage from the date of installation. (*Id.* § 5.2.4.2.) This term will be extended to thirty-five (35) years from the date of installation. (*Id*.) As a result of the expansion of the warranty period by five (5) additional years, claimants with eligible claims will receive $40.00 per square (a square is equal to approximately 100 square feet of shingles) for the replacement area subject to an extended proration schedule as set forth below:

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action and potential settlement if they accepted CertainTeed's warranty offer. Plaintiffs' counsel responded to all of the questions of the Class members and provide them with information regarding the status of the litigation. (Joint Decl. ¶ 61)

> Claimants with 30-year warranty terms (formerly 25-year terms) will have reimbursement prorated at 1/384 per month.
>
> Claimants with 35-year warranty terms (formerly 30-year terms) will have reimbursement prorated at 1/444 per month.

(*Id.* § 5.2.5) (Joint Decl. ¶ 38).

In addition, if the qualifying damage to the Shingles exists on greater than 5 percent (5%) of a given roof plane, the claimant will receive compensation for 100% of the shingles on that roof plan. Prior to this settlement, Class Members' warranties limited a claim to only those shingles which actually failed. This meant that even if a claimant had a roof with 50% failed shingles, the claim was limited to the failed 50%. With this settlement, even if only 5 percent (5%) or more of the Shingles on a roof plane qualify for compensation, then the claimant will receive compensation for 100% of the Shingles on that roof plane even if the unaffected Shingles do not have qualifying damage. (*Id.* § 5.2.2)

The five percent (5%) benefit will allow a significant additional monetary recovery under the Settlement. An example of the increased value of a claim which triggers the 5% rule is as follows: If a claim is made which includes exactly 5% of the roof shingles, and that claim is worth $100 dollars, the 5% trigger will increase the value of their claim to $2,000. This is calculated by multiplying $100 x 20 (representing the fact that each 5% represents 1/20 of the whole), for a total of $2,000, or twenty times the payout if the claim had been made pre-settlement (Joint Decl. ¶ 40).

The Settlement also protects Settlement Class Members who received a prior warranty offer but did not accept that offer. If a Settlement Class Member with an eligible claim filed a warranty claim before or after the litigation, and CertainTeed made a written cash offer to resolve that claim, then upon submission of a new claim under this Settlement, CertainTeed will pay the

eligible claim with the greater of either (1) that original offer or (2) the amount payable under the terms of this Settlement. (*Id.* § 5.4) (Joint Decl. ¶ 41).

B. The Overall Value of the Benefits Created by The Settlement.

The value of the settlement can be estimated because the number of class members is known, as well as the historical claims values associated with warranty claims made related to these roofing shingles. For the reasons set forth in detail below, the total value of the settlement available to class members is approximately over $900 million. However, Class Counsel recognizes that the expected claims rate, and the value attached to the claims which will come in during seven years claim period, is also an important metric, and that value is $99,138,852 as discussed below.

C. The Value of the Benefits Created by the Settlement for the Class Over the Course of the Seven-Year Claims Period.

As with any class actions involving a settlement based on a claims-made structure, the exact amount of the settlement benefits paid can only be estimated. . However, based on Class Counsels' experience in other building materials claims-made settlements it is likely that the settlement in this case will result in approximately a 10% claims rate. Specifically, Class Counsel in this case were also involved in the nationwide claims-made organic roofing shingle settlement in *In re CertainTeed Corp. Roofing Shingles Prods. Liab. Litig.*, MDL No. 1817 (E.D. Pa.), presided over by the Honorable Louis Pollack (deceased) and the Honorable Timothy Savage. (*See* McShane Decl. ¶ 3.) To date that settlement has resulted in payments of approximately $150,000,000 to class members. According to the claims data, the claims rate before the settlement in that case was 8%, and post-settlement increased to 16%. *Id.* Given the similar nature of the product in this case, and the fact that it is the same Defendant with same basic warranty and likely customer base, the Plaintiffs can reasonably expect a similar increase in the claims rate in this case.

In addition, due to the attendant published notice, class settlements generally result in a higher post-settlement claims rate because the notice focuses class members' attention on the fact that their product has a warranty; has a potential defect; and of the existence of an increased monetary benefit because of the settlement. In addition, given the fact the product in this case is not a three-dollar widget, but an expensive, critical component protecting the class members home, the claims rate in this type of case is generally higher. (Joint Decl. ¶ 48)

As noted in the Defendant's Supplemental Memorandum (ECF No. 48, 52) the historical claims rate for this product pre-settlement is 5%. As a result, and for the reasons given above, it is likely that the post-settlement claims rate will double, as in related cases, to 10%. The result will be an estimated 60,000 claims, or 10% of the 600,000 class members. (Joint Decl. ¶ 49)

The claims examples provided in Defendant's Supplemental Memorandum in Support of Preliminary Approval of Class Action Settlement demonstrates the increased payment schedule a class member can expect because of the settlement. *See* Def. Supp. Brief (ECF No. 48, 52 at 3-4) (Joint Decl. ¶ 50). Those charts with the examples are duplicated below:

	Example Claim 1 (under limited warranty)	**Example Claim 2 (under limited warranty)**
Installation Date	06/2000	06/2008
Length of Warranty	25 years (300 months)	30 years (360 months)
Claim Submitted	4/2022	4/2022
Months Since Installation	262 months	166 months
Warranty Months Remaining	38 months	194 months
Proration Rate	1/300 per month	1/360 per month
Number of Squares with Qualifying Damage	5 squares	5 squares
Prorated Square Amount	$5.07	$21.56
Total Compensation	$25.33	$107.78

	Example Claim 1 (under settlement)	**Example Claim 2 (under settlement)**
Installation Date	06/2000	06/2008
Length of Warranty	30 years (360 months)	35 years (420 months)
Claim Submitted	04/2022	04/2022

Proration Rate	1/384 per month	1/444 per month
Months Since Installation	262 months	166 months
Warranty Months Remaining	98 months	254 months
Number of Squares on Roof Plane	15 squares	15 squares
Number of Squares with Qualifying Damage	5 squares	5 squares
Estimated Percent of Plane with Qualifying Damage	33%	33%
Prorated Square Amount	$12.71	$25.05
Total Compensation	$190.63	$375.68
Additional Value Provided by Enhanced Warranty	$165.30	$267.90

The amount of the increased payment per square is the most helpful metric to estimate the total future payments the class will receive. In Example 1, the value increases from $5.07 to $12.71 per square, or 2.5 times. In Example 2, the value increases from $21.56 to $25.05, or 1.16 times. While each claim will vary in value due to the difference in the size of a roof and the size of the claim, these examples demonstrate relative increases which will remain constant regardless of those variables. The specific example provided by CertainTeed involves a claim which triggers the 5% rule. As noted in the example, this changes the first claim value from $25.33 to $190.63, and the second from $107.78 to $375.68, increases of 7.5 and 3.5 times respectively. (Joint Decl. ¶ 51)

The claims data provided by CertainTeed in this litigation demonstrates that the historical average claim value for the 12,034 claims received regarding this product, is $1,990.74, for total payments of $24,494,089 to the claimants. Def. Supp. Mem at 6-7, ECF No. 48, 52 . (Joint Decl. ¶ 52)

Applying that per-claim value to the expected 60,000 post-settlement claims results in a benefit to the class of $119,444,400. But that would be without the increased monetary benefits provided by the settlement. As noted above, the post-settlement increased monetary value per

square will range from 1.16 to 2.5 times as compared to payments under the existing warranty. If the mid-point of that range is used, or 1.83, then the increased value of the expected payments to the class will increase by $99,138,852. This amount is the actual value of the settlement to the class based on both historical and expected claims rates for the subject roof shingles. (Joint Decl. ¶ 53). In addition, if the total opportunity value or available benefit to the class is calculated (which is just another way of assigning a value as if 100% if the class makes a claim), which this Court is aware is used when determining the value of a settlement conferred upon class, then the value of the benefit to the class is of over $900 million (which is effectively ten times the 10% claims rate described above). Class Counsel is of course aware that a 100% claims rate is not going to happen, but that it is important to identify the "opportunity" value created by Class Counsel to the Court.

D. The Enhanced Warranty Created by the Settlement Also Has a Monetary Value or Benefit to Each Class Member Regardless of Whether the Class Member Makes a Claim.

Every Class Member will also receive the benefit of the five-year extended warranty to protect what is most likely their most valuable asset—their home. This value and benefit exist regardless of whether or not the class member actually ever uses the extended protection. This component of the settlement essentially purchases an insurance policy for the benefit of each of the class members, and does not require a class member to make a claim or do anything to receive this benefit The Report of Kerper and Bowron calculates a monetary value of $30 per warranty can be attached to this benefit, which is provided to each of the 600,000 class members whether or not they actually make a claim. The result being that this provision of the settlement has a total value to the class of $18,000,000 ($30 x 600,000). (*See* McShane Decl., Exhibit 1, Expert Report of Kerper and Bowron at 3) (Joint Decl. ¶ 54).

E. CertainTeed's Separate Payment of Attorney's Fees, Expenses and Service Awards, and Separate Administration Fees.

Separate and apart from the monetary and enhanced warranty benefits discussed above, CertainTeed also has agreed to pay for the notice costs, claims administration and appeals, attorneys' fees, litigation expenses and service awards. (Joint Decl. ¶ 55).

F. Claims administration and Notice

As set forth in the Settlement Agreement, CertainTeed will establish all policies and procedures involved in processing claims under the terms of the Settlement, with input from Plaintiffs' Counsel. (Joint Decl., Ex. 1, § 7.10.) The Settlement requires that CertainTeed provide claimants two (2) opportunities to cure any deficiencies in their claims package. (Joint Decl., Ex. 1, § 7.10.) Plaintiffs' Counsel may audit CertainTeed's administration of the Settlement if necessary, if there is a question concerning the application of the Agreement generally, or if there is a question with respect to an individual claim. (Joint Decl., Ex. 1, § 7.13) The parties have agreed to provide members of the Settlement Class with notice in accordance with the Notice Plan, along with multiple forms of notice. (Joint Decl., Ex. 1, § 10). As set forth in the Settlement Agreement, the parties have agreed to provide members of the Settlement Class with notice in accordance with the Notice Plan, along with multiple forms of notice. (Joint Decl., Ex. 1, § 10).

Counsel worked extensively with CertainTeed's counsel and the notice provider Angeion Group, LLC ("Angeion"), a nationally recognized class notice firm, to develop and implement customized plan for distribution of the settlement the Declaration of Steven Weisbrot ("Weisbrot Decl."), attached as Ex. 4-1 of the Schaffer Declaration (ECF No. 31) describes the notice plan in detail and attests to it meeting the requirements of Fed. R. Civ. P. 23 and due process. (Weisbrot Decl. § 12). In summary, the proposed notice plan has the following key components:

1. The direct notice will consist of sending the full notice ("Notice") via first-class U.S. mail, postage pre-paid, to 5,000 Settlement Class Members and entities in the distribution chain for whom a mailing address is provided to Angeion by CertainTeed or Plaintiffs' Counsel. (Weisbrot Decl., §§ 14-19).
2. A form of internet advertising known as Programmatic Display Advertising, which is the leading method of buying digital advertisements in the United States, to provide notice of the Settlement to absentee Settlement Class Members. This is strategically designed to provide notice of the litigation to these individuals using demographic targeting and driving them to the dedicated website where they can learn more about the Settlement, including their rights and options. (Weisbrot Decl., §§ 21 –35).
3. Settlement website where Settlement Class Members can easily view general information about this class action, review relevant Court documents, and view important dates and deadlines pertinent to the Settlement. The Settlement Website will be designed to be user-friendly and make it easy for Settlement Class Members to find information about the Settlement. The Settlement Website will also have a "Contact Us" page whereby Settlement Class Members can send an email with any additional questions to a dedicated email address. (Weisbrot Decl., § 36).
4. A toll-free hotline devoted to this case will be implemented to further apprise Settlement Class Members of the rights and options pursuant to the terms of the Settlement. The toll-free hotline will utilize an interactive voice response ("IVR") system to provide Settlement Class Members with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline

> will be accessible 24 hours a day, 7 days a week. Settlement Class Members will be able to request a Notice via the toll-free hotline and speak with a live operator during normal business hours. (Weisbrot Decl., § 37).

(Joint Decl. ¶ 60). Class Counsel in conjunction with CertainTeed's counsel and the notice provider revised amongst other things the claim forms, notice forms, press release, settlement webpage and then implemented the notice plan as directed by the Court. Since notice has been issued Class Counsel has responded to class members' inquiries regarding the proposed settlement including benefits available and the claims process. (Joint Decl. ¶ 61).

G. Claims Procedure and Resolution

Claims under the Settlement will be administered by CertainTeed in the same manner as it administers its regular warranty program but, of course, under the conditions and oversight of the Settlement.[4] The claims package required by the Settlement was designed to enable CertainTeed

[4] Courts in similar cases have recognized the aforementioned benefits and value of having a defendant administer a claims-made enhanced warranty settlement. *See In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 476 (E.D. Pa. 2010); *In re IKO Roofing Shingle Prods. Liab. Litig.*, MDL No. 2104, ECF No. 435 ("Claims Administrator means IKO's Warranty Department"); *In re Bldg. Materials Corp. of Am. Asphalt Roofing Shingle Prods. Liab. Litig.*, No. 8:11-m n-02000-JMC, ECF No. 118-2 at 18 ("Warranty Services Department" shall mean GAF's Warranty Services Department, which will administer the Claims Program with the assistance" of a third party); *Roseman v. BGASC, LLC*, No. EDCV1501100VAPSPX, 2015 WL 13752886, at *7 (C.D. Cal. Oct. 1, 2015) (granting preliminary approval when the "parties propose that Defendant serve as the settlement administrator"); *Ross v. Trex Company, Inc.*, No. 3:09-cv-00670-JSW, ECF No.79 at 9 (defendant Trex evaluated whether claimants qualified for relief under the settlement); *Hamm v. Sharp Electronics Corp.*, No. 19-cv-00488, ECF No. 44-1 at 14 (settlement approved where defendant served as claims administrator and evaluated whether claimants qualified for relief); *Gulbankian v. MW Mfrs., Inc.*, No. 10-10392-RWZ, 2014 WL 7384075 (D. Mass. Dec. 29, 2014) (defendant authorized to evaluate whether claimants demonstrated qualifying damage for relief); *Eliason v. Gentek Bldg. Prods., Inc.*, No. 1:10-cv-2093, 2013 WL 12284495 (N.D. Ohio Aug. 1, 2013) (defendant received requests for damages under settlement agreement); *Burrow v. Forjas Taurus S.A.*, No. 16-21606-Civ-TORRES, 2019 WL 4247284 (S.D. Fla. Sep. 6, 2019) (defendant inspected submitted class revolvers for warranty service or replacement under settlement); *Lopez v. Delta Funding Corp.*, No. CV 98-7204 MDG, 2004 WL 7196763, at *18 (E.D.N.Y. Aug. 9, 2004) ("However, no statute, rule or

to determine whether the claimant has CertainTeed organic shingles on his or her building, as contrasted with CertainTeed fiberglass shingles or shingles of other manufacturers; if so, when the shingle was manufactured and therefore likely installed; whether the shingles are showing signs of a manufacturing defect; and whether any deterioration of the shingle is attributable to an intervening cause since the shingles left CertainTeed's control. Indeed, this provision was chosen because CertainTeed has been processing claims made under the warranty through an internal claim's office rather than a third-party administrator. Thus, CertainTeed already has in place, and possesses the capability to administer the claims process. This minimizes the cost to administer the settlement and ensures class members faster responses to their claims. However, recognizing the Court's concern that some class members may disagree with CertainTeed's evaluation of their claims, the parties amended the Settlement which now Settlement provides for appeals to an independent administrator and for participation by class counsel to assure all class members of the proper administration of the claims in accordance. (Ex. 1, § 7.18). The obligation to appoint an independent third party to review appeals by claimants was included as an Addendum to the Settlement Agreement filed with the Court on September 9, 2022. (ECF No. 57) (Joint Decl. ¶ 57).

Class Counsel will continue to be involved in the monitoring of the settlement throughout the claims period. Class Counsel's continued involvement ensures that CertainTeed is fairly

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case prohibits a defendant from serving as settlement administrator and, in fact, courts have upheld the administration of many settlement agreements by the settling defendants.") (collecting cases). In these cases, and especially in *In re CertainTeed Corp. Roofing Shingles Prods. Liab. Litig.*, the defendants have administered the settlements impartially without having to get the court involved in the claims determination process. In *In re CertainTeed Corp. Roofing Shingles Prods. Liab. Litig.*, 185,939 claims were processed, 166,058 accepted, 19,881 denied and there were only 128 appeals. (*See* McShane Decl. ¶ 3.) Clearly, this demonstrates CertainTeed's, in its past litigation (which concerned building materials, like here) ability to administer this Settlement neutrally, fairly, impartially. Additionally, Class Counsel will continue to monitor the claims process to ensure that CertainTeed does exactly that.

evaluating the claims made to the claims administrator and is complying with the terms of the settlement. Class Counsel will be provided annual reports on the claims made and rejected through the settlement in order to monitor the progress and ensure that the settlement is proceeding fairly. (Joint Decl. ¶ 58).

IV. ARGUMENT

A. The Court Should Approve the Attorneys' Fees Agreed to By the Parties.

The Federal Rules of Civil Procedure expressly authorize that "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); *Halley v. Honeywell Int'l, Inc.,* 861 F.3d 481, 496 (3d Cir. 2017). The Supreme Court has observed that, without the possibility of recovering an attorneys' fee, most class actions would never be filed. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980) ("[w]here it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class action device"); *Allapattah Servs. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1216-17 (S.D. Fla. 2006) (parallel citations omitted).

As a result, courts generally prefer that litigants agree to a fee award. *Lobatz v. U.S. W. Cellular of California, Inc.*, 222 F.3d 1142, 1149–50 (9th Cir. 2000) (affirming award of fees and expenses to be paid separate from class action settlement where defendant agreed not to oppose request up to negotiated amount); *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("Ideally, of course, litigants will settle the amount of the fee."); *In re Ford Motor Co. Spark Plug Engine Prod. Liab. Litig*, No. 12-MD-2319, 2016 WL 6909078, at *9 (N.D. Ohio Jan. 26, 2016) ("Negotiated and agreed-upon attorneys' fees as part of a class action settlement are encouraged as an 'ideal' toward which the parties should strive.").

Where, as here, the fee award is to be paid separately by the defendant rather than as a reduction to a common fund, the "Court's fiduciary role in overseeing the award is greatly reduced, because there is no potential conflict of interest between attorneys and class members." *Rossi v. Proctor & Gamble Co*., No. 11-cv-07238, 2013 WL 5523098, at *9 (D.N.J. Oct. 3, 2013); *accord Granillo v. FCA US LLC*, No. 16-cv-00153, 2019 WL 4052432, at *2 (D.N.J. Aug. 27, 2019) ("[O]ne important consideration in this Court's analysis is the . . . provision that any award of attorneys' fees and costs is wholly separate and apart from the relief provided for the Settlement Class; thus relief will not be reduced by an award of the fees."); *Haas v. Burlington Cty*., No. 08-cv-01102, 2019 WL 413530, at *9 (D.N.J. Jan. 31, 2019) ("[T]he amount of attorneys' fees was negotiated as a separate aspect of the settlement agreement, which further supports reasonableness.").

Notwithstanding, where, as here, attorneys' fees do not diminish the class benefits, "the Court's fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members." *McBean v. City of New York*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006); *see also Bailey v. AK Steel Corp.*, No. 1:06-CV-468, 2008 WL 553764, at *1 (S.D. Ohio Feb. 28, 2008) ("fees negotiated and paid separate and apart from the class recovery are entitled to the 'presumption of reasonableness'") (citing *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322 (W.D. Tex. 2007)); *Stokes v. Saga Int'l Holidays, Ltd.*, 376 F. Supp. 2d 86, 89 (D. Mass. 2005) (The arm's-length negotiations of attorneys' fees that would not diminish the class benefits "do not have the potential for the evils of extortion and collusion); *Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 67 (S.D.N.Y. 2003) ("Unlike common fund cases, where attorneys' fees can erase a considerable portion of the funds allocated for settlement, the fees were negotiated

separately and after the settlement amount had been decided, thus considerably removing the danger that attorneys' fees would unfairly swallow the proceeds that should go to class members").

This reduced fiduciary role is due in part to the fact that "reduc[ing] the award of class counsel's fees . . . would not confer a greater benefit upon the class, but rather would only benefit [defendant]." *DeHoyos*, 240 F.R.D. at 322. Therefore, in such circumstances, "[a] court can generally assume that the defendants have closely examined the plaintiffs' fee request and agreed to pay only a reasonable amount." *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 829 (D. Mass. 1987) (citing *In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 582 (3d Cir. 1984)); *see Matter of Cont'l Illinois Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992), *as amended on denial of reh'g* (May 22, 1992) ("markets know market value better than judges do").

In "claims-made" settlements, where the defendant bears responsibility for paying class counsel's reasonable fees and costs, courts encourage litigants to resolve fee issues by agreement. As the United States Supreme Court explains, "[a] request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Hensley*, 461 U.S. at 437; *see also Johnson v. Georgia Hwy. Exp., Inc.,* 488 F.2d 714, 720 (5th Cir. 1974) ("In cases of this kind, we encourage counsel on both sides to utilize their best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees."); *M. Berenson Co.*, 671 F. Supp. at 829 ("Whether a defendant is required by statute or agrees as part of the settlement of a class action to pay the plaintiffs' attorneys' fees, ideally the parties will settle the amount of the fee between themselves."). Accordingly, courts routinely approve agreed-upon reasonable attorneys' fees awards in claims made settlements, noting that the fee does not decrease the benefit obtained for the class. *See, e.g., In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 106 F. Supp. 2d 721, 732 (D.N.J. 2000) (finding it significant that attorneys' fees would not

diminish settlement fund). *See also McBean*, 233 F.R.D. at 392 (granting class counsel full amount of fees agreed to by defendant where the attorneys' fees were separate from the class settlement and did not diminish the class settlement); (N.D.N.Y. 2009) (same); *DeHoyos*, 240 F.R.D. at 322 (same).

Here, attorneys' fees were negotiated at arm's length, with a sophisticated defendant and their counsel, only after the merits of the Settlement were decided, with the assistance of Hon. Diane Welsh (ret.), a well-respected mediator, and in a manner that does not diminish the relief to the Class. Given that CertainTeed sees the fee as reasonable—and they would be the only beneficiary of a reduction—this lends great credence to find the fee reasonable. Equally, it reduces the fiduciary burden on the Court in examining the fee request, as there is no "built-in conflict of interest."

Moreover, CertainTeed has agreed not to object to Class Counsel's application for a fixed sum of $1.69 million in attorneys' fees, expenses and service awards in connection with the relief obtained for the Class, subject to the Court's approval.[5] This award of attorneys' fees and costs is completely separate and apart from the relief available to the and, thus, will not reduce the relief to the Class in any manner.[6] Furthermore, attorneys' fees were not negotiated or discussed until

[5] "[A]n agreement not to oppose an application for fees up to a point is essential to completion of the settlement, because the defendants want to know their total maximum exposure and the plaintiffs do not want to be sandbagged." *Malchman v. Davis*, 761 F.2d 893, 905 n.5 (2d Cir. 1985), *abrogated on other grounds, Amchem Products, Inc. v. Windsor,* 521 U.S. 591 (1997).

[6] In evaluating fee requests in claims-made settlements, federal appellate courts have, following *Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980), ruled that it is an abuse of discretion to base fee awards only on the class members' claims made rather than on the total relief made available to the class. *See Williams v. MGM-Pathe Comm's. Co*., 129 F.3d 1026, 1027 (9th Cir. 1997) (reversing district court for basing fee award only on claimed portion of common fund); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) (same). *See also Gonzalez v. TCR Sports Broad. Holding, LLP*, No. 1:18-CV-20048-DPG, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019); *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 285 (6th Cir. 2016) ("an option to file a claim creates a prospective value, even if the option is never exercised");

after agreement was reached between the parties on all other terms of the settlement. (Joint Decl. ¶ 29). *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 335 (3d Cir. 1998); *see also In re NFL Players Concussion Injury Litig*., 821 F.3d 410, 447 (3d Cir. 2016) (clear sailing provision unobjectionable when fees not discussed until after principal terms of settlement agreed and did not diminish class recovery); *CertainTeed Corp. Roofing Shingles Prods. Liab. Litig.*, MDL No. 1817 (E.D. Pa.); *In re IKO Roofing Shingle Prods. Liab. Litig.*, MDL No. 2104 (C.D. Ill.); *In re Bldg. Materials Corp. of Am. Asphalt Roofing Shingle Prods. Liab. Litig.*, MDL No. 2000 (D.S.C.); *Melillo v. Building Prods. of Canada Corp*., No. 12-cv-00016 (D. Vt.); *Minor v. Congoleum Corp.*, No. 3:13-cv-07727-JAP-LHG (D.N.J.); *Torch v. Windsor Surry Co.*, No. 3:17-cv-00918-AA (D. Or.); *Begley v. Windsor Surry Co.*, No. 1:17-cv-00317-LM (D.N.H.) ("Windsor"); *Eliason v. Gentek Bldg. Prods., Inc*., No. 1:10-cv-2093 (N.D. Ohio); *Richard Ziccarello v. Sanyo Energy (U.S.A.) Corp.*, No. 2:19-cv-16623 (D.N.J.); *Gulbankian v. MW Mfrs., Inc.,* No. 10-cv-10392; *Hartshorn v. MW Windows, Inc*., No. 13-cv-30122 (D. Mass.); *Wilson v. Metals USA, Inc.*, No. 2:12-CV-00568 (E.D. Cal.).

The fee arrangement here was negotiated under the best of market conditions – an arm's-length negotiation – a process which the courts have encouraged. *Matter of Cont'l Ill. Sec. Litig*., 962 F.2d at 568-70 (market factors, best known by the negotiating parties themselves, should determine the quantum of attorneys' fees). The virtue of a fee negotiated by the parties at arm's-

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Alleyne v. Time Moving & Storage Inc., 264 F.R.D. 41, 59 (E.D.N.Y. 2010) ("the value of legal service rendered in the creation of a settlement fund [is not] diminished by the failure of beneficiaries to cash in, regardless of what happens to the surplus"). *Cf. Washington v. Phila. Cty. Court of Common Pleas,* 89 F.3d 1031, 1042 (3d Cir. 1996) ("We must not, however, reduce an attorney's fee award [in a fee-shifting case] "to maintain some ratio between the fees and the damages awarded'); *Carruthers v. Messner Enterprises Northgate*, No. CI-09-07812, 2013 WL 10872127, at *13 (Pa. Ct. Com. Pl. Nov. 19, 2013) (awarding fee that was five times the amount that it awarded in damages on a fee-shifting UTPCPL claim).

length is that it is, essentially, a market-set price. CertainTeed has an interest in minimizing the fee; Class Counsel have an interest in maximizing the fee to compensate themselves (as the case law encourages) for their risk, innovation, and creativity; and the negotiations are informed by the parties' knowledge of the work done and result achieved and their views on what the Court may award if the attorneys' fees award were litigated.

Because the fee arrangement in this case was negotiated by experienced counsel at arm's-length, judicial deference to the parties' fee agreement is warranted. *See In re First Capital Holdings Corp. Fin. Prod. Sec. Litig.*, 1992 WL 226321, at *4 (C.D. Cal. June 10, 1992) (stating that the court should be reluctant to disturb agreed-upon attorneys' fees where class counsel negotiated the fee with sophisticated defense counsel who were familiar with the case, risks, amount and value of class counsel's time, and nature of the result obtained for class); *In re Apple Computer, Inc. Deriv. Litig*., 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) ("A court should refrain from substituting its own value for a properly bargained-for agreement."); *Cohn v. Nelso*n, 375 F. Supp. 2d. 844, 861 (E.D. Mo. 2005) ("[W]here, as here, the parties have agreed on the amount of attorneys' fees and expenses, courts give the parties' agreement substantial deference."); *In re AXA Fin., Inc*., 2002 WL 1283674, at *7 (Del. Ch. May 22, 2002) ("Where, as here, the fee is negotiated after the parties have reached an agreement in principle on settlement terms and is paid in addition to the benefit to be realized by the class, this court will also give weight to the agreement reached by the parties in relation to fees."); *Ingram v. Coca-Cola Co*., 200 F.R.D. 685, 695 (N.D. Ga. 2001) (giving "substantial weight to a negotiated fee amount"). *See also McBean*, 233 F.R.D. at 392 (when class counsels' fees are not being taken out of a "common fund," a court need not review an application for attorneys' fees with the same heightened level of scrutiny because there is no conflict of interest between attorneys and class members). In short,

Class Counsel's requested award of $1.69 million, inclusive of fees and costs and service wards, in connection with conferring a substantial benefit on the Class is presumptively reasonable because the award will not diminish the settlement fund.

B. The Lodestar Method Should Be the Primary Method Used Because This is Not a Traditional Common Fund Case.

Although CertainTeed does not oppose the fee request, the Court is nonetheless required to scrutinize the reasonableness of the fee request. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 299 (3d Cir. 2005). Courts in the Third Circuit have discretion to select between the lodestar method and percentage-of-the-benefit method when approving a class action fee award. *See, e.g.,* William B. Rubenstein, 5 *Newberg on Class Actions* § 15:98 (5th ed. 2021) (hereinafter "*Newberg*") ("The Third Circuit gives its district courts discretion as to whether to use a percentage or lodestar method."). The Third Circuit has explained that the goal of the percentage fee or lodestar awards is to ensure "that competent counsel continue to undertake risky, complex, and novel litigation." *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 747 (E.D. Pa. 2013) (quoting *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000)).

"The awarding of attorneys' fees in a class action settlement is within the Court's discretion, provided that the Court thoroughly analyzes and reviews an application for such fees." *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, No. 08-3610 (CLW), 2015 WL 2383358, at *7 (D.N.J. May 18, 2015), *aff'd*, 639 F. App'x 880 (3d Cir. 2016) (citing *In re Rite Aid*, 396 F.3d at 299); *In re Nat'l Football League Players' Concussion Inj. Litig.*, 814 F. App'x 678, 683 n.6 (3d Cir. 2020) ("we give district courts considerable deference in fee decisions").

The lodestar method "has appeal where . . . the nature of the settlement evades the precise evaluation needed for the percentage of recovery method." *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 590 (D.N.J. 2010) (citations omitted), *rev'd on other grounds*, 681 F.3d 170 (3d Cir.

2012). It is "designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation." *Granillo*, 2019 WL 4052432, at *3 (quoting *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001)). Which one of these two methodologies to use "will rest within the district court's sound discretion." *Charles v. Goodyear Tire & Rubber Co*., 976 F. Supp. 321, 324 (D.N.J. 1997).

Most courts use the lodestar method in claims made settlements especially ones dealing with enhanced warranty benefits. That is because where, as here, the fee is not part of a traditional common fund, the fee is best evaluated under the lodestar method. *See, e.g.*, *Torch v. Windsor Surry Company*, No. 3:17-cv-00918 (D. Or.) (ECF No. 105, 111); *In re IKO Roofing Shingle Prods. Liab. Litig.*, MDL No. 2104 (C.D. Ill.) (ECF No. 457, 459); *Gulbankian v. MW Windows, Inc.,* 1:10-cv-10392 (D. Mass.) (ECF No. 187-1, 189, 209); *Eliason v. Gentek Bldg. Prods., Inc*., No. 1:10-cv-2093 (N.D. Ohio) (ECF No. 143, 149); *Minor v. Congoleum Corp.*, No. 3:13-cv-07727-JAP-LHG (D.N.J.) (ECF No. 40, 42).

While either methodology will confirm the reasonableness of the fee requested here, Plaintiffs respectfully submit that the Court should use the lodestar method in this case. *See In re Philips/Magnavox Television Litig.*, No. CIV.A. 09-3072 CCC, 2012 WL 1677244, at *16–17 (D.N.J. May 14, 2012) (determining fees based on the lodestar method); *Dewey*, 728 F. Supp. 2d at 593 ("[I]f the settlement's value is certain, the Court can use the percentage-of recovery method to calculate attorneys' fees, but if the value is too uncertain, then the Court must use the lodestar method."); *Monteleone v. Nutro Co.*, No. 14-801 (ES) (JAD), 2016 WL 3566964, at *2 (D.N.J. June 30, 2016) (finding lodestar appropriate in statutory fee-shifting cases involving the New Jersey Consumer Fraud Act). *See also In re Schering-Plough/Merck Merger Litig.*, No. CIVA09-

CV-1099DMC, 2010 WL 1257722, at *17–18 (D.N.J. Mar. 26, 2010) (noting that the existence of complexities in valuing a settlement supports use of the lodestar method).

1. The Number of Hours Incurred by Class Counsel Was Reasonable

Under the lodestar method, the fee award is analyzed by "multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services." *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at *11 (E.D. Pa. Sept. 24, 2019). The Third Circuit has stated that the "abridged lodestar analysis" is calculated "by multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys." *In re Rite Aid*, 396 F.3d at 305. Unlike a statutory fee-shifting case, the lodestar cross-check of the percentage award in common fund cases "need entail neither mathematical precision nor bean-counting." *Id.* at 306. Instead, the Court "may rely on summaries submitted by the attorneys and need not review actual billing records." *Id.* at 307; *accord Schuler v. Medicines*, No. 14-cv-1149 (CCC), 2016 WL 3457218, at *10 (D.N.J. June 24, 2016). This is standard protocol in this District, and elsewhere. *See, e.g., Stevens v. SEI Investments, Co*., No. 18-4025, 2020 WL 996418, *13 (Feb. 28, 2020); *In re Cigna-American Specialty Health Admin Fee Litig.,* No. 03967, 2019 WL 4082946, *15 (E.D. Pa. Aug. 29, 2019).

The number of hours incurred by Class Counsel was reasonable for a case of this type and size. Class Counsel expended hours on this case through September 30, 2022, which correlates to a lodestar amount of $2,131,175.01. (Joint Decl. ¶ 66-67). These hours were documented contemporaneously, and detailed, itemized statements are available on request. These hours, incurred over the course of two years of litigation, were necessary in light of the novelty and scope of this case and in light of CertainTeed's vigorous defense.

The following chart summarize the hours and lodestar incurred by each firm, recorded at each firm's hourly rates, as of September 30, 2022:

Law Firm	Hours	Lodestar
Levin Sedran & Berman, LLP	964.25	$897,600.00
Cuneo Gilbert & LaDuca, LLP	795.30	$640,923.75
Audet & Partners, LLP	675.75	$592,651.26
Total	2,435.30	$2,131,175.01

(Joint Decl. ¶ 66). Charts specifying the hours incurred by each individual biller and each biller's hourly rates for each firm are set forth in the Joint Declaration.

The aggregate hours were spent on tasks that were necessary to the overall litigation and settlement of this case. Class counsel's efforts included, among other things (Joint Decl. ¶ 64), the following:

- investigating the underlying factual background regarding the failure of shingles including interviewing Plaintiffs Kim Segebarth and Susan Stone, other owners of homes and buildings with CertainTeed shingles, installers of the shingles, contractors repairing or replacing the shingles; inspecting the shingles and homes with shingles affixed to them; testing the shingles and developing the legal theories of the case;
- investigating and researching the applicable legal standards for product defect cases involving construction materials;
- performing legal research researching, e.g. standing, damages, causation, duty of care, class certification and potential common law and statutory claims to include in the complaint;
- vetting, retaining and working with a uniquely qualified team of experts in construction materials, in particular, roofing shingles;

- vetting, retaining and working with an expert in the fields of economics and valuation of enhanced warranty benefits;
- drafting the complaint and amended complaints
- drafting and sending evidence preservation letters to CertainTeed;
- drafting and negotiating a tolling agreement with CertianTeed's counsel;
- meeting and conferring with CertainTeed's counsel regarding filing a motion to dismiss or answering the Complaint;
- analyzing CertainTeed's Answer with Affirmative Defenses (ECF No. 4) to the Complaint (ECF No. 1);
- researching and investigating the proper CertainTeed defendant and drafting Stipulation to Amend Caption (ECF No. 9) to name the correct defendant;
- drafting and negotiating a Confidentiality Stipulation (ECF No. 9) with CertainTeed's counsel;
- drafting and negotiating an ESI Stipulation (ECF No. 10) with CertainTeed's counsel;
- drafting and negotiating a Joint Motion Regarding Modifications to Amended Scheduling Order Proposed Scheduling Order (ECF No. 22) with CertainTeed' counsel;
- drafting amended complaint adding Susan Stone as class representative plaintiff (ECF No. 25) :
- assisting the Kathryn Eloff, personal representative of the estate of plaintiff Kim Segebarth raise the estate and take the necessary steps for substitution as class representative plaintiff;

- drafting notice of death of Plaintiff Kim Segebarth and Motion to Substitute Party (ECF No. 28);
- investigating and researching individuals with knowledge to support Plaintiffs' claims and then preparing Plaintiffs' Fed. R. Civ. P. 26(a)(1) initial disclosures identifying amongst other builders/developers, installers and class members whom shingles prematurely deteriorated;
- drafting and negotiating an ESI Stipulation (ECF No. 10) with CertainTeed's counsel;
- drafting and sending evidence preservation letters to the Class Representative Plaintiffs;
- conducting subsequent ESI interviews with Class Representative Plaintiffs to understand where and how they store their electronically stored information in preparation of discovery responses.
- investigating and researching the individuals identified by CertainTeed in their Fed. R. Civ. P. 26(a)(1) initial disclosures in preparation of conducting discovery including depositions;
- drafting responses and objections to CertainTeed's interrogatories including telephone conferences with Class Representative Plaintiffs regarding answers to the interrogatories;
- drafting privilege log including telephone conferences with Class Representative Plaintiffs regarding determining source of documents to determine privilege status;

- drafting responses and objections to CertainTeed's Request for Production of Documents including telephone conferences with Class Representative Plaintiffs regarding gathering documents for production;
- drafting responses and objections to CertainTeed's Request for Production of Documents including telephone conferences with Class Representative Plaintiffs regarding gathering documents for production;
- drafting responses and objections to CertainTeed's Request for Production of Documents including telephone conferences with Class Representatives;
- drafting responses and objections to CertainTeed's Request for Production of Documents including telephone conferences with Class Representative Plaintiffs regarding gathering documents for production;
- engaging in countless meet and confer conferences with CertainTeed's counsel regarding Plaintiffs' responses and objections to Request for Production of Documents;
- investigating the 43 ESI custodians proposed by CertainTeed and conducting several meet and confer sessions, during which Class Counsel and CertainTeed's counsel negotiated the custodian list and relevant search terms for the electronic data set to be produced;
- engaging in countless meet and confer conferences with CertainTeed's counsel regarding CertainTeed's responses and objections to Request for Production of Documents;

- speaking and corresponding with class members who contacted Class Counsel prior to the Settlement to discuss the warranty offers from CertainTeed and status of the litigation;
- drafting discovery requests including Requests For Production of Documents, Interrogatories and a 30(b)(6) deposition notice;
- speaking and corresponding with class members who contacted Class Counsel prior to the Settlement to discuss the warranty offers from CertainTeed and status of the litigation;
- analyzing CertainTeed's production of documents including historical product design specifications, including changes thereto, third-party audit and testing data, product brochures and marketing materials, warranties for all products, sales data and information, pricing data and information, warranty claim data and information, and additional product information;
- engaged in consultations and analysis with their experts regarding the documents produced by CertainTeed and their impact on Plaintiffs' alleged defect and claims in the litigation;
- negotiated an inspection protocol for warranty shingle returns and exemplar shingles which required input for Plaintiffs' experts;
- working with Plaintiffs' experts to test and analyze the Shibles produced by CertainTeed;
- In addition to the forensic testing of the shingle samples provided by CertainTeed, Class Counsel and their roofing experts conducted field inspections of Plaintiffs' and class members' roofs and shingles around the country;

- before, during and after the field inspections, Class Counsel interviewed Plaintiffs and class members regarding the installation of the shingles, premature failure of the shingles. damage to the home from shingle failure, repairs/replacement of shingle, warranty claims as well as reviewing records provided;
- consulted with their roofing experts regarding the information and documents obtained from Plaintiffs and class members;
- attending and conducting site inspections along with experts of class members' and Plaintiffs' homes;
- arranging for and facilitating the roofing experts removing shingles from the Plaintiffs' and class members' roofs and analyzing and testing those shingles to determine if the shingles were defectively designed and/or manufactured, as well as the cause of the failures;
- consulting and working with a warranty valuation expert who conducted an analysis of the warranty claims data, warranty(s) and other information and assessed the warranty benefits including determining a value of the enhanced warranty benefits achieved through the Settlement;
- conducting arm's-length, independent settlement negotiations;
- drafting the Settlement Agreement and accompanying papers and other documents seeking preliminary approval of the Settlement, including the short-form and long-form notices, claim forms, proposed preliminary approval order and proposed final judgment, and Plaintiff's motion and memorandum of law;
- interviewing and selecting a notice provider in conjunction with CertainTeed;

- working with Angeion to prepare and send notice of the Settlement to putative Settlement Class Members, respond to inquiries from Settlement Class Members and others, and supervise the claims administration process;
- working with CertainTeed to establish an effective and efficient claims protocols and methods the administration of the settlement ;
- preparing for and attending the hearings concerning preliminary approval conducted by this Court;
- communicating with Plaintiffs throughout the litigation regarding updates on the litigation, settlement negotiations, and the notice and settlement approval process; and
- communicating with class members post preliminary approval explaining the claims process and procedure.

In performing the tasks outlined above, Class Counsel coordinated amongst each other and took measures to ensure that the work was necessary in light of the needs of the case, carried out efficiently, and non-duplicative. (Joint Decl. ¶ 62-73).

In sum, the number of hours incurred was reasonable given the tasks at hand and the overall needs of the case.

2. Class Counsel's Hourly Rates are Reasonable

Generally, a reasonable hourly rate is calculated according to the "prevailing market rates in the relevant community." *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001) (citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984)); *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990). The starting point "is the attorney's usual billing rate, but this is not dispositive." *Potence v. Hazleton Area Sch. Dist.,* 357 F.3d 366, 374 (3d Cir. 2004) (citing *Maldonado*, 256 F.3d at 184–

85); *Gonzalez v. Account Resolution Servs., LLC*, No. 20-cv-03259, 2021 WL 3007257, at *2 (E.D. Pa. July 15, 2021) ("Generally, a reasonable hourly rate is calculated according to the prevailing market rates in the relevant community.' An appropriate starting point is usually the attorney's normal billing rate."). In addition, a court "should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Id*. (citing *Dellarciprete*, 892 F.2d at 1183). The party seeking attorneys' fees "bears the burden of establishing by way of satisfactory evidence...that the requested hourly rates meet this standard." *Id*. (citation omitted).[7]

Class Counsel have met their burden. Each of the Declarants here have presented evidence of the hourly rates for them and members of their respective firms. (Joint Decl. ¶ 74, 84, 87). Class Counsel's hourly rates are their standard billing rates. (*Id.*). The hourly rates range from $500 to $975 for attorneys, and $110 to $475 for paralegals and administrative staff. (*Id.*). These hourly rates are consistent with standard billing rates accepted by in this District in numerous class action settlements. *See Erby v. Allstate Fire and Casualty Ins. Co.*, No. 2:18-cv 04944 (E.D. Pa. 2022) (ECF No. 63) (approving the hourly rates ranging from $450 - $975 and the number of hours worked as reasonable); *Accolade*, 2019 WL 4677954, at *12 (approving lodestar-based fee where rates ranged from "$202 to $975" per hour in data breach case); *In re Imprelis Herbicide Mktg.,*

[7] While courts in this District have sometimes applied the Philadelphia Community Legal Services rates to determine reasonable billing rates, it is not required or even appropriate here. *See, e.g., Mitchell v City of Phila*., 2010 WL 1370863 (E.D. Pa. 2010) (declining to apply the CLS hourly fee schedule, explaining that "the Third Circuit has accepted the CLS fee schedule in some circumstances, such as where the attorney seeking recoupment of fees was associated with CLS, or where limited evidence was submitted by the parties."). The CLS schedule, last updated in 2015, should not employed here because there is not an of absence of evidence supporting the counsel's hourly rates.

Sales Practices & Prod. Liab. Litig., 296 F.R.D. 351, 370 (E.D. Pa. 2013) (approving fee request where hourly rates peaked at $1,200 and several attorneys' rates were at or above $900) (Pratter, J.);[8] *In re Processed Egg Prod. Antitrust Litig*., No. 08-MD-2002, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012) (approving fee request where hourly rates peaked at $1,100 and several attorneys' rates were at or above $900; "the Court finds that the stated hourly rates of these attorneys and staff . . . are reasonable") (Pratter, J.),[9] *Cunningham v. Wawa, Inc*., No. 18-cv-03355, 2021 WL 1626482, at *8 (E.D. Pa. Apr. 21, 2021) (approving hourly rates of $235 to $975); *In re Cigna*, 2019 WL 4082946, at *15 ("Class Counsel and support staff are claiming . . . hourly rates between $175 and $995. . . . These hourly rates are well within the range of what is reasonable and appropriate in this market."); *In re Viropharma Inc., Secs. Litig*., No. 12-cv-02714, 2016 WL 312108, at *18 (E.D. Pa. Jan. 25, 2016) (approving fee where "hourly billing rates of all Plaintiff's Counsel range from $610 to $925 for partners, $475 to $750 for of counsels, and $350 to $700 for other attorneys").

Further, the hourly rates of each firm here have been accepted by many courts in Pennsylvania and beyond. (Joint Decl. ¶ 81-83, 86, 89). For example, the hourly rates of Levin Sedran were accepted in *Erby, Accolade*, and *Imprelis*.[10] Also, the rates of Levin Sedran, Audet and Cuneo LaDuca were accepted in *In re: CertainTeed Fiber Cement Siding Litig.*, MDL No.

[8] The Order cited class counsel's total lodestar amount but not the underlying hourly rates. The hourly rates were set forth in various Declarations filed by class counsel (ECF No. 189-2, -3, -4). Hourly rates greater than $900 are located at ECF No. 189-2 at 15, ECF No. 189-3 at 30, 216, and ECF No. 189-4 at 32.

[9] The Order cited class counsel's total lodestar amount but not the underlying hourly rates. The hourly rates were set forth in various Declarations filed by class counsel (ECF No. 735, 736). Hourly rates greater than $900 are located at ECF No. 735-17, 736-6, 736-12, 736-14.

[10] *Imprelis*, 296 F.R.D. at 370 (approving overall fee request); *Imprelis*, No. 2:11-md-02284-GEKP, ECF No. 189-3 at 13 (Decl. setting forth Berger Montague's hourly rates), ECF No. 189-3 at 30 (Decl. setting forth Chimicles Schwartz's hourly rates).

2270 (E.D. Pa. 2014) (approved the entire requested fee of $18.5 million dollars); *In re: CertainTeed Roofing Shingle Products Liability Litig*., No. 07-MDL-1817 (E.D. Pa. 2010) (approved the entire requested fee of $22.5 million dollars).

The hourly rates of each attorney and paralegal are appropriately tailored to the individual's level of seniority and experience. The highest hourly rates are limited to only those attorneys with the greatest expertise, and vice versa. (Joint Decl. ¶ 74, 84, 87). *See Moore v. GMAC Mortg*., No. 07-cv-04296, 2014 WL 12538188, at *2 (E.D. Pa. Sept. 19, 2014) ("A reasonable hourly rate reflects an attorney's experience and expertise, [thus] the rates for individual attorneys vary.").

Each of Plaintiffs' counsel firm is highly specialized with abundant experience in complex class actions, which further supports the reasonableness of the hourly rates. (Joint Decl. ¶ 7-8).

3. The 0.73 Negative Multiplier is Reasonable

The $1,561,071,03 request relative to Class Counsel's $2,111, 705.75 lodestar results in a **0.73 negative multiplier**. "A negative multiplier reflects that counsel is requesting only a fraction of the billed fee; negative multipliers thus 'favor[] approval.'" *Dickerson v. York Int'l Corp*., No. 15-cv-01105, 2017 WL 3601948, at *11 (M.D. Pa. Aug. 22, 2017); *accord Shannon v. Sherwood Mgmt. Co*., No. 19-cv-01101, 2020 WL 5891587, at *3 (S.D. Cal. Oct. 5, 2020) ("The negative multiplier suggests that the requested fee award is reasonable."); *Beane v. Bank of N.Y. Mellon*, No. 07-cv-09444, 2009 WL 874046, at *8 (S.D.N.Y. Mar. 31, 2009) ("'Here . . . the multiplier is negative . . . [and] the lodestar cross-check demonstrates that a 15% fee is reasonable because it will not bring a windfall to co-lead plaintiffs' counsel.'") (citation omitted).

The 0.73 multiplier is much lower than multipliers commonly awarded in the Third Circuit. *See Newberg* § 15:89 (noting two separate studies in which the mean multiplier in the Third Circuit was 2.01 and 1.38, respectively); *Stevens*, 2020 WL 996418, at *13 ("multiples ranging from 1 to

8 are often used in common fund cases"; approving 6.16 multiplier) (collecting cases); *Dickerson*, 2017 WL 3601948, at *11 ("Multipliers between one and four are routinely approved in the Third Circuit."); *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 225 (E.D. Pa. 2014) ("The [Third Circuit] Court of Appeals has recognized that multipliers 'ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.'"); *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 173 (3d Cir. 2006) ("[W]e approved of a lodestar multiplier of 2.99 in *Cendant PRIDES*, in a case we stated 'was neither legally nor factually complex.' The case lasted only four months, 'discovery was virtually nonexistent, ' and counsel spent an estimated total of 5,600 hours on the case.").

The 0.73 multiplier is also lower than multipliers awarded nationwide, which typically range from 1 to 3. *See Newberg* § 15:89 ("[T]he basic range of multipliers [nationwide] . . . run[s] from a floor around counsel's lodestar to a ceiling around three times lodestar, as the mean.").

4. The Multiplier Will Decrease Further as Class Counsel Incurs Future Lodestar

The negative multiplier will decrease further going forward as Class Counsel incurs future lodestar. Class Counsel will at a minimum spend time drafting the motion for final settlement approval, preparing for and attending the Final Approval Hearing, overseeing the claims administration and distribution process, and responding to inquiries from Class Members. Class Counsel for seven years, including analyzing periodic compliance reports from CertainTeed. (Joint Decl. ¶ 65). Thus, Class Counsel's anticipated future lodestar (and the resulting decrease in the multiplier) further supports the reasonableness of the fee request.

C. The Fee Request is Reasonable Under the Percentage of the Benefit Cross Check

The Court may use the percentage of the benefit method as a cross-check to the lodestar-based fee. *See Newberg* § 15:92 ("Courts that utilize the lodestar method sometimes will ensure

the reasonableness of a lodestar award by assessing what percentage of the class's fund the lodestar fee amounts to. . . . This process is referred to as a 'percentage cross-check.'"); *Accolade,* 2019 WL 4677954, at *12 ("Although the Court agrees with Class Counsel that the lodestar method is the appropriate calculation in this case, courts within the Third Circuit will often perform a [percentage-of-recovery] 'cross-check' to ensure reasonable fees.").

1. The Settlement Value Should be Measured by Settlement Benefits Offered to the Class, Regardless of Claims Rates

Class Counsel have achieved an all cash settlement that substantially benefits the Class and is not tied to reimbursement of fees and costs at any level. Attorneys who produce a benefit for the class they represent are entitled to be compensated for their services. Fed. R. Civ. P. 23(h) states that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." The Supreme Court "has recognized consistently 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 reasonable attorney's fee from the fund as a whole." *Boeing*, 444 U.S. at 478; *see also, Mills v. Elec. Auto-Lite Co*., 396 U.S. 375, 393 (1970); *Cent R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 123 (1885).

Courts in Pennsylvania, the Third Circuit, this District and elsewhere have held that where a settlement involves a claims-made or reversionary structure, the settlement benefits made available to the Class (versus those claimed during the claims process) may be used for purposes of the percentage of the benefit calculation. These holdings have typically followed U.S. Supreme Court precedent. In *Boeing*, the Supreme Court held that class counsel were entitled to a fee based on the funds available to be claimed by class members regardless of the amount actually claimed during the claims process. 444 U.S. at 480. The Court stated that class members' "right to share

the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel." *Id*.

The Third Circuit has followed this precedent. The Third Circuit, citing *Boeing*, held that a district court "properly relied on the entire fund as the appropriate benchmark for assessing the size of the fund" for purposes of calculating a fee award, as opposed to calculating fees based only on the amount actually claimed by class members. *Landsman & Funk, P.C. v. Skinder-Strauss Associates*, 639 Fed. Appx. 880, 884 (3d Cir. 2016).

Indeed, the rationale underlying application of the percentage-of-the-fund approach in common fund cases is so compelling that the Third Circuit has ruled that this method should be used in all common fund cases including those cases, like the present one, where a discrete "pot of money" is not created, but where the Court must make a considered judgment regarding the value of the benefit bestowed upon the class. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995). In fact, the percentage-of-the-fund as the method for awarding attorneys' fees is so entrenched that exceptions to using this methodology are few and narrowly drawn.

In *In re Diet Drugs*, the Third Circuit affirmed the District Court's award of $567 million in attorneys' fees to Class Counsel under the common fund doctrine after 130 putative class actions were filed alleging that appetite suppressants manufactured and sold by the defendant resulted in valvular heart disease in users. *In re Diet Drugs*, 582 F.3d 524, 529–30 (3d Cir. 2009). Over the course of the litigation, Class Counsel reviewed over nine million pages of documents and conducted 80 depositions. *Id*. at 530. Because of Class Counsels' efforts, the Court held that the fee award satisfied the "*Gunter* Factors" (*see Gunter*, 223 F.3d 190) for the following reasons:

> (1) the work of Class Counsel yielded a $6.44 billion settlement fund that benefitted more than 800,000 Class Members; (2) the *Diet*

> *Drugs* litigation was complex, and it endured significantly longer than did other super-mega-fund cases; (3) Class Counsel had devoted an extraordinary amount of time to the Settlement Agreement and the litigation surrounding it; (4) the requested award was, in percentage terms, slightly below the average award granted in the super-mega-fund cases; (5) the Major Filers' consent to the joint fee petition indicated that the petitioners were not seeking fees in excess of market value; and (6) many of the Settlement Agreement's features -- including the multiple downstream opt-out rights -- were innovative and ha[d] already served as models for other cases.

Id. at 545 (internal quotations omitted). In coming to its conclusion to affirm the fee award, the *In re Diet Drugs* Court agreed that it was "entirely appropriate for the District Court to adhere to the general convention and apply the [POF] method" where "the financial stakes . . . were enormous, and their lawyers involved were primarily concerned with obtaining relief for their clients and the members of the class, not with serving the public interest." *In re Diet Drugs*, 582 F.3d at 540-41.

In the *G.M. Truck* litigation, the Third Circuit required application of the percentage-of-the-fund methodology to determine counsel fees even though the principal benefit provided by the settlement consisted of coupons, redeemable within a limited fifteen-month period, toward the purchase of certain General Motors vehicles.[11] *G.M. Truck*, 55 F.3d at 780. Although this settlement "fund" was admittedly "difficult to value," the court found that "for practical purposes" it amounted to "a constructive common fund" which merited application of the POF method since the settlement "did not award the even more hard-to-value intangible rights that could in some limited circumstances justify using the lodestar method." *Id*. at 820-822.

[11] "Courts have relied on 'common fund' principles and the inherent management powers of the court to award fees to lead counsel in cases that do not actually generate a common fund." *G.M. Truck*, 55 F.3d at 833 (citing *In re Air Crash Disaster at Fla. Everglades*, 549 F.2d 1006 (5th Cir. 1977)).

Similarly, in *Prudential*, more than eight million policyholders successfully alleged that Prudential's sales force conducted deceptive sales practices. Class Counsel was awarded a $90 million award, approximately 6.7% of the minimum settlement. The Court supported the settlement and Class Counsel's fee because: 1) it was "impressed with the nature and extent of the relief provided under the settlement"; 2) agreed with the "procedural safeguards created by the settlement"; 3) was persuaded by the external indicia of fairness contained in the settlement; and 4) found that the administrative and legal costs of the settlement would not diminish the class recovery. 148 F.3d at 328–29. Ultimately, the settlement involved "an uncapped, 'future fund' whose ultimate value is dependent on the final number of claims remediated under the settlement [such that] 'the settlement...cannot reasonably be valued.'" *Id.* at 334. Nonetheless, the Third Circuit:

> . . . agree[d] with the district court that this case is more appropriately viewed under the common fund paradigm than as a statutory fee-shifting case. Consequently, the district court was required to make a "reasonable estimate" of the settlement's value in order to calculate attorneys' fees using the percentage-of-recovery method.

Id. at 333-34. Similarly, in *Cendant PRIDES*, the Court continued to emphasize application of the percentage-of-recovery method for monetary class settlements even where the fund involved was difficult to value:

> Though this is not a traditional common-fund case, because the unclaimed portion of the settlement fund is returned to Cendant and because the plaintiffs who recover may not be affected by the attorneys' fee award, ... use of the percentage-of-recovery method is appropriate in this case.

Cendant PRIDES, 243 F.3d at 734.

Courts in this District have reached similar holdings. In *In re: CertainTeed Corp. Roofing Shingle Products Liability Litigation*, No. 2:07-md-01817 (E.D. Pa. 2010) (ECF No. 220, 217),

Judge Pollak calculated a fee award in a class made settlement involving CertainTeed roofing shingles under a percentage of recovery method utilizing the value of the settlement benefits created and available to the class by the settlement. This is often referred to as a constructive fund. The court adopted the report and recommendation of magistrate Judge Faith Angell stating:

> Here, the settlement is valued between $687 to $815 million. *Class Counsel's Updated Petition for Fees and Expenses* [Doc 198], pg. 20. the settlement will benefit 1.8 million members of the class. *Id.* at 1. Members of the settlement class are significantly benefited by the settlement because they receive cash compensation and there remains an open period of twenty five years for additional claims. Thus, the large number of class members and large settlement value weigh in favor of Petitioner's fee request. *See In re Diet Drugs,* 553 F. Supp. 2d at 472 (noting that 6.44 billion settlement fund obtained for 800,000 class members weighed in favor of fee request).

In re: CertainTeed Corp. Roofing Shingle Products Liability Litigation, No. 2:07-md-01817 (E.D. Pa. 2010) (ECF No. 217).[12]

[12] Notably, other courts commonly use this constructive fund approach and estimate the value of the settlement benefits created to determine the attorneys' fees award in claims made settlements like the one before the Court. *See Melillo v. Building Prods. of Canada Corp*., No. 12-cv-00016 (D. Vt.) (ECF No. 64-1, 66) ($2.4mm fee award representing a 1.75 multiplier and 2.4% to 6.15% of the estimated settlement value in a in a claims made settlement providing enhanced warranty benefits for defective roofing shingles); *Torch v. Windsor Surry Company*, No. 3:17-cv-00918 (D. Or.) (ECF No. 105, 111) ($1,097,381.91 fee award representing a 1.3 multiplier in a in a claims made settlement providing enhanced warranty benefits for defective trim board); *In re IKO Roofing Shingle Prods. Liab. Litig.*, MDL No. 2104 (C.D. Ill.) (ECF No. 457, 459) ($5.8mm fee award representing 0.32 negative multiplier in a in a claims made settlement providing enhanced warranty benefits for defective roofing shingles); *Ziccarello v. Sanyo energy*, No. 2:19-cv-16623 (D.N.J.) (ECF No. 97, 103) ($1,672,265.03 fee award representing a 0.73 negative multiplier and 23% of the total estimated settlement value in in a claims made settlement providing enhanced warranty benefits for defective solar panels); *Gulbankian v. MW Windows, Inc.,* 1:10-cv-10392 (D. Mass.) (ECF No. 187-1, 189, 209) ($2mm fee award presenting a 0.36 negative multiplier and a 15% of the total estimated settlement value in a in a claims made settlement providing enhanced warranty benefits for defective windows); *Eliason v. Gentek Bldg. Prods., Inc*., No. 1:10-cv-2093 (N.D. Ohio) (ECF No. 143, 149) ($2.5mm fee award representing a 0.75 negative multiplier in a in a claims made settlement providing enhanced warranty benefits for defective siding); *Minor v. Congoleum Corp.*, No. 3:13-cv-07727-JAP-LHG (D.N.J.) (ECF No. 40, 42) ($485,000 fee award representing a 0.71 negative

Likewise, in *Teh Shou Kao v. CardConnect Corp.*, No. 16-cv-05707, 2021 WL 698173, at *8-9 (E.D. Pa. Feb. 23, 2021), Judge Pappert calculated a fee award as 33% of the fund made available to the class in a reversionary settlement, despite a low claims rate, stating:

> "In calculating a percentage of recovery fee award, the Supreme Court has recognized "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 attorney's fee from the fund as a whole," even if part of the fund reverts to the defendant. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Although some settlement class members may not file claims and receive compensation, "[t]heir right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel." *Id*. at 480.

Similarly, in *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 333 F.R.D. 364, 386-87 (E.D. Pa. 2019), Judge Brody based a fee award on the total amount of the fund made available to the class in a reversionary settlement, despite a low claims rate, stating that a "'lawyer who recovers a common fund for the benefit of persons other than . . . his client is entitled to a reasonable attorneys' fee from the fund as a whole, ' even if part of the fund reverts to the defendant." *Id*. at 386 (citing *Boeing*). The fee award there was based on $15.5 million in funds offered to the class even though class members submitted claims totaling just "$211,255.00 in cash payments plus an additional $286,986.50 in in-kind relief." *Id*. at 386.

Further, in *Fickinger v. C.I. Plan. Corp*., No. 81-cv-00951, 1989 WL 146695, at *3 (E.D. Pa. Dec. 1, 1989), Judge Shapiro stated:

> "It is immaterial to an award of attorney's fees whether beneficiaries claim or accept the benefits obtained on their behalf." [Citation omitted.] Therefore, the benefit to the plaintiff class in this litigation must be determined from the amount that would have been recovered if every class member had exercised his, her or its rights

multiplier in a in a claims made settlement providing enhanced warranty benefits for defective floor tile).

> under the settlement agreement. . . . **Counsel should not be penalized because members of the class failed to exercise their vested right to collect from the Fund**.

Id. (discussing *Boeing*) (emphasis added).

Other Pennsylvania, New Jersey and District of Columbia district courts, have reached similar conclusions without expressly citing *Boeing*, but, relying on its rationale and reasoning by determining fees based upon the value of the constructive fund created by the settlement. *See Accolade*, 2019 WL 4677954, at *3, 12 (analyzing the fee request based on, *e.g.*, the total "potential cash compensation" if all class members submit claims for all available benefits in a claims-made settlement, even though the anticipated claims rate was just 3%); *Hall v. Best Buy Co.*, 274 F.R.D. 154, 171–73 (E.D. Pa. 2011) ("[T]his is not a traditional common fund case because unclaimed amounts in the net settlement fund are returned to Best Buy. . . . [T]he Settlement Agreement caps the total [potential] award to class members at $592,566. . . . [T]he requested [$300,000] fee award amounts to 33% of the [$892,566 constructive] common fund. . . . [T]he Court will approve Plaintiffs' Motion for Attorneys' fees.");[13] *see also In re Am. Invs. Life Ins. Co. Annuity Mktg. & Sales Pracs. Litig.*, 263 F.R.D. 226, 243 (E.D. Pa. 2009) ("The Court of Appeals for the Third Circuit . . . approves a District Court's use of this method when evaluating settlements that involve an uncapped valuation dependent upon the relief class members seek.") (citing *Prudential*, 148

[13] The Third Circuit, in an analogous setting involving a *cy pres* distribution of unclaimed settlement funds, held that unclaimed funds may be included in the settlement value for purposes of calculating the attorneys' fee award. The Court stated: "**There are a variety of reasons that settlement funds may remain even after an exhaustive claims process – including if the class members' individual damages are simply too small to motivate them to submit claims**. **Class counsel should not be penalized for these or other legitimate reasons unrelated to the quality of representation they provided**. Nor do we want to discourage counsel from filing class actions in cases where few claims are likely to be made but the deterrent effect of the class action is equally valuable." *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163, 178 (3d Cir. 2013) (emphasis added).

F.3d at 333); *In re Insurance Brokerage Antitrust Litig*., 2009 WL 411856, at *4 (D.N.J. Feb. 17, 2009) ("[a]lthough the Settlement Agreement [was] not strictly a common fund, " the court utilized POF method with a lodestar cross check "where defendants . . . agreed to pay an amount certain for fees and costs in addition to the amount designated to go to the Class Members directly, [because] the analysis is analogous to that performed to the common fund doctrine"); *Varacallo v. Massachusetts Mutual Life Ins. Co*., 226 F.R.D. 207 (D.N.J. 2005) ("Although this Settlement is not strictly speaking a common fund case, the Court finds it is analogous in that the fees and Class award would be paid by the Defendants and a common fund has been established for the Class."); *Vista Healthplan, Inc. v. Warner Holdings Co*., 246 F.R.D. 349 (D.D.C. 2007) (considering "various settlement funds collectively as a 'constructive common fund'" where the settlement had separate funds for class recovery and attorneys' fees); *In re Vitamins Antitrust Litig*., 2001 WL 34312839 (D.D.C. July 16, 2001) (based on its recognition that ascribing a value to the settlement was difficult—but not impossible—the court regarded the arrangement as a constructive common fund and applied the percentage of the recovery method).

Appellate courts in several other circuits have reached the same conclusion. For example, the Second Circuit stated the following in *Masters*, 473 F.3d at 436-37:

> In this case, the District Court calculated the percentage of the Fund on the basis of the claims made against the fund, rather than on the entire Fund created by the efforts of counsel. We hold that this was error.
>
> . . .
>
> The entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not.

The Eleventh Circuit stated the following in *Waters v. Int'l Precious Metals Corp.,* 190 F.3d 1291, 1296-97 (11th Cir. 1999):

> [A] leading commentator [*Newberg on Class Actions*] has agreed that fee awards may be based on the total available fund:
>
> > When a lump sum has been recovered for a class, that sum represents the common fund benchmark on which a reasonable fee will be based. When, however, the defendant reserves the right to recapture any unclaimed portion of the common fund after class members have had an opportunity to make their claims against the fund, . . . the question arises concerning whether the benchmark common fund amount for fee award purposes comprises only the amount claimed by class members or that amount potentially available to be claimed. In *Boeing Co. Van Gemert*, the Supreme Court settled this question by ruling that class counsel are entitled to a reasonable fee based on the funds potentially available to be claimed, regardless of the amount actually claimed.

Similarly, the Ninth Circuit held that a "district court abused its discretion by basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund." *Williams*, 129 F.3d at 1027.

Unlike the *GM Truck*, this Court need not value coupons as each eligible class member gets all cash. Nevertheless, in this case, as in *CertainTeed Shingles I* and the other cases discussed above, the Court can estimate the cash value of the settlement benefits available to the Class using certain objective criteria. Here, the total value of the settlement available to class members is approximately over $900 million and the value of the enhanced warranty benefits to be paid out over the seven year claims period is $99,138,852. (Joint Decl. ¶ 46). The lack of an exact valuation taking into account amongst other things number of qualifying squares, length of warranty, installation date and ultimate claims rate (which is an estimate based on the 7 year long claims period, but also based on both actual claims experience in similar cases and CertainTeed's own claims experience with this product) and other variables, does not prevent this Court from making

a fair determination and then considering the attorney fee request accordingly. Indeed, CertainTeed and its consultants may likely submit a contrary view to the value of the settlement benefits that looks at the same factors addressed by Class Counsel. Moreover, the value of the enhanced warranty benefits which is akin to an insurance policy is valued at $18,000,000. (Joint Decl. ¶ 54).

2. The Requested Percentages are Well Below Fee Awards Commonly Approved in the Third Circuit

The $1,561,071.03 fee request equates to less than 1 percent of the overall settlement value of over $900,00,000 and 1.6% of the value of settlement benefits to be paid out over the seven-year claims period. These percentages are below the range which fee awards commonly granted in the Third Circuit, including this District. *See, e.g., Accolade,* 2019 WL 4677954, at *11 ("'Courts have allowed attorney compensation ranging from 19% to 45% of the settlement fund created, and one Circuit panel has concluded that the appropriate benchmark for fee awards is 25%.'"; approving 21% fee) (citation omitted); *Haas*, 2019 WL 413530, at *9 ("typical [percentage-of-recovery] fee awards range between 25%-45%"; approving fee of "60% of the settlement fund"); *Leap v. Yoshida*, No. 14-cv-03650, 2016 WL 1730693, at *10 (E.D. Pa. May 2, 2016) ("fee awards in common fund cases within this district generally range between 19% and 45% of the fund"; approving 30% fee) (Pratter, J.); *Alexander v. Washington Mut., Inc*., No. 07-cv-04426, 2012 WL 6021103, at *3 (E.D. Pa. Dec. 4, 2012) (approving 30% fee award, collecting cases); *Processed Egg Prods.*, 2012 WL 5467530, at *6 (approving 30% fee award) (Pratter, J.); *In re Ikon Office Solutions, Inc., Secs. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("most fees appear to fall in the range of nineteen to forty-five percent").

Several studies found that the average fee award in the Third Circuit is between 25% and 33%. *See Newberg* § 153 (three studies of class action fee awards found that the mean percentage award in the Third Circuit was 26%, 25.4%, and 25%, respectively); *Williams v. Aramark Sports,*

LLC, No. 10-cv-01044, 2011 WL 4018205, at *10 (E.D. Pa. Sept. 9, 2011) ("[A]nother court in this District took note of a study of class action fee awards within the Third Circuit . . . and determined that the average attorney's fees percentage in such cases was 31.71% and that the median fee award was 33.3%.") (Pratter, J.).

On a national scale, "empirical data on fee awards demonstrate that percentage awards in class actions are generally between 20-30%, with the average award hovering around 25%." *Newberg* § 153.

Notably, courts in this District in similar enhanced warranty class actions awarded percentages ranging from 2.9% to 18.5% of the value of the settlement. *See In re: CertainTeed Corp. Roofing Shingle Products Liability Litigation,* 2:07-md-01817 (E.D. Pa.) (ECF No. 217) ($21,886,199.97 fee award representing a 1.76 multiplier and 2.9% - 3.3 % of the total estimated settlement value in a claims made settlement providing enhanced warranty benefits for defective roofing shingles); *In Re: CertainTeed Fiber Cement Siding Litigation,* MDL No. 11-2270 (E.D. Pa.) (ECF No. 89, 119) ($18.5mm fee award representing a 2.6 multiplier and 18.5% of $103.9 mm common fund for enhanced warranty benefits for defective siding

Accordingly, the percentage fee requested here is well below the award trends in the Third Circuit, this District and across the country.

3. The Value of the Enhanced Warranty Benefits Further Supports the Reasonableness of the Fee Request

The expert analysis presented to the Court as part of the preliminary approval brief demonstrates the real-world value of the extended and enhanced warranties is $18,000,000, or $30 per class member. The upgraded warranties are the equivalent of an insurance policy purchased for the benefit of the class members as part of this settlement and will last for the complete extended term of each of the 600,000 warranties held by class members. The value of this benefit,

which is not dependent on actual our estimated claims rates, will alone support Class Counsels' attorney fee request in that an award of $1,561,071.03 is just 8.7% of the $18,000,000 enhanced warranty value. As the 8.7% fee requested here is well below the award trends in the Third Circuit and across the country. This percentage further supports the reasonableness of the fee request.

D. The Fee Request is Reasonable Under the Third Circuit's *Gunter* and *Prudential* Factors

1. The Requested Fee Satisfies the Seven-Factor *Gunter* Analysis

Courts in the Third Circuit use the seven-factor *Gunter* analysis to evaluate the reasonableness of a class action fee award. *Gunter*, 223 F.3d at 195 n.1; *Newberg* § 15:98 ("The Third Circuit requires its district courts to assess the reasonableness of a given award according to a multifactor test entitled the '*Gunter* factors.'"). The *Gunter* factors are:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Gunter, 223 F.3d at 195 n.1. "The factors . . . need not be applied in a formulaic way." *Id*. Not every *Gunter* factor is necessarily applicable in a given case.

The "*Gunter* factors are not applicable to the lodestar method." *Haas*, 2019 WL 413530, at *9. Class Counsel nevertheless address them here as an additional measure of the reasonableness of the requested fee.

i. *Gunter* Factor 1: The Size of the Fund Created and Number of Persons Benefitted.

As discussed above, the Settlement Fund in this case has a total estimated overall value of over $900 million and around $98 million in enhanced warranty benefits is likely to be paid out

over the seven-year claims period. (*See* Joint Decl. ¶ 46). As noted, the number of Class Members is large, consisting of the owners of an estimated 600,000 structures. (Joint Decl. ¶ 35). Class Members are significantly benefitted by this settlement in that they will receive all cash compensation under the terms of the settlement for remediation of their damaged shingles even if as little as 5% of a roof plane is exhibiting the subject defect. These benefits are not to be trivialized given the substantial defenses CertainTeed has raised when processing warranty claims, and that carried over to the vigorous defenses raised at each step of this litigation. CertainTeed is represented by seasoned and well-respected defense counsel, supported by countless individuals at CertainTeed's national, North American, and European operations. In addition, as stated above the enhanced warranty benefits is akin to an insurance policy and has been value at $18,000,000.

This is not a circumstance where the size of the fund is merely a mathematical extrapolation of the number of claimants times the loss per claimant. *In re Prudential,* 148 F.3d at 339. The size of the settlement was driven by the long developing proof of liability, including consideration of both the strengths and weaknesses of the plaintiffs' claims, the difficulties and risks associated with the class certification process, and the calculation of damages, including the consideration of the impact of the written warranty which limited CertainTeed's liability and the often substantial unimpaired usage of the product by Class Members. (Joint Decl. ¶ 26-30).

CertainTeed did not concede class-wide liability in any respect. It maintained that failure of the product was limited to an isolated number of shingles and was neither a nationwide problem nor one that occurred during the entire class period. *See In re Diet Drugs,* 553 F. Supp. 2d 442, 468 (E.D. Pa. 2008), *aff'd* 582 F.3d 524 (3d Cir. 2009), ("the court must look to all benefits, tangible and intangible, as a whole when calculating the value of the Settlement Agreement and the appropriate award therewith"). As a result, although Class Counsel had confidence in their

retained experts and facts developed through discovery that they could prevail on the merits, they simultaneously faced the very real possibility that class certification would fail or would involve a much smaller class and a limited time frame, together with a jury verdict that could limit compensation only to those portions of a roof that exhibited organic shingle failure. After full consideration of the factors, and after substantial discovery and litigation, Class Counsel entered into a fair and substantial all cash settlement on behalf of the class which:

- Provides each individual class member, few of whom could afford to litigate this case on their own, with a right to obtain significant monetary recovery.
- Provides a substantial settlement which includes a claims period that lasts for up to seven years but does not include a cap on the amount of money CertainTeed must pay.
- Provides full op-out rights for those Class Members who want to pursue individual claims.
- Provides that any fees and costs awarded to Class Counsel will not reduce in any manner the benefits to the class.

In the end, the size of the fund and the potential for significant compensation to all Class Members is the result of Class Counsel's substantial efforts and extraordinary persistence. The vast majority of Class Members could never have afforded the cost of proving the case against CertainTeed and would have remained forever uncompensated.

For the foregoing reasons, the first *Gunter* factor is easily satisfied. *See In re Diet Drugs,* 553 F. Supp. 2d at 472-473 (factor weighed in favor of approval with $6.44 billion settlement fund obtained for benefit of approximately 800,000 of Class Members); *In re Insurance Brokerage Antitrust Litig*., 2009 WL 411856, at *5 (factor weighed in favor of approval where $62 million

obtained for class, significant number of people expected to benefit considering notice program, and award would not be reduced by attorneys' fees and expenses); *In re Lucent Techs., Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 437 (D.N.J. 2004).

ii. *Gunter* Factor 2: The Presence or Absence of Substantial Objections by Class Members.

The deadline for submitting objections is November 22, 2022. *See* Preliminary Approval Order ¶ 5 (ECF No. 56.). While this fee petition is being filed before the expiration of the objection period, to date no Class Members submitted objections to the Settlement or proposed fee award.[14]

The reaction of the class to date indicates overwhelming approval of this settlement. Class Counsel received no objections to the settlement. Significantly, no state lodged an objection, which has become more common under current class action jurisprudence, where all state attorneys' general must be notified.

The lack of objections, given the breadth of the notice program, is suggestive of class approval. The paucity of objections supports granting the Fee Petition. *In re Diet Drugs*, 582 F.3d at 542 ("dearth of objections throughout settlement and fee adjudication process" weighed in favor of approval); *In re Lucent*, 327 F. Supp. 2d at 435 ("the lack of a significant number of objections is strong evidence that the fee request is reasonable."); *In re Am. Invs. Life Ins. Co. Annuity Mktg. & Sales Pracs. Litig.*, 263 F.R.D. at 244 ("The small number of objections and the objections' lack of merit indicate that the class is satisfied with the fee award."); *See Yaeger v. Subaru of Am., Inc.*, No. 114CV4490JBSKMW, 2016 WL 4547126, at *3 (D.N.J. Aug. 31, 2016) ("There are, moreover, no objections to the attorney's fee request, which is 'strong evidence that the fees

[14] Plaintiffs reserve the right to address any objection(s) that may be filed in their motion seeking final approval of the settlement, and will also be prepared to address any questions or concerns the Court may have about any such objection at the Final Approval Hearing on December 22, 2022.

request is reasonable.'") (quoting *In re Lucent*, 327 F. Supp 2d at 435); *In re Lucent*, 327 F. Supp. 2d at 435) ("[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable."); *see also Weber v. Gov't Emples. Ins. Co*., 262 F.R.D. 431, 451 (D.N.J. 2009) ("The Court relies upon the representations of Class Counsel, the lack of objection to the reasonableness of the lodestar calculation, and its own experience in fee applications in other class actions of similar duration, scope, and complexity, to conclude that these claimed hours and rates are correct and reasonable.").

This *Gunter* factor is thus satisfied here.

iii. *Gunter* Factor 3: The Skill and Efficiency of the Attorneys.

The result obtained is in large measure a reflection of the skill and tenacity with which Class Counsel prosecuted this litigation. As courts have noted, "[t]he result achieved is the clearest reflection of petitioners' skill and expertise." *In re Linerboard Antitrust Litig.*, No. CIV.A. 98-5055, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004); *McGee v. Continental Tire North America, Inc*., 2009 WL 539893, at *14 (D.N.J. Mar. 4, 2009) ("The substantial Settlement amount negotiated by Class Counsel further evidence their competence."). Here, Class Counsel have achieved enormous benefits for Class Members and that speaks volumes for counsel's abilities.

Class Counsel faced significant factual, legal, and financial obstacles in pursuing this nationwide product litigation yet, ultimately, produced this superlative result. The complexity of the legal issues and duration of the litigation are addressed above. *See infra* Part IV.D.1.iv.

Further, as other courts have acknowledged, the quality of opposing counsel is one measure of the skill of an advocate. *See In re Lucent*, 327 F. Supp. 2d at 437; *McGee*, 2009 WL 539893, at *14; *In re Insurance Brokerage Antitrust Litig*., 2009 WL 411856, at *5. CertainTeed engaged one

of the finest law firms in the country with extensive experience in highly contentious litigation including asbestos defense.

The biographies of counsel reflect the quality of Class Counsel who had already established their reputations as class action attorneys and recognized regional and national counsel in complex litigation, some of whom uniquely have tried national class action lawsuits to verdict and judgment. (*See* Joint Decl. ¶ 7-8). The skill and efficiency with which they exercised that zealousness is beyond reproach. Counsel also respectfully directs the Court's attention to their prior submission in support of preliminary approval of the settlement (ECF No. 32), and this Court's appointment as Class Counsel. (ECF No. 53). Accordingly, the third *Gunter* factor strongly favors award of the requested fee.

iv. *Gunter* Factor 4: The Complexity and Duration of the Litigation.

The Parties have litigated this case for almost three years. The myriad of difficulties posed by this litigation demanded exceptional work if Class Counsel hoped to achieve relief for the homeowners. The complexity of issues and duration of the litigation were very significant. *See Cendant PRIDES*, 243 F.3d at 741 ("complex and/or novel legal issues, extensive discovery, acrimonious litigation, and tens of thousands of hours spent on the case by Class Counsel" are "the factors which increase the complexity of class litigation"). As the court in *Gunter* noted, this factor is of significant importance. "The complexity and duration of the litigation is the first factor a district court can and should consider in awarding fees." *Gunter,* 223 F.3d at 195 n.1, 197.

Although Class Counsel believe that the claims are meritorious, this case involves a number of complicated legal and factual issues and defenses. CertainTeed has vigorously denied liability and certification of a class from the outset, and Plaintiff would thus likely have

considerable risks proceeding with this litigation. (Joint Decl. ¶ 43). CertainTeed's position has been clear that Plaintiffs cannot overcome, *inter alia*, the following hurdles:

- identifying and proving a uniform design defect of the shingles resulted in the cracking, curling, or granule loss;
- the cracking, curling, or loss of granules experienced by the Plaintiffs and class members are just signs of the shingles aging as described in CertainTeed's marketing materials;
- the cracking, curling, or loss of granules experienced by the Plaintiffs and class members are aesthetic signs of aging and pose no risk to the integrity of the roof or underlying structure and the shingles will continue to perform as warranted despite the signs of aging;
- Plaintiffs will not be able to prevail on the merits because CertainTeed's Limited warranty for the shingles is valid and enforceable, meaning Plaintiff is limited to the remedies provided therein.
- damages cannot be calculated or determined on a class wide basis because the nature of the damages is highly individualized.

(Id.)

The complexity of proving that CertainTeed Organic Shingles are defective is no small feat. Enormous legal and scientific resources were devoted to using sound scientific principles to support Plaintiffs' claim that the shingles were in fact defective thereby leading to their premature failure. CertainTeed to this very day denies that the shingles are defective and point to a myriad of reasons for why the shingles fail before the end of the expected or warranted life. Class Counsel conducted extensive discovery, reviewed thousands of pages of documents, retained leading

shingle experts to test/analyze the shingles and define the fiberglass shingle problem. Thus, this factor favors the requested fee given the enormous challenges, burdens, and expenses incurred in this exhaustive litigation. *See, e.g.*, *In re Lucent,* 327 F. Supp. 2d at 454.

Plaintiffs also faced risks in certifying a litigation class and maintaining it through a likely Rule 23(f) appeal, trial, post-trial motions, and any appeal on the merits. CertainTeed raised significant defenses, including numerous legal arguments noted above. These defenses pose risk concerning especially predominance under Rule 23(b)(3). *See, e.g., In re Lamictal Direct Purchaser Antitrust Litig.*, 957 F.3d 184, 195 (3d Cir. 2020) (reversing class certification under Rule 23(f) on predominance grounds and remanding).

While Plaintiffs are confident they could overcome these hurdles, there is a real risk that they may not. Further, continued litigation would be long, complex and expensive, and a burden to court dockets. *Lake v. First National Bank*, 900 F. Supp. 726 (E.D. Pa. 1995) (expense and duration of litigation are factors to be considered in evaluating the reasonableness of a settlement); *Weiss v. Mercedes-Benz of N. Am. Inc.*, 899 F. Supp. 1297 (D.N.J. 1995) (burden on crowded court dockets to be considered). Continuing this litigation against CertainTeed would entail a lengthy and expensive battle, involving legal and factual issues specific to CertainTeed. It is reasonable to expect that all such matters would be sharply disputed and vigorously contested, as they were in settlement negotiations. Additionally, CertainTeed would assert various defenses, and a jury trial (assuming the case proceeded beyond pretrial motions) might well turn on class questions of proof making the outcome of such trial uncertain for both parties. Moreover, even after trial is concluded, there would very likely be one or more lengthy appeals. Given this uncertainty, a certain "bird in the hand in this litigation is surely worth more than whatever birds are lurking in the bushes." *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995). Further litigation will add

additional complexity and prolong the proceedings. *See, e.g., Hegab v. Family Dollar Stores, Inc.*, No. 11-cv-1206, 2015 WL 1021130, at *13 (D.N.J. Mar. 9, 2015) (complexity and duration of the litigation favored approval of fee); *Acevedo v. BrightView Landscapes, LLC,* No. 3:13-cv-2529, 2017 WL 4354809, at *18 (M.D. Pa. Oct. 2, 2017) (awarding 33⅓% fee; "extensive informal discovery and . . . ample amount of time engaging in mediation [that included] three full-day sessions" supports requested fee).

From the outset, Class Counsel undertook this complex and potentially lengthy litigation knowing that there was significant and real risk as to whether counsel would be compensated. Regarding the duration of this case, the litigation does not end now as the class period remains open for seven years and Class Counsel will continue to field calls, help with administrator appeals, and monitor the claims process during that entire time. The amount of compensation sought by the Class Counsel is neither excessive, unearned nor a windfall when assessed in light of these factors. The complexity and duration of this litigation therefore also support the requested fee.

v. *Gunter* Factor 5: The Risk of Nonpayment.

Class Counsel took this case on contingency, and there was a substantial risk that the investment of time, personnel and resources would not be successful. Courts have recognized that this is an important consideration in determining an appropriate fee. *See, e.g. In re Merck & Co., Inc. Vytorin ERISA Litig.*, No. 08-cv-285 (DMC), 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (holding that "[t]he risk of little to no recovery weighs in favor of an award of attorneys' fees"); *In re Flonase Antitrust Litig.,* 291 F.R.D. 93, 104 (E.D. Pa. 2013) ("[A]s a contingent fee case, counsel faced a risk of nonpayment. . . . This factor supports approval of the requested fee."); *Kapolka v. Anchor Drilling Fluids USA, LLC*, No. 2:18-CV-01007-NR, 2019 WL 5394751, at *9

(W.D. Pa. Oct. 22, 2019) (representation "on a contingent basis . . . favors approving the fee award").

The Court's analysis should logically proceed from the beginning of the case with an evaluation of the risks of non-recovery faced by Class Counsel when they committed themselves to this litigation on a contingent basis. *In re Diet Drugs*, 553 F. Supp. 2d at 478. Given the success achieved by counsel, the perspective of hindsight all too easily conceals the true magnitude of this risk. In point of fact, the risks here were genuine and enormous.

In a setting such as that presented by the CertainTeed national litigation, the objectives of our judicial system are often not accomplished. Victims either go entirely without relief or, if they are lucky, receive meager amounts of compensation decades after they suffered their damages. This is because of difficulties in obtaining suitable "scientific evidence" of defect, the challenge of establishing liability against a manufacturing company, the vast financial resources available to the defendant to conduct a "scorched earth" defense, the legal obstacles to securing class relief, the delays engendered by the complexity of the litigation, and the risk of a bankruptcy as the inevitable and ultimate defense against the financial press of such cases. One need only cite the litigation experience involving Asbestos, Three Mile Island, Bendectin, Dalkon Shield, Breast Implants, Agent Orange, HIV Contaminated Blood, and Pedicle Screws to make the point.[15] This risk posed by the CertainTeed litigation was of a substantially similar nature.

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[15] *E.g.*, Hensler, D., *Fashioning a National Resolution of Asbestos Personal Injury Litigation*, 13 Cardozo L. Rev. 1967 (Apr. 1992); *In re TMI Litig.,* 193 F.3d 613 (3d Cir. 1999) (sustaining summary judgment against those exposed to radiation because of the difficulty of proving injury causation); *Wilson* v. *Merrell Dow Pharm., Inc.,* 160 F.3d 625 (10th Cir. 1998) (sustaining summary judgment in a prescription drug product liability action because of the difficulty of establishing causation); *Raynor* v. *Merrell Pharm., Inc.,* 104 F.3d 1371 (D.C. Cir. 1977) (same); Vairo, G., *Georgine, The Dalkon Shield Claimants Trust, and the Rhetoric of Mass Tort Claims Resolution*, 31 Loyola L. Rev. 79 (Nov. 1997); Hensler, D. & Peterson, M., *Understanding Mass Personal Injury Litigation: A Socio-Legal Analysis*, 59 Brooklyn L. Rev. 961 (Fall 1993);

As noted earlier, risk must be judged based on the circumstances that existed when counsel first committed their resources to the litigation. When this case began, it was well within the penumbra of high risk litigation historically associated with classes seeking to prosecute claims on a nationwide basis for a substantial number of Class Members. This case was not remotely a "slam-dunk" with regard to liability. Nor did Counsel have the assistance from a government investigation or an admission of guilt or liability in the face of such an investigation. *In re Diet Drugs*, 553 F. Supp. 2d at 481 ("this case is quite different from the typical antitrust or securities litigation where government prosecutions frequently lay the groundwork for private litigation"). Rather, this was and is a high risk matter. Numerous more particularized and substantial risks included the following:

- The risk that CertainTeed would successfully shift responsibility for its own failures to Class Members, installers, or other contractors;
- The risk that CertainTeed would bury plaintiffs and their counsel in a mountain of discovery, and wage a war of attrition the cost of which the classes and their counsel could not indefinitely bear;
- The risk that CertainTeed would prevail on a purely legal defense, such as the "economic loss rule" nullifying plaintiffs' claims, or the claim that the limiting terms of the warranty protected it from additional claims;

Snyder, J., *Silicone Breast Implants: Can Emerging Medical, Legal and Scientific Concepts be Reconciled?*, 18 J. Legal Med. 133 (June 1997); Vairo, 31 Loyola L. Rev. at 125; Guzzardo, J. & Monachino, J., *Gulf War Syndrome - Is Litigation the Answer?: Learning Lessons from In re Agent Orange*, 10 St. Johns J. Legal Comment 673 (Summer 1995); Kelly, J., *The Liability of Blood Banks and Manufacturers of Clotting Products to Recipients of HIV - Infected Blood: A Comparison of Law and Reaction in the United States, Canada, Great Britain, Ireland, and Australia*, 27 J. Marshall L. Rev. 465 (Winter 1994).

- The risk that CertainTeed would prevail on its challenges to class certification, including forcing counsel to undertake the arduous process of pursuing multi-state or state-by-state certification; and
- The risk that CertainTeed would ultimately prevail in a trial on the merits.

In retrospect, there was virtually no risk related to this case that Class Counsel did not shoulder and weather. This factor strongly supports the requested award to counsel. *See e.g. In re Diet Drugs*, 553.F. Supp. 2d at 479 ("At the inception, and throughout this litigation, there was a substantial risk that the efforts of the Joint Fee Applicants would not be successful."); *In re Am. Invs. Life Ins. Co. Annuity Mktg. & Sales Pracs. Litig.*, 263 F.R.D. at 244 (fee request reasonable where Class Counsel "undertook representation on a contingency basis, . . . advanced hundreds of thousands of dollars in expenses" and prosecuted the case "without any guarantee of payment"); *McGee*, 2009 WL 539893, at *15 ("Class Counsel accepted the responsibility of prosecuting this class action on a contingent fee basis and without any guarantee of success or award. Accordingly, this factor weighs in favor of approval.") *In re Insurance Brokerage Antitrust Litig.*, 2009 WL 411856, at *5 (same).

vi. *Gunter* Factor 6: The Amount of Time Devoted by Plaintiffs' Counsel.

Over 2,400 hours of contingent work by Class Counsel over a period of almost three years. The number of hours were reasonable based on the needs of the case, and were consistent with the number of hours incurred in other building product class actions. Further, the requested fee will result in a significant negative multiplier of 0.74, a fact that supports this *Gunter* factor. *See In re Royal Dutch/Shell Transportation Secs. Litig.*, No. 04-cv-00374, 2008 WL 9447623, at *28 (D.N.J. Dec. 9, 2008) (sixth *Gunter* factor met because the "multiplier of only 1.002" was reasonable).

vii. *Gunter* Factor 7: Awards in Similar Cases.

A review of analogous enhanced warranty class actions demonstrates that the fee request here is reasonable and appropriate, and on the low-end of similar building product class action enhanced warranty settlements. *See In re: CertainTeed Corp. Roofing Shingle Products Liability Litigation,* 2:07-md-01817 (E.D. Pa.) (ECF No. 217) ($21,886,199.97 fee award representing a 1.76 multiplier and 2.9% - 3.3 % of the total estimated settlement value in a claims made settlement providing enhanced warranty benefits for defective roofing shingles); *In Re: CertainTeed Fiber Cement Siding Litigation,* MDL No. 11-2270 (E.D. Pa.) (ECF No. 89, 119) ($18.5mm fee award representing a 2.6 multiplier and 18.5% of $103.9 mm common fund for enhanced warranty benefits for defective siding); *Melillo v. Building Prods. of Canada Corp*., No. 12-cv-00016 (D. Vt.) (ECF No. 64-1, 66) ($2.4mm fee award representing a 1.75 multiplier and 2.4% to 6.15% of the estimated settlement value in a in a claims made settlement providing enhanced warranty benefits for defective roofing shingles); *Torch v. Windsor Surry Company*, No. 3:17-cv-00918 (D. Or.) (ECF No. 105, 111) ($1,097,381.91 fee award representing a 1.3 multiplier in a in a claims made settlement providing enhanced warranty benefits for defective trim board); *In re IKO Roofing Shingle Prods. Liab. Litig.*, MDL No. 2104 (C.D. Ill.) (ECF No. 457, 459) ($5.8mm fee award representing 0.32 negative multiplier in a in a claims made settlement providing enhanced warranty benefits for defective roofing shingles); *Ziccarello v. Sanyo Energy*, No. 2:19-cv-16623 (D.N.J.) (ECF No. 97, 103) ($1,672,265.03 fee award representing a 0.73 negative multiplier and 23% of the total estimated settlement value in in a claims made settlement providing enhanced warranty benefits for defective solar panels); *Gulbankian v. MW Windows, Inc.,* 1:10-cv-10392 (D. Mass.) (ECF No. 187-1, 189, 209) ($2mm fee award presenting a 0.36 negative multiplier and a 15% of the total estimated settlement value in a in a claims made settlement providing enhanced

warranty benefits for defective windows); *Eliason v. Gentek Bldg. Prods., Inc*., No. 1:10-cv-2093 (N.D. Ohio) (ECF No. 143, 149) ($2.5mm fee award representing a 0.75 negative multiplier in a in a claims made settlement providing enhanced warranty benefits for defective siding); *Minor v. Congoleum Corp.*, No. 3:13-cv-07727-JAP-LHG (D.N.J.) (ECF No. 40, 42) ($485,000 fee award representing a 0.71 negative multiplier in a in a claims made settlement providing enhanced warranty benefits for defective floor tile).

Also, as discussed above, the requested multiplier and percentage-of-the-benefit award are modest relative to fee awards commonly approved in the Third Circuit.

In sum, application of the seven *Gunter* factors, individually and in the aggregate, indicates that the fee request is reasonable and should be approved.

2. The Requested Fee Satisfies the Three *Prudential* Factors

Courts in the Third Circuit also utilize three additional "*Prudential* factors" when analyzing class action fee requests. *See Prudential*, 148 F.3d at 336-40; *accord Imprelis*, 296 F.R.D. at 370 (listing *Prudential* factors); *Processed Egg Prods.*, 2012 WL 5467530, at *3 (same). The *Prudential* factors support the fee request here.

First, the "value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, " supports the fee request. *Imprelis,* 296 F.R.D. at 370. No governmental agencies initiated formal investigations or litigation against CertainTeed. The benefits to Class Members were achieved solely from the efforts of Class Counsel.

Second, the "percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement" supports the fee request. *Id*. The proposed less than 1 percent fee award is low relative to contingent fee percentages commonly entered into in private fee

agreements. *See, e.g., Hall v. Accolade, Inc*., No. 17-cv-03423, 2020 WL 1477688, at *11 (E.D. Pa.) ("Contingency fees generally range between 30% to 40%."); *Bredbenner v. Liberty Travel, Inc.,* No. 09-cv-1248, 2011 WL 1344745, at *21 (D.N.J. Apr. 8, 2011) (stating that, in private, non-class action litigation, "the customary contingent fee would likely range between 30% and 40% of the recovery"); *In re Remeron Direct Purchaser Antirust Litig.,* No. 03-cv-0085 (FSH), 2005 WL 3008808, at *16 (D.N.J. Nov. 9, 2005) ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class commercial litigation."); *Halley*, 861 F.3d at 496 (accord); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 340 (E.D. Pa. 2007) ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."). Accordingly, this factor favors the fee requested.

Third, the inquiry into whether there are any "innovative terms of settlement" supports the requested fee. *Imprelis,* 296 F.R.D. at 370. As discussed above, if the qualifying damage to the Shingles exists on greater than 5 percent (5%) of a given roof plane, the claimant will receive compensation for 100% of the shingles on that roof plan. Prior to this settlement, Class Members' warranties limited a claim to only those shingles which actually failed. This meant that even if a claimant had a roof with 50% failed shingles, the claim was limited to the failed 50%. With this settlement, even if only 5 percent (5%) or more of the Shingles on a roof plane qualify for compensation, then the claimant will receive compensation for 100% of the Shingles on that roof plane even if the unaffected Shingles do not have qualifying damage.[16]

[16] Even if the terms of the Settlement were deemed not to be innovative, that would result in this *Prudential* factor being merely neutral as opposed to detrimental to the fee request. *See Processed Egg Prods.*, 2012 WL 5467530, at *6 ("Plaintiffs' counsel admit that the . . . Settlement does not contain any particularly 'innovative' terms. Therefore, 'this factor neither weighs in favor nor detracts from a decision to award attorneys' fees.'") (citation omitted).

In sum, application of the three *Prudential* factors, individually and in the aggregate, indicates that the fee request is reasonable and should be approved.

E. The Expense Reimbursement Request is Reasonable

Class Counsel request reimbursement of $113,928.97 in out-of-pocket litigation expenses. Defendant consents to the reimbursement of Class Counsel's expenses from the $1.69 million lump sum payment. (Joint Decl. ¶ 90-93). Reimbursement of these expenses will not detract from any settlement benefits made available to the Class. (Joint Decl. ¶ 90). Class Counsel's expenses are detailed in the Joint Declaration and exhibits attached thereto.

"Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *In re Safety Components, Inc. Secs. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (citing *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1224-25 (3d Cir. 1995)); *accord* Fed. R. Civ. P. 23(h). The expenses incurred are reasonable in the circumstances of this case and should be approved. *See, e.g.*, *In re Remeron End-Payor Antitrust Litig.*, No. CIV. 02-2007 FSH, 2005 WL 2230314, at *32 (D.N.J. Sept. 13, 2005); *Bradburn,* 513 F. Supp. 2d at 336; *Tavares v. S-L Distrib. Co.*, No. 13-1313, 2016 WL 1743268, at *15 (M.D. Pa. May 2, 2016).

The expense categories are consistent with the types of expenses commonly approved by courts in the Third Circuit. *See Cunningham*, 2021 WL 1626482, at *8 (approving class counsel's request for reimbursement of, *e.g.*, "filing fees, . . . mediation fees, and other similar, ordinary litigation expenses"); *Acevedo*, 2017 WL 4354809, at *20 (approving class counsel's request for reimbursement of, *e.g.*, filing fees, mediation fees, and legal research costs); *Glaberson v. Comcast Corp.*, No. 03-cv-06604, 2015 WL 5582251, at *16 (E.D. Pa. Sept. 22, 2015) (approving class counsel's request for reimbursement of, *e.g.*, expert witness fees and legal research costs); *In re*

Am. Invs. Life Ins. Co. Annuity Mktg. & Sales Pracs. Litig., 263 F.R.D. at 245 (approving class counsel's request for reimbursement of, *e.g.*, "expert witness fees; mediation fees; . . . legal research; . . . and service of process").

Accordingly, Class Counsel's request for litigation expenses should be approved.

F. The Service Award Request is Reasonable

Class Counsel respectfully requests a $7,500 Service Award to be paid to each of the Lead Plaintiffs for their service in fully litigating this action on behalf of the Settlement Class and obtaining a highly favorable Settlement for the benefit of the Class.

"Incentive awards are not uncommon in class action litigation and particularly where . . . a common fund has been created for the benefit of the entire class." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 334 n.65 (3d Cir. 2012). "'The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation,' and to 'reward the public service of contributing to the enforcement of mandatory laws.'" *Id.* (quoting *Bredbenner,* 2011 WL 1344745, at *21).

Plaintiffs' willingness to step forward and serve as the lead plaintiffs and class fiduciaries directly led to the benefits that the proposed Settlement provides to the Settlement Class. Thus, the requested Service Awards should be approved in full. *See also Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) ("courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation"); *Kapolka*, 2019 WL 5394751, at *13 ("Courts have ample authority to award incentive or 'service' payments to particular class members where the individual provided a benefit to the class or incurred risks during the course of the litigation.").

The Service Award requested is in line with service awards commonly approved in the Third Circuit. *See Diaz v. BTG Int'l, Inc*., No. 19-cv-01664, 2021 WL 2414580, at *9 (E.D. Pa. June 14, 2021) ($10,000 service awards where plaintiffs were not deposed); *Stevens*, 2020 WL 996418, at *14 ($10,000 service award where plaintiff was not deposed); *Accolade*, 2019 WL 4677954, at *13 ($1,000 service awards in data breach case settled prior to discovery); *Brown v. Progressions Behav. Health Servs., Inc*., No. 16-cv-06054, 2017 WL 2986300, at *7 (E.D. Pa. July 13, 2017) ($10,000 service awards where plaintiffs were not deposed); *Moore*, 2014 WL 12538188, at *3 ($5,000 service awards for plaintiffs who "respond[ed] to document requests and consult[ed] with Counsel about developments in the case"); *Imprelis*, 296 F.R.D. at 371 (service awards of $1,500 for individual property owners and $2,500 for commercial entities, none of whom were deposed).

The Class Representatives' efforts included, among other things, undergoing lengthy initial and follow-up interviews by Class Counsel to gather facts and evidence; searching for, culling, and producing documents regarding installation of shingles, premature failure of the shingles, inspections by roofing contractors, repair and replacement estimates, warranty claims and responses by CertainTeed, and history with dealing with the builder/developer and CertainTeed regarding the premature failure of the shingles in their building development; arranging for interviews of neighbors whose CertainTeed Shingles prematurely failed; agreeing to having their home inspected and shingles removed for testing; arranging for their neighbors' homes to be inspected and shingles removed for testing; agreeing to burdensome evidence preservation obligations regarding hardcopy documents, emails, financial records, and other ESI; reviewing major case filings; monitoring the overall progress of the litigation; engaging in frequent

communications with Class Counsel; and approving the Settlement Agreement. (Joint Decl. ¶ 96-98)

The $7,500 Service Award amount is also in line with Service Awards routinely approved in building product cases where class representatives participate in discovery including having their homes inspected. *See, e.g., Torch v. Windsor Surry Company*, No. 3:17-cv-00918 (D. Or.) (ECF No. 111) ("an incentive award of $15,000 to each of the Class Representative Plaintiffs*");* *In re IKO Roofing Shingle Prods. Liab. Litig., MDL No. 2104* (C.D. Ill.) (ECF No. 459) ($7,500 service award for plaintiffs participating in discovery and home inspection); *Eliason v. Gentek Bldg. Prods., Inc*., No. 1:10-cv-2093 (N.D. Ohio) (ECF No. 149) ($7,500 service award for plaintiffs participating in discovery and home inspection); *Ziccarello v. Sanyo Energy*, No. 2;19-cv-16623 (D.N.J.) (ECF No. 103) (" . . . $5,000 service award is reasonable and well in line with precedent "); *Melillo v. Building Prods. of Canada Corp*., No. 12-cv-00016 (D. Vt.) (ECF No. 64-1, 66) ($5,000 incentive award); *Gulbankian v. MW Windows, Inc.,* 1:10-cv-10392 (D. Mass.) (ECF No. 187-1, 189, 209) ($5,000 incentive award); *Minor v. Congoleum Corp.*, No. 3:13-cv-07727-JAP-LHG (D.N.J.) (ECF No. 40, 42) ($5,000 incentive ward); *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. at 476 ("if the named plaintiff was not deposed, the . . . incentive payment will be $2,500"); *In Re: CertainTeed Fiber Cement Siding Litigation,* MDL No. 11-2270 (E.D. Pa.) (ECF No. 119) ($2,500 incentive award).

Accordingly, the requested Service Awards are reasonable and should be granted.

V. CONCLUSION

Plaintiffs respectfully request that the Court approve Defendant's agreed upon payment of a $1.69 million lump sum to be allocated as follows: (i) $1,561,071.03 for Class Counsel's

attorneys' fees, (ii) $113,928.97 for Class Counsel's litigation expenses and (iii) $7,500 Service Awards to each of the two Class representatives, totaling $15,000.

Dated: November 1, 2022

Respectfully submitted,

/s/ Charles E. Schaffer

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIM SEGEBARTH and SUSAN STONE, individually and on behalf of all others similarly situated, Plaintiffs, v. CERTAINTEED LLC, Defendant.	No. 19-cv-5500

JOINT DECLARATION OF CHARLES E. SCHAFFER, CHARLES J. LADUCA AND MICHAEL MCSHANE IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD OF SERVICE AWARDS

I. INTRODUCTION

Charles E. Schaffer, Charles J. LaDuca and Michael McShane, declare as follows:

1. On August 8, 2022, the Court granted Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement and appointed us as Class Counsel. *See* ECF No. 53.

2. As counsel for Plaintiffs ("Plaintiffs") and the Settlement Class, we respectfully submit this declaration in support of Plaintiffs' motion for:

   a. an award of attorneys' fees for Class Counsel;

   b. reimbursement of expenses Class Counsel incurred and disbursed in prosecuting Plaintiffs' claims; and

   c. the payment of Service Awards to the Representative Plaintiffs.

3. We have personal knowledge of the facts set forth in this Declaration, and could testify competently to them if called upon to do so.

4. As set forth in section 8.2 of the Amended Class Action Settlement Agreement, CertainTeed has agreed not to oppose an award of attorneys' fees and litigation costs and incentive awards to Named Plaintiffs totaling $1,690,000.

5. Significantly, as of the date of this declaration, there are no objections to the Settlement or attorneys' fees, and no opt-outs.

6. We have been involved in this litigation from the pre-complaint investigation and filing of the initial complaint on November 21, 2019 (ECF No. 1) and continuing through the present. We are therefore familiar with all aspects of this litigation, of which we summarize below.

II. QUALIFICATIONS

7. Individually and collectively, we have dozens of years of experience in class actions in general and building product class actions in particular. *See* ECF No. 31-2, 31-5, 31-6, 31-7 (firm resumes attached as exhibits to Declaration of Charles E. Schaffer in Support of Plaintiffs' Motion for Preliminary of Settlement).

8. Class Counsel have worked together on numerous class action cases including, but not limited to: *In re CertainTeed Corporation Roofing Shingles Product Liability Litigation*, MDL No. 1817 (E.D. Pa.); *In re CertainTeed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. Pa.); *In re IKO Roofing Products Liability Litigation*, MDL No. 2104 (C.D. Ill.); *Gold v. Lumber Liquidators, Inc*., 323 F.R.D. 280 (N.D. Cal. 2017); *In re Building Materials Corp. of America Asphalt Roofing Shingle Prods. Liab. Litig*., MDL No. 2283 (D.S.C.); *Melillo v. Building Products of Canada*, No. 618-11 (Vermont St. Ct.). Class Counsel are particularly experienced in the litigation, certification, trial, and settlement of nationwide class actions involving allegedly defective products such as those at issue here. In negotiating the settlement in this matter, counsel

had the benefit of years of relevant experience as well as a thorough familiarity with the facts of this case.

9. Below we summarize each of our experience.

A. Charles E. Schaffer, Levin Sedran

10. Charles Schaffer is a partner with Levin Sedran & Berman LLP ("Levin Sedran"), and a member in good standing of the bar of the Commonwealth of Pennsylvania.

11. Levin Sedran is one of the nation's preeminent and most experienced plaintiff class-action firms with extensive experience and expertise in consumer protection, product liability, antitrust, securities, financial, commercial and other complex class-action litigation. Levin Sedran has been recognized by its peers and Courts nationwide for its successful class-action leadership. As a result of its success representing consumers in complex litigation throughout the country, Levin Sedran has been distinguished as a Tier I class-action firm in the Best Law Firms rankings published in the U.S. News and World Report Best Law Firms. It also ranked Levin Sedran Tier I for personal injury and mass tort firms. Levin Sedran was also named to THE NATIONAL LAW JOURNAL'S insurance list of America's Elite Trial Lawyers in 2014. Members of Levin Sedran are listed in the LEGAL 500, LAW DRAGON 500, Martindale Hubbell's Directory of Preeminent Attorneys, as in the Best Lawyers in America. *See generally* Levin Sedran firm resume at ECF No. 31-5. Levin Sedran pioneered the use of class actions and mass actions in the United States and its work has resulted in numerous record-breaking recoveries over the past four decades. Just for example:

a. *In re: Asbestos School Litigation*, No. 83-0263 (E.D. Pa.) (Levin Sedran as member of Executive Committee and Lead Trial Counsel obtained a certification of a nationwide class and settlement on behalf of school districts);

b. *In re: Diet Drug Product Liability Litigation*, MDL No. 1203 (E.D. Pa.) (Levin Sedran as Co-Lead Counsel obtained a $6.75 billion-dollar settlement on behalf of consumers who ingested Fen Phen);

c. *In re: The Exxon Valdez*, No. 89-00095 (D. Alaska) (Levin Sedran as a member of the Trial and Discovery Committee represented fishermen, native corporations, native villages, native claims and business claims in this mass tort. After a jury trial, Plaintiffs obtained a judgment of $5 billion in punitive damages - at the time the largest punitive damage verdict in U.S. history. Later reduced to $507.5 million by the U.S. Supreme Court);

d. *In re: Chinese-Manufactured Drywall Product Liability Litigation*, MDL No. 2047 (E.D. La.) (Levin Sedran as Lead Counsel obtained inter-related settlements involving various suppliers, builders, installers, insurers and manufacturers of Chinese drywall valued in excess of $1 billion);

e. *In re: The Vioxx Product Liability Litigation*, MDL No. 1657 (E.D. La.) (As a member of the PSC and Plaintiffs' Negotiating Committee, Levin Sedran was instrumental in achieving a $4.85 billion-dollar settlement on behalf of consumers who ingested Vioxx);

f. *In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775 (E.D.N.Y.) (As Co-Lead counsel in the decade long air cargo antitrust litigation Levin Sedran obtained 28 inter-related settlements against air cargo service providers totaling $1.2 billion dollars);

g. *Galanti v. The Goodyear Tire and Rubber Co.* ("*Entran II*"), No. 03-209 (D.N.J.) (As a member of the Executive Committee Levin Sedran was instrumental in negotiating and achieving the creation of a common fund in the amount of $344,000,000); and

h. *In re: National Football League Players' Concussion Injury Litigation*, MDL No. 2323 (E.D. Pa.) (As Subclass Counsel working along with Lead Counsel obtained an uncapped settlement valued in excess of $1 billion dollars on behalf of NFL football players).

See ECF No. 31-5.

12. To briefly summarize his experience, Mr. Schaffer has been attorney at Levin Sedran & Berman for over 25 years and during that time the entirety of his practice has been devoted to complex litigation and class actions involving product liability, defective building

products, consumer claims and personal injury matters. He has served as court-appointed class counsel in more than 30 class actions, most involving defective products. *See* ECF No. 31-5.

13. His appointments in MDL litigation include *inter alia*: *In re Aqueous Film-Forming Foams Products Liability Litigation*, MDL 2873 (D.S.C.) (Plaintiffs' Steering Committee); *In re Apple Inc. Device Performance Litigation*, MDL 2827 (N.D. Cal.) (Plaintiffs' Executive Committee); *In re: Intel Corp. CPU Marketing Sales Practices and Products Liability Litigation*, MDL 2828 (D. Or.) (Plaintiffs' Steering Committee); *In re: Wells Fargo Insurance Marketing Sales Practices Litigation*, MDL No. 2797 (C.D. Cal.) (Plaintiffs' Executive Committee); *In re: JP Morgan Modification Litigation*, MDL No. 2290 (D. Mass.) (Plaintiffs' Co-lead Counsel); *In re: IKO Roofing Products Liability Litigation*, MDL No. 2104 (C.D. Ill.) (Plaintiffs' Co-lead Counsel); *In re: HardiePlank Fiber Cement Siding Litigation*, MDL No. 2359 (D. Minn.) (Plaintiffs' Executive Committee); *In re Navistar Diesel Engine Products Liability Litigation*, MDL No. 2223 (N.D. Ill.) (Plaintiffs' Executive Committee); *In re: Azek Decking Sales Practice Litigation*, No. 12-6627 (D.N.J.) (Plaintiffs' Executive Committee); *In re: Pella Corporation Architect and Designer Series Windows Marketing Sales Practices and Product Liability Litigation*, MDL No. 2514 (D.S.C.) (Plaintiffs' Executive Committee); *In re: Navistar Diesel Engine Products Liability Litigation*, MDL No. 2223 (N.D. Ill.) (Plaintiffs' Steering Committee); *In re: CitiMortgage, Inc. Home Affordable Modification Program* ("*HAMP*"), MDL No. 2274 (C.D. Cal.) (Plaintiffs' Executive Committee); *In re: Carrier IQ Consumer Privacy Litigation*, MDL No. 2330 (N.D. Cal.) (Plaintiffs' Executive Committee); *In re: Dial Complete Marketing and Sales Practices Litigation*, MDL No. 2263 (D.N.H.) (Plaintiffs' Executive Committee); *In re: Emerson Electric Co. Wet/Dry Vac Marketing and Sales Litigation*, MDL NO. 2382 (E.D. Miss.) (Plaintiffs' Executive Committee); *In re: Colgate-Palmolive Soft Soap Antibacterial Hand Soap*

Marketing and Sales Practice Litigation, (D.N.H.) (Plaintiffs' Executive Committee); and *Gold v. Lumber Liquidators, Inc.*, No.3:14-cv-05373-TEH (N.D. Cal.) (Plaintiffs' Executive Committee). I have also served in leadership positions in class actions which were not consolidated in an MDL. *See* ECF No. 31-5. In addition, I have served as member of litigation teams where Levin Sedran was appointed to leadership positions in, *inter alia*, *In re Chinese-Manufactured Drywall Product Liability Litigation*, MDL No. 2047 (E.D. La.); *In re Vioxx Products Liability Litigation*, MDL No. 1657 (E.D. La.); *In re Orthopedic Bone Screw Products Liability Litigation*, MDL No. 1014 (E.D. Pa.); and *In re Diet Drug Litigation*, MDL No. 1203 (E.D. Pa.). *See* ECF No. 31-5.

14. Of relevance to this litigation, Levin Sedran and Mr. Schaffer has served as Lead Counsel and as a member of a PSC or Executive Committee in class actions involving defective products including building products. *See, e.g.*, *In re: Chinese-Manufactured Drywall Product Liability Litigation*, MDL No. 2047 (E.D. La.) (Lead Counsel); *Galanti v. The Goodyear Tire and Rubber Co.* ("*Entran II*"), No. 03-209 (D.N.J.) (Plaintiffs' Executive Committee); *In Re CertainTeed Corporation Roofing Shingles Product Liability Litigation*, MDL No. 1817 (E.D. Pa.) (Liaison Counsel), *In re CertainTeed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. Pa.) (Plaintiffs' Executive Committee); *In re IKO Roofing Products Liability Litigation*, MDL No. 2104 (C.D. Ill.) (Plaintiffs' Co-lead Counsel); *In re: HardiePlank Fiber Cement Siding Litigation*, MDL No. 2359 (D. Minn.) (Plaintiffs' Executive Committee); *In re: Azek Decking Sales Practice Litigation*, No. 12-6627 (D.N.J.) (Plaintiffs' Executive Committee); *In re: Pella Corporation Architect and Designer Series Windows Marketing Sales Practices*; and *Gold v. Lumber Liquidators, Inc.*, No. 3:14-cv-05373-TEH (N.D. Cal.) (Plaintiffs' Executive Committee). *Product Liability Litigation*, MDL No. 2514 (D.S.C.) (Plaintiffs' Executive Committee). *See* ECF No. 31-

5. We have prosecuted these cases from their inception, through discovery, to certification of class(es), to settlements and in some instances to trial.

15. In the process of handling these cases, Levin Sedran and Mr. Schaffer have devoted an extensive amount of time to the investigation, litigation, settlement and administration of these building product class actions.

B. Charles J. LaDuca, Cuneo Gilbert and LaDuca, LLP

16. Charles J. LaDuca is the Managing Partner of Cuneo Gilbert and LaDuca, LLP ("CGL"), and a member in good standing of the bar of the State of New York.

17. CGL has devoted the majority of its practice to the representation of clients involved in home defect, consumer protection, products liability, antitrust, securities and corporate governance. *See* ECF No. 31-6.

18. Examples of CGL's success are:

a. working to recover approximately two billion dollars for homeowners with defective construction materials;

b. helping to recover billions of dollars in shareholder litigation (notably, the firm served as Washington counsel for the plaintiffs in the *Enron Securities Litigation, In re Enron Corp. Sec. Litig*., No. H-01-3624 (S.D. Tex. 2006));

c. obtaining settlements in *Automotive Parts Antitrust Litigation* ("*Auto Parts*"), No. 12-md-02311 (E.D. Mich.), a case based on the largest antitrust conspiracy in history where CGL recovered more than $400 million;

d. obtaining compensation for Holocaust survivors (*see Rosner v. United States*, No. 01-cv-1859 (S.D. Fla.), the firm acted as Co-Lead Counsel in a case on behalf of survivors of the Holocaust in Hungary whose fortunes were misappropriated by the U.S. government in the final days of World War II);

e. in several jurisdictions, ending the practice of jails subjecting minor law violators to unconstitutional strip searches; and

f. in 1991, with two California firms, the firm brought the so-called "Joe Camel" case, *Mangini v. RJ Reynolds Tobacco Co*., 7th Cal. 4th 1057

(1994), which alleged essentially that R. J. Reynolds Tobacco Company's Joe Camel Advertising Campaign illegally tricked children into smoking cigarettes. *See* ECF No. 31-6.

19. Mr. LaDuca possesses years of experience litigating and prosecuting complex class actions and home defect cases. *See In re: CertainTeed Corp. Roofing Shingle Products Liability Litig.*, MDL No. 1817 (E.D. Pa.) (alleging defective organic shingles litigation, firm served as Co-lead Counsel in an MDL that secured a settlement valued at more than $700 million); *In re Building Materials Corp. of Amer. Asphalt Roofing Shingle Prods. Liab. Litig.*, MDL No. 2283 (D.S.C.) (Co-Lead Counsel in an MDL valued at approximately $240 million); *In re: Kitec Plumbing System Products Liability Litig.*, MDL No. 2098 (N.D. Tex.) (Co-Lead Counsel to a $125 million settlement concerning defective Kitec Plumbing Systems sold throughout the United States); *In re Zurn Pex Plumbing Litig.*, MDL No. 1958 (D. Minn.); *In re Uponor, Inc. F1807 Plumbing Prods. Liab. Litig.*, MDL No. 2247 (D. Minn.); *In re: CertainTeed Fiber Cement Siding Litig.*, MDL No. 2270 (E.D. Pa.); *In re IKO Roofing Shingle Products Liability Litig.*, MDL No. 2104 (M.D. Il.); *Gold v. Lumber Liquidators*, No. 15-cv-5373 (N.D. Cal.) (concerning defective flooring and misrepresentations); *Melillo v. Building Products of Canada*, No. 618-11 (Vermont St. Ct.) (Co-Lead Counsel to a settlement valued at approximately $39-$100 million); *In re: Groupon, Inc. Mktg and Sales Practices Litig.*, MDL No. 2238 (D.D.C.). *See* ECF No. 31-6.

C. Michael McShane, Audet & Partners

20. Michael McShane is a partner in the law firm of Audet & Partners, LLP and a member in good standing of the State Bar of California with over 34 years of experience litigating class actions in both State and Federal Courts. He is duly admitted to practice by the California Supreme Court and the United States Supreme Court. Since 1988 his practice has consisted solely of prosecuting class actions on behalf of Plaintiffs. He has been appointed Class Counsel in dozens

of cases during this time, and since the passage of the Class Action Fairness Act in 2005 his practice has been almost exclusively in Federal Court. During the last 25 years his practice has emphasized product defect cases like the instant case; especially those involving significant home products such as siding, plumbing, windows and roofing. In addition to the numerous cases referenced in by curriculum vitae previously submitted to this Court,. he is also currently Court-appointed lead counsel in the actions styled as *In re: CertainTeed Corp. Roofing Shingles Prods. Liab. Litig.*, MDL No. 1817 (E.D. Pa.) and *In re: CertainTeed Fiber Cement Siding Litigation*, MDL 2270 (E.D. Pa.). *See* ECF No. 31-7,

III. BACKGROUND AND PROCEDURAL HISTORY

A. Plaintiffs' Allegations, Pre-Litigation Investigation and Discovery Conducted.

21. This case is a putative class action filed on November 21, 2019, by Plaintiff Kim Segebarth in which Plaintiff asserted claims on behalf of a nationwide class of building owners who had CertainTeed Fiberglass Horizon Shingles (the "Shingles") installed between 1995 and 2010 that are covered by CertainTeed limited warranties applicable to the Shingles. The claims relate to the premature failure of the Shingles, all of which were sold with either a 25 or 30-year limited warranty. Plaintiffs allege that the Shingles are defective, that they failed before the expiration of the applicable limited warranty, and that, as a result, Plaintiffs have suffered economic loss damages. Plaintiffs allege the Shingles' premature failure included loss of granules, cracking or splitting, curling, fishmouthing, and leaking. (ECF No. 1).

22. Prior to the filing of this matter, Plaintiffs' Counsel undertook an extensive investigation of the issues raised by the failure of the Shingles and prepared for protracted litigation. Among other things, Plaintiffs' Counsel investigated the causes of the failure of the shingles, the applicable legal standards for product defect cases involving construction materials,

and relevant class action standards. Plaintiffs' Counsel has substantial experience in prosecuting class actions, in particular, class actions involving residential construction materials and roofing shingles. Plaintiffs' Counsel assembled a uniquely qualified team of experts in construction materials, in particular, roofing shingles, to assist them in the investigation and prosecution of the action on behalf of homeowners across the nation.

23. Prior to the filing of this action on November 21, 2019, and throughout the litigation, Plaintiffs' Counsel undertook an extensive investigation into the Shingles' failure, issues resulting from the Shingles' failure and prepared for protracted litigation. Among other things, Plaintiffs' Counsel investigated the causes of the Shingles' failure, the applicable legal standards for product defect cases involving construction materials, relevant class action standards, interviewed class members, reviewed class members' documents, interviewed builders and installers and inspected Shingles on buildings in various parts of the country. Plaintiffs' Counsel has substantial experience in prosecuting class actions, in particular, class actions involving residential construction and roofing materials. As part of their investigation, Plaintiffs' Counsel assembled a uniquely qualified team of experts in construction materials, in particular, roofing shingles, to assist them in the investigation of the facts, assessment of the viability and strength of the claims and prosecution of the action on behalf of homeowners across the nation.

24. In addition, Plaintiffs conducted substantial discovery enabling Class Counsel to fully investigate the underlying facts supporting Plaintiffs' and Class members' claims alleged in the complaint, asses the viability of the alleged defect, liability and damage theories and reach the Proposed Settlement on behalf of the Class. The parties were diligent in their ongoing discovery efforts. Both parties produced initial disclosures identifying individuals with knowledge regarding claims and defenses in the litigation. After their investigation and research Plaintiffs' Counsel

prepared initial disclosures identifying amongst others builders/developers, installers and class members whom shingles prematurely deteriorated. Plaintiffs' Counsel also investigated and researched the individuals identified by CertainTeed in their initial disclosures in preparation of conducting discovery including depositions. Plaintiffs responded to CertainTeed's interrogatories and document requests including a production of documents on behalf of the class representative plaintiffs as well as a preparation of a privilege log. CertainTeed produced, among other things, historical product design specifications, including changes thereto, third-party audit and testing data, product brochures and marketing materials, warranties for all products, sales data and information, pricing data and information, warranty claim data and information, and additional product information. Not only did Plaintiffs' counsel review and analyze thousands of pages of documents obtained during discovery and the warranty claims data spreadsheets, but, they also engaged in consultations and analysis with their experts regarding these documents and their impact on Plaintiffs' alleged defect and claims in the litigation.

25. In addition to the documents and information produced and analyzed by Plaintiffs' Counsel, CertainTeed conducted electronic data collection for 43 custodians and reviewed over 100,000 documents from these custodial files. After Plaintiffs' Counsel investigated the custodians proposed by defendant, the parties conducted several meet and confer sessions, during which they negotiated the custodian list and relevant search terms for the electronic data set to be produced. The parties also negotiated an inspection protocol for warranty shingle returns and exemplar shingles which required input for Plaintiffs' Experts, and CertainTeed produced shingle samples which Plaintiffs' experts analyzed and tested. In addition to the forensic testing of the shingle samples provided by CertainTeed, Plaintiffs' Counsel and their roofing experts conducted field inspections of Plaintiffs' and class members' roofs and shingles around the country. Before, during

and after the field inspections, Plaintiffs' counsel interviewed Plaintiffs and class members regarding the installation of the shingles, premature failure of the shingles. damage to the home from shingle failure, repairs/replacement of shingle, warranty claims as well as reviewing records provided. Plaintiffs' counsel consulted with their roofing experts regarding the information and documents obtained from Plaintiffs and class members. The roofing experts also removed shingles from the Plaintiffs' and class members' roofs and analyzed and tested those shingles to determine if the shingles were defectively designed and/or manufactured, as well as the cause of the failures. Furthermore, Plaintiffs' Counsel retained a warranty valuation expert who conducted an analysis of the warranty claims data, warranty(s) and other information and assessed the warranty benefits including determining a value of the enhanced warranty benefits achieved through the settlement.

IV. SETTLEMENT AND MEDIATION

26. In early 2020, after the litigation progressed through discovery, and Plaintiffs carefully evaluated the case's strengths and weaknesses, the parties commenced settlement negotiations. These negotiations—which included the exchange of information and data, written offers and counteroffers, in person meetings in Philadelphia, and countless telephone conversations—were conducted prior to and contemporaneously with the ongoing discovery process and expert inspections and testing. In early 2021, the parties determined that an experienced mediator was necessary to resolve the claims in this litigation and reach a class-wide resolution. The parties retained the Honorable Diane Welsh (ret.) to mediate this matter.

27. The parties first session with Judge Welsh took place on March 24, 2021. The parties made significant progress during the mediation session. Following that session, the parties continued to work through Judge Welsh and ultimately agreed upon the material terms of the settlement, which were memorialized in a memorandum of understanding. Thereafter the parties

methodically set about negotiating the specifics of the settlement, including fleshing out all key terms, establishing a mutually agreeable claims process and protocol, selecting the notice provider, and working with the notice provider to develop a notice plan. This process required many months of back-and-forth negotiation between counsel for both sides, as well as between defense counsel and their respective client representatives. In addition, it necessitated Plaintiffs to consult with their experts about their firsthand observations in the field of the deterioration of the Shingles as well as laboratory testing results. With the assistance of Judge Welsh again, the parties then negotiated and reached agreement on the amount of the lump sum amount that CertainTeed would pay for attorneys' fees, costs and incentive awards. All of the material terms of the settlement were agreed upon with the assistance of Judge Welsh before there was any discussion of attorneys' fees.

28. As part of the negotiations, Plaintiffs worked to develop a fair threshold for qualifying damage and the 5% plan rule, a process that necessitated Plaintiffs to consult with their experts about their firsthand observations in the field of the deterioration of the shingles as well as laboratory testing results.

29. All of the material terms of the settlement were agreed upon with the assistance of Judge Welsh before there was any discussion of attorneys' fees.

30. During the course of the settlement negotiations and thereafter, Class Counsel also worked at length with CertainTeed's counsel and the notice provider Steven Weisbrot of Angeion Group, LLC ("Angeion") to develop customized plan for distribution of settlement notice if and when preliminary approval is granted. In addition, Class Counsel worked extensively with CertainTeed Counsel in developing a seamless claims procedure with the right to have a denied claim reviewed by an independent third party.

A. Preliminary Approval of the Settlement and Settlement Terms.

31. On November 24, 2021, Plaintiffs filed a Motion for Preliminary Approval of the Settlement along with a Memorandum of Law and Declaration of Charles E. Schaffer setting forth and explaining the history of the ligation, the settlement negotiations and meetings with Judge Welsh (ret.), the provisions of the settlement, the claims process, the notice plan, that the settlement is fair, reasonable and adequate, and that a settlement class should be certified pursuant to Federal Rule 23. (ECF No. 31-1). CertainTeed filed a response and joined in the request for preliminary approval of the Settlement and certification of the settlement class. (ECF No. 32).

32. On March 4, 2022, during the hearing (the "Hearing") on the Plaintiffs' Motion for Preliminary Approval, the Court asked counsel to submit supplemental briefing responding to various questions it raised about the proposed Settlement. In response to the Court's questions, Plaintiffs submitted a Supplemental Memorandum in Support of Motion for Preliminary Approval of the Class Action Settlement. (ECF. No. 45), and for the reasons previously articulated in their preliminary brief, respectfully submit that the Settlement is fair, adequate, reasonable, and will satisfy final approval requirements.

33. On August 2, 2022, the Court granted Plaintiffs' Motion for preliminary of Approval of Class Action Settlement, directed that the notice be implemented and set various deadlines for implementation of the proposed settlement prior to the final approval hearing. (ECF. No. 53). On August 16, 2022, the parties filed a Joint Motion to Modify the Preliminary approval order (ECF. No. 53), requesting *inter alia*, that the Court modify the Preliminary Approval Order to provide a date by which the parties file an Amended Settlement Agreement and provide notice under the Class Action Fairness Act, 28 U.S.C. ¶1715(b). The Court granted the Motion on August 18, 2022. (ECF. No. 46). Thereafter, Plaintiffs' Counsel in conjunction with CertainTeed's counsel

revised the settlement agreement and filed it with the Court on September 2, 2022. (ECF No. 57). In addition, Plaintiffs' Counsel in conjunction with CertainTeed's counsel and the notice provider revised amongst other things the claim forms, notice forms, press release, settlement webpage and then implemented the notice plan as directed by the Court. Since notice has been issued to the Class Plaintiffs' Counsel has responded to class members' inquiries regarding the proposed settlement including benefits available and the claims process.

B. Summary of Settlement Benefits

34. The "Settlement Class" includes all individuals or entities who own a building in the United States on which Horizon brand fiberglass roofing shingles manufactured by CertainTeed, excluding Horizon Organic shingles, between 1995 and 2010 and are eligible for relief under the Limited Warranty applicable to the Shingles.

35. During discovery it was revealed that during the Class Period CertainTeed sold approximately 20 million squares of shingles. There are on average 30 squared of shingles per a home in the United States meaning that the number of homes with shingles that are subject of this Settlement Class is roughly 600,000.

36. If finally approved, the Settlement will provide substantial benefits to approximately 600,000 class members in the following class: all individuals or entities that own a building in the United States on which the Shingles were installed between 1995 and 2010 that are eligible for relief under the Limited Warranty applicable to the Shingles installed on their building.

37. Each class member who submits a claim within the claims period will receive $40 per square of roofing shingles subject to the revised proration schedule as reimbursement for the material cost of the shingles qualifying under the settlement. (Ex. 1, § 5.2.5).

38. The Settlement establishes a claims process whereby owners of Shingles will obtain extended warranties providing compensation for valid claims as follows: Claimants with Shingles installed between 1995 and 2003 have limited warranties with twenty-five (25) years of warranty coverage from the date of installation. (*Id.*) This term will be extended to thirty (30) years from the date of installation. (*Id.*) Claimants with Shingles installed between 2004 and 2010 have limited warranties with thirty (30) years of warranty coverage from the date of installation. (*Id.* § 5.2.4.2.) This term will be extended to thirty-five (35) years from the date of installation. (*Id.*) As a result of the expansion of the warranty period by five (5) additional years, claimants with eligible claims will receive $40.00 per square (a square is equal to approximately 100 square feet) for the replacement area subject to an extended proration schedule as set forth below:

> Claimants with 30-year warranty terms (formerly 25-year terms) will have reimbursement prorated at 1/384 per month.
>
> Claimants with 35-year warranty terms (formerly 30-year terms) will have reimbursement prorated at 1/444 per month.

(*Id.* § 5.2.5.)

39. In addition, if the qualifying damage to the Shingles exists on greater than 5 percent (5%) of a given roof plane, the claimant will receive compensation for 100% of the shingles on that roof plan. Prior to this settlement, Class Members' warranties limited a claim to only those shingles which actually failed. This meant that even if a claimant had a roof with 50% failed shingles, the claim was limited to the failed 50%. With this settlement, even if only 5 percent (5%) or more of the Shingles on a roof plane qualify for compensation, then the claimant will receive compensation for 100% of the Shingles on that roof plane even if the unaffected Shingles do not have qualifying damage. (*Id.* § 5.2.2.)

40. The five percent' (5%) benefit will allow a significant additional monetary recovery under the Settlement. An example of the increased value of a claim which triggers the 5% rule is as follows: If a claim is made which includes exactly 5% of the roof shingles, and that claim is worth $100 dollars, the 5% trigger will increase the value of their claim to $2,000. This is calculated by multiplying $100 x 20 (representing the fact that each 5% represents 1/20 of the whole), for a total of $2,000, or twenty times the payout if the claim had been made pre-settlement.

41. The Settlement also protects Settlement Class Members who received a prior warranty offer but did not accept that offer. If a Settlement Class Member with an eligible claim filed a warranty claim before or after the litigation, and CertainTeed made a written cash offer to resolve that claim, then upon submission of a new claim under this Settlement, CertainTeed will pay the eligible claim with the greater of either (1) that original offer or (2) the amount payable under the terms of this Settlement. (*Id.* § 5.4.)

42. The proposed Settlement offers a substantial recovery to Class members and does so through a claims process that does not impose undue burden on Class members. Settlement Class Members will receive extended warranty periods that provide compensation based on the amount of Shingles installed on the property that exhibit Qualifying Damage, how long the Shingles have been installed, and whether or not they previously made a warranty claim submission with Defendant and/or accepted a payment for damage to the Shingles. The Settlement treats all similarly situated Class members fairly and equally as the recovery of every Class Member is based on the amount of CertainTeed Product they own, the existence of a warranty and the length of time since the product was installed. As structured, the settlement ensures that a Class member with a greater number of damaged Shingles will receive a higher payment than a Class

member with fewer damaged Shingles, but that similarly situated Class members will receive the same amount of money based on the same uniform formula.

43. CertainTeed has vigorously denied liability and certification of a class from the outset, and Plaintiff would thus likely have considerable risks proceeding with this litigation. CertainTeed's position has been clear that Plaintiffs cannot overcome, *inter alia*, the following hurdles:

a. identifying and proving a uniform design defect of the shingles resulted in the cracking, curling, or granule loss;

b. the cracking, curling, or loss of granules experienced by the Plaintiffs and class members are just signs of the shingles aging which is well described in CertainTeed's marketing materials;

c. the cracking, curling, or loss of granules experienced by the Plaintiffs and class members are aesthetic signs of aging and pose no risk to the integrity of the roof or underlying structure and the shingles will continue to perform as warranted despite the signs of aging;

d. Plaintiffs will not be able to prevail on the merits because CertainTeed's Limited Warranty for the shingles is valid and enforceable, meaning Plaintiff is limited to the remedies provided therein.

e. courts throughout the country have consistently dismissed claims similar to those brought by Plaintiffs in cases involving building products. These courts have cited to, among other things, significant causation challenges and the economic loss doctrine as reasons for dismissing these types of claims.

f. damages cannot be calculated or determined on a class wide basis because the nature of the damages is highly individualized.

44. Class Counsel are all extremely experienced in class action litigation as well as the settlement and claims process and believe that due to all of the uncertainties and risks they face with continued litigation the proposed Settlement is a fair, adequate and reasonable settlement and highly beneficial to the Class.

45. Class Counsel respectfully submits that the terms of the Settlement are eminently fair, adequate, and reasonable for the Class and that the requirements for final approval will be satisfied.

1. The Value of the Benefits Created by the Settlement for the Class Over the Course of the Seven-Year Claims Period

46. The value of the settlement can be estimated because the number of class members is known, as well as the historical claims values associated with warranty claims made related to these roofing shingles. For the reasons set forth in detail below, the total value of the settlement available to class members is approximately over $900 million. However, Class Counsel recognizes that the expected claims rate, and the value attached to the estimated claims, is also an important metric, and that value is $99,138,852 as discussed below.

2. The Value of Benefits Likely to Be Paid Out by CertainTeed Over the Course of the Seven-Year Claims Period.

47. During the Preliminary Approval Hearing, the Court asked how much money CertainTeed was going to pay out under the settlement, and requested an estimated range of what might be paid. (Hearing Tr., 7-9). Plaintiffs addressed the Court's inquiry in their Supplemental Memorandum in Support of Motion for Preliminary Approval of the Class Action Settlement. (ECF. No. 45).

48. As with any class actions involving a settlement based on a claims-made structure, the exact amount of the settlement benefits paid out will not be known until the conclusion of the claims period. However, based on Class Counsels' experience in other building materials claims-made settlements it is likely that the settlement in this case will result in approximately a 10% claims rate. Specifically, Class Counsel in this case were also involved in the nationwide claims-made organic roofing shingle settlement in *In re CertainTeed Corp. Roofing Shingles Prods. Liab.*

Litig., MDL No. 1817 (E.D. Pa.), presided over by the Honorable Louis Pollack (deceased) and the Honorable Timothy Savage. (*See also* McShane Decl. ¶ 3 (ECF No. 45-1)). To date that settlement has resulted in payments of approximately $150,000,000 to class members. According to the claims data, the claims rate before the settlement in that case was 8%, and post-settlement increased to 16%. *Id.* Given the similar nature of the product in this case, and the fact that it is the same Defendant with same basic warranty and likely customer base, the Plaintiffs can reasonably expect a similar increase in the claims rate in this case. In addition, due to the attendant published notice, class settlements generally result in a higher post-settlement claims rate because the notice focuses class members' attention on the fact that their product has a warranty; has a potential defect; and of the existence of an increased monetary benefit because of the settlement. In addition, given the fact the product in this case is not a three-dollar widget, but an expensive, critical component protecting the class members home, the claims rate in this type of case is generally higher.

49. As noted in the Defendant's Supplemental Memorandum (ECF No. 48, 52) the historical claims rate for this product pre-settlement is 5%. As a result, and for the reasons given above, it is likely that the post-settlement claims rate will increase to 10%. The result will be an estimated 60,000 claims, or 10% of the 600,000 class members.

50. The claims examples provided in Defendant's Supplemental Memorandum in Support of Preliminary Approval of Class Action Settlement demonstrates the increased payment schedule a class member can expect because of the settlement. (*See* Def. Supp. Brief, ECF. No. 48, 52 at 3-4). Those charts with the examples are duplicated below:

	Example Claim 1 (under limited warranty)	**Example Claim 2 (under limited warranty)**
Installation Date	06/2000	06/2008
Length of Warranty	25 years (300 months)	30 years (360 months)

Claim Submitted	4/2022	4/2022
Months Since Installation	262 months	166 months
Warranty Months Remaining	38 months	194 months
Proration Rate	1/300 per month	1/360 per month
Number of Squares with Qualifying Damage	5 squares	5 squares
Prorated Square Amount	$5.07	$21.56
Total Compensation	$25.33	$107.78

	Example Claim 1 (under settlement)	**Example Claim 2 (under settlement)**
Installation Date	06/2000	06/2008
Length of Warranty	30 years (360 months)	35 years (420 months)
Claim Submitted	04/2022	04/2022
Proration Rate	1/384 per month	1/444 per month
Months Since Installation	262 months	166 months
Warranty Months Remaining	98 months	254 months
Number of Squares on Roof Plane	15 squares	15 squares
Number of Squares with Qualifying Damage	5 squares	5 squares
Estimated Percent of Plane with Qualifying Damage	33%	33%
Prorated Square Amount	$12.71	$25.05
Total Compensation	$190.63	$375.68
Additional Value Provided by Enhanced Warranty	$165.30	$267.90

51. The amount of the increased payment per square is the most helpful metric to estimate the total future payments the class will receive. In Example 1, the value increases from $5.07 to $12.71 per square, or 2.5 times. In Example 2, the value increases from $21.56 to $25.05, or 1.16 times. While each claim will vary in total value due to the difference in roof size and the number of shingles involved in a claim, these examples demonstrate relative increases will remain constant regardless of those variables. The specific example provided by CertainTeed involves a claim which triggers the 5% rule. As noted in the example, this changes the first claim value from $25.33 to $190.63, and the second from $107.78 to $375.68, increases of 7.5 and 3.5 times respectively.

52. The claims data provided by CertainTeed in this litigation demonstrates that the average claim value for the 12,034 claims received regarding this product, is $1,990.74, for total payments of $24,494,089 to the claimants. Def. Supp. Mem. at 6-7, ECF No. 48, 52.

53. Applying that per-claim value to the expected 60,000 post-settlement claims results in a benefit to the class of $119,444,400. But that would be without the increased monetary benefits provided by the settlement. As noted above, the post-settlement increased monetary value per square will range from 1.16 to 2.5 times as compared to payments under the existing warranty. If the mid-point of that range is used, or 1.83, then the increased value of the expected payments to the class will increase by $99,138,852. This amount is the actual value of the settlement to the class based on both historical and expected claims rates for the subject roof shingles. In addition, if the total opportunity value or available benefit to the class is calculated (which is just another way of assigning a value as if 100% if the class makes a claim), which this Court is aware is used when determining the value of a settlement conferred upon class, then the value of the benefit to the class is of over $900 million (which is effectively ten times the 10% claims rate described above). Class Counsel is of course aware that such a rate is not going to occur, but that it is important to identify this value to the Court.

3. The Enhanced Warranty Created by the Settlement Also Has a Monetary Value or Benefit to Each Class Member Regardless of Whether the Class Member Makes a Claim.

54. Every Class Member will also receive the benefit of the five-year extended warranty to protect what is most likely their most valuable asset—their home. This value and benefit exist regardless of whether or not the class member actually ever uses the extended protection. This component of the settlement essentially purchases an insurance policy for the benefit of each of the class members, but does not require a class member to make a claim or do

anything to receive this benefit. The report of Kerper and Bowron calculates a monetary value of $30 per warranty can be attached to this benefit, which is provided to each of the 600,000 class members whether or not they actually make a claim. The result being that this provision of the settlement has a total value to the class of $18,000,000 ($30 x 600,000). (*See* McShane Decl. Exhibit 1, Expert Report of Kerper and Bowron at 3). CertainTeed's Separate Payment of Attorney's Fees, Expenses and Service Awards, and Separate Administration Fees.

55. Separate and apart from the monetary and enhanced warranty benefits discussed above, CertainTeed also has agreed to pay the cost of class notice, claims administration and appeals, attorneys' fees, litigation expenses and service awards. (Ex. 1, §§ 8.1-8.2, 10.4, 7.1-7.18.7.)

C. Claims Procedure and Resolution

56. As set forth in the Settlement Agreement, CertainTeed will establish all policies and procedures involved in processing claims under the terms of the Settlement, with input from Plaintiffs' Counsel. (Ex. 1, § 7.10.) The Settlement requires that CertainTeed provide claimants two (2) opportunities to cure any deficiencies in their claims package. (Ex. 1, § 7.10.) Plaintiffs' Counsel may audit CertainTeed's administration of the Settlement if necessary, if there is a question concerning the application of the Agreement generally, or if there is a question with respect to an individual claim. (Ex. 1, § 7.13.)

57. Claims under the Settlement will be administered by CertainTeed in the same manner as it administers its regular warranty program but, of course, under the conditions and oversight of the Settlement. The claims package required by the Settlement was designed to enable CertainTeed to determine whether the claimant has CertainTeed organic shingles on his or her building, as contrasted with CertainTeed fiberglass shingles or shingles of other manufacturers; if

so, when the shingle was manufactured and therefore likely installed; whether the shingles are showing signs of a manufacturing defect; and whether any deterioration of the shingle is attributable to an intervening cause since the shingles left CertainTeed's control. Indeed, this provision was chosen because CertainTeed has been processing claims made under the warranty through an internal claim's office rather than a third-party administrator. Thus, CertainTeed already has in place, and possesses the capability to administer the claims process. This minimizes the cost to administer the settlement and ensures class members faster responses to their claims. However, recognizing the Court's concern that some class members may disagree with CertainTeed's evaluation of their claims, the parties amended the Settlement which now Settlement provides for appeals to an independent administrator and for participation by class counsel to assure all class members of the proper administration of the claims in accordance. (Ex. 1, § 7.18). The obligation to appoint an independent third party to review appeals by claimants was included as an Addendum to the Settlement Agreement filed with the Court on September 9, 2022. (ECF. No. 57)

58. Class Counsel will continue to be involved in the monitoring of the settlement throughout the claims period. Class Counsel's continued involvement ensures that CertainTeed is fairly evaluating the claims made to the claims administrator and is complying with the terms of the settlement. Class Counsel will be provided annual reports on the claims made and rejected through the settlement in order to monitor the progress and ensure that the settlement is proceeding fairly

D. Class Counsel's Efforts to Maximize Notice

59. The parties agreed to provide members of the Settlement Class with notice in accordance with the Notice Plan, along with multiple forms of notice. (Ex. 1, § 10.).

60. Counsel worked extensively with CertainTeed's counsel and the notice provider Angeion Group, LLC ("Angeion"), a nationally recognized class notice firm, to develop and implement customized plan for distribution of the settlement the Declaration of Steven Weisbrot ("Weisbrot Decl."), attached as Ex. 4-1 of the Schaffer Declaration (ECF No. 31) describes the notice plan in detail and attests to it meeting the requirements of Fed. R. Civ. P. 23 and due process. (Weisbrot Decl., § 12.) In summary, the proposed notice plan has the following key components:

a. The direct notice will consist of sending the full notice ("Notice") via first-class U.S. mail, postage pre-paid, to 5,000 Settlement Class Members and entities in the distribution chain for whom a mailing address is provided to Angeion by CertainTeed or Plaintiffs' Counsel. (Weisbrot Decl., §§ 14-19.)

b. A form of internet advertising known as Programmatic Display Advertising, which is the leading method of buying digital advertisements in the United States, to provide notice of the Settlement to absentee Settlement Class Members. This is strategically designed to provide notice of the litigation to these individuals using demographic targeting and driving them to the dedicated website where they can learn more about the Settlement, including their rights and options. (Weisbrot Decl., §§ 21 –35.)

c. Settlement website where Settlement Class Members can easily view general information about this class action, review relevant Court documents, and view important dates and deadlines pertinent to the Settlement. The Settlement Website will be designed to be user-friendly and make it easy for Settlement Class Members to find information about the Settlement. The Settlement Website will also have a "Contact Us" page whereby Settlement Class Members can send an email with any additional questions to a dedicated email address. (Weisbrot Decl., § 36.)

d. A toll-free hotline devoted to this case will be implemented to further apprise Settlement Class Members of the rights and options pursuant to the terms of the Settlement. The toll-free hotline will utilize an interactive voice response ("IVR") system to provide Settlement Class Members with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline will be accessible 24 hours a day, 7 days a week. Settlement Class Members will be able to request a Notice via the toll-free hotline and speak with a live operator during normal business hours. (Weisbrot Decl., § 37.)

61. Class Counsel in conjunction with CertainTeed's counsel and the notice provider revised amongst other things the claim forms, notice forms, press release, settlement webpage and then implemented the notice plan as directed by the Court. Since notice has been issued Class Counsel has responded to class members' inquiries regarding the proposed settlement including benefits available and the claims process.

V. SUMMARY OF PLAINTIFF'S COUNSELS' SIGNIFICANT WORK (LODESTAR) AND UNREIMBURSED LITIGATION EXPENSES

A. Lodestar

62. From the inception of this case to the present Class Counsel vigorously pursued this litigation, committing their services and resources and advancing funds out-of-pocket to prosecute it for the Plaintiff and the class. Plaintiff's Counsel provided these services and advanced necessary litigation expenses with no assurance of compensation or repayment, and have received no compensation or reimbursement of their expenses. Plaintiff's Counsel's compensation and expense reimbursement has at all times in this litigation been entirely contingent upon successfully obtaining relief.

63. Class Counsel diligently, skillfully and efficiently investigated prosecuted this litigation for approximately three years. Class Counsel did so also in the face of skilled, professional and determined opposition from CertainTeed and its capable counsel. These efforts required briefing of complex legal and factual issues, and numerous meetings, extensive negotiations and other communications with defense counsel and third parties.

64. More specifically, Class Counsel's efforts on behalf of the Settlement Class included, *inter alia*, the following:

a. investigating the underlying factual background regarding the failure of Shingles including interviewing Plaintiffs Kim Segebarth and Susan Stone, other owners of homes and buildings with CertainTeed shingles, installers

of the Shingles, contractors repairing or replacing the Shingles; inspecting the Shingles and homes with Shingles affixed to them; testing the Shingles and developing the legal theories of the case;

b. investigating and researching the applicable legal standards for product defect cases involving construction materials;

c. performing legal research concerning standing, damages, causation, duty of care, class certification and potential common law and statutory claims to include in the complaint;

d. vetting, retaining and working with a uniquely qualified team of experts in construction materials, in particular, roofing Shingles;

e. vetting, retaining and working with an expert in the fields of economics and valuation of enhanced warranty benefits;

f. drafting the complaint and amended complaints;

g. drafting and sending evidence preservation letters to CertainTeed;

h. drafting and negotiating a tolling agreement with CertainTeed's counsel;

i. meeting and conferring with CertainTeed's counsel regarding filing a motion to dismiss or answering the Complaint;

j. analyzing CertainTeed's Answer with Affirmative Defenses (ECF No. 4) to the Complaint (ECF No. 1);

k. researching and investigating the proper CertainTeed defendant and drafting Stipulation to Amend Caption (ECF No. 9) to name the correct defendant;

l. drafting and negotiating a Confidentiality Stipulation (ECF No. 9) with CertainTeed's counsel;

m. drafting and negotiating an ESI Stipulation (ECF No. 10) with CertainTeed's counsel;

n. drafting and negotiating a Joint Motion Regarding Modifications to Amended Scheduling Order Proposed Scheduling Order (ECF No. 22) with CertainTeed' counsel;

o. drafting amended complaint adding Susan Stone as class representative plaintiff (ECF No. 25);

p. assisting Kathryn Eloff, personal representative of the estate of plaintiff Kim Segebarth, raise the estate and take the necessary steps for substitution as class representative plaintiff;

q. drafting notice of death of Plaintiff Kim Segebarth and Motion to Substitute Party (ECF No. 28);

r. investigating and researching individuals with knowledge to support Plaintiffs' claims and then preparing Plaintiffs' Fed. R. Civ. P. 26(a)(1) initial disclosures identifying amongst other builders/developers, installers and class members whom shingles prematurely deteriorated;

s. drafting and negotiating an ESI Stipulation (ECF No. 10) with CertainTeed's counsel;

t. drafting and sending evidence preservation letters to the Class Representative Plaintiffs;

u. conducting subsequent ESI interviews with Class Representative Plaintiffs to understand where and how they store their electronically stored information in preparation of discovery responses;

v. investigating and researching the individuals identified by CertainTeed in their Fed. R. Civ. P. 26(a)(1) initial disclosures in preparation of conducting discovery including depositions;

w. drafting responses and objections to CertainTeed's interrogatories including telephone conferences with Class Representative Plaintiffs regarding answers to the interrogatories;

x. drafting privilege log including telephone conferences with Class Representative Plaintiffs regarding determining source of documents to determine privilege status;

y. drafting responses and objections to CertainTeed's Request for Production of Documents including telephone conferences with Class Representative Plaintiffs regarding gathering documents for production;

z. drafting responses and objections to CertainTeed's Request for Production of Documents including telephone conferences with Class Representative Plaintiffs regarding gathering documents for production;

aa. drafting responses and objections to CertainTeed's Request for Production of Documents including telephone conferences with Class Representatives;

bb. drafting responses and objections to CertainTeed's Request for Production of Documents including telephone conferences with Class Representative Plaintiffs regarding gathering documents for production;

cc. engaging in countless meet and confer conferences with CertainTeed's counsel regarding Plaintiffs' responses and objections to Request for Production of Documents;

dd. investigating the 43 ESI custodians proposed by CertainTeed and conducting several meet and confer sessions, during which Class Counsel and CertainTeed's counsel negotiated the custodian list and relevant search terms for the electronic data set to be produced;

ee. engaging in countless meet and confer conferences with CertainTeed's counsel regarding CertainTeed's responses and objections to Request for Production of Documents;

ff. speaking and corresponding with class members who contacted Class Counsel prior to the Settlement to discuss the warranty offers from CertainTeed and status of the litigation;

gg. drafting discovery requests including Requests for Production of Documents, Interrogatories and a 30(b)(6) deposition notice;

hh. speaking and corresponding with class members who contacted Class Counsel prior to the Settlement to discuss the warranty offers from CertainTeed and status of the litigation;

ii. analyzing CertainTeed's production of documents (thousands of pages) including historical product design specifications, including changes thereto, third-party audit and testing data, product brochures and marketing materials, warranties for all products, sales data and information, pricing data and information, warranty claim data and information, and additional product information;

jj. engaged in consultations and analysis with their experts regarding the documents produced by CertainTeed and their impact on Plaintiffs' alleged defect and claims in the litigation;

kk. negotiated an inspection protocol for warranty Shingle returns and exemplar shingles which required input for Plaintiffs' experts;

ll. working with Plaintiffs' experts to test and analyze the Shingles produced by CertainTeed;

mm. In addition to the forensic testing of the Shingle samples provided by CertainTeed, Class Counsel and their roofing experts conducted field inspections of Plaintiffs' and class members' roofs and shingles around the country;

nn. before, during and after the field inspections, Class Counsel interviewed Plaintiffs and class members regarding the installation of the shingles, premature failure of the shingles. damage to the home from shingle failure, repairs/replacement of shingle, warranty claims as well as reviewing records provided;

oo. consulted with their roofing experts regarding the information and documents obtained from Plaintiffs and class members;

pp. attending and conducting site inspections along with experts of class members' and Plaintiffs' homes;

qq. arranging for and facilitating the roofing experts removing shingles from the Plaintiffs' and class members' roofs and analyzing and testing those Shingles to determine if the Shingles were defectively designed and/or manufactured, as well as the cause of the failures;

rr. consulting and working with a warranty valuation expert who conducted an analysis of the warranty claims data, warranty(s) and other information and assessed the warranty benefits including determining a value of the enhanced warranty benefits achieved through the Settlement;

ss. conducting numerous arm's-length, independent settlement negotiations with mediator, Judge Welsh;

tt. drafting the Settlement Agreement, and Amended Settlement Agreement, and accompanying papers and other documents seeking preliminary approval of the Settlement, including the short-form and long-form notices, claim forms, proposed preliminary approval order and proposed final judgment, and Plaintiff's motion and memorandum of law;

uu. interviewing and selecting a notice provider in conjunction with CertainTeed;

vv. working with Angeion to prepare and send notice of the Settlement to putative Settlement Class Members, respond to inquiries from Settlement Class Members and others, and supervise the claims administration process;

ww. working with CertainTeed to establish an effective and efficient claims protocols and methods the administration of the settlement;

xx. preparing for and attending the hearings concerning preliminary approval conducted by this Court;

yy. communicating with Plaintiffs and possible Plaintiffs, throughout the litigation regarding updates on the litigation, settlement negotiations, and the notice and settlement approval process; and

zz. communicating with class members post preliminary approval explaining the claims process and procedure.

65. Further, our work on this litigation has not ended and will not end until the last settlement distribution payment is made to eligible Settlement Class Members after the conclusion of the seven-year claims period. We expect to expend additional hours going forward, which of course are not included in Class Counsel's lodestar reported below, concerning the Settlement approval and administration processes, preparing for the Final Approval Hearing, responding to Settlement Class Members and other inquiries and, if the Court grants final approval, overseeing Settlement administration.

66. The following chart summarizes the hours and lodestar incurred by all counsel as of September 30, 2022, recorded at each firm's hourly rates:

Law Firm	**Hours**	**Lodestar**
Levin Sedran & Berman, LLP	964.25	$897,600.00
Cuneo Gilbert & LaDuca, LLP	795.30	$640,923.75
Audet & Partners, LLP	675.75	$592,651.26
Total	2,435.30	$2,131,175.01

67. From the inception of this matter through September 30, 2022, Class Counsel expended 2,435.20 hours prosecuting this litigation, resulting in a total lodestar of $2,131,175.01.

68. The requested total attorney fee amounts to a negative multiplier of approximately 0.73. Accordingly, there will be no multiplier to compensate counsel for the contingent risks assumed. The requested fee is below the fee range commonly granted in other class action cases

in the Third Circuit and elsewhere as discussed more fully in Plaintiff's accompanying Memorandum of Law in support of their request for attorneys' fees.

69. Class counsel has been directly involved in all aspects of this litigation from the initial investigation through settlement, design and implementation of the administration, notice, and final approval. We have the understanding and capacity to distribute the attorneys' fee award among themselves based upon both lodestar and the value of their contribution.

70. Class Counsel believes that all of the work described above was reasonable and necessary to the prosecution and settlement of this case. We also believe that our comprehensive evaluation of the facts and law in this case and the persistence and perseverance over the past two-plus years of Class Counsel enabled Plaintiffs to achieve the proposed Settlement.

71. Class Counsel assumed a very real risk in taking on this contingent fee class action. Class Counsel has demonstrated that they were prepared to invest time, effort, and money over a period of years with absolutely no guarantee of any recovery. It is a part of a contingent fee practice that plaintiff's counsel sometimes recover far less than their actual current fees, as occurred in this case. If this Action had continued to be litigated and Plaintiff was ultimately unsuccessful in his claims, Class Counsel would not be entitled to recover any attorneys' fees or costs.

72. Even if Plaintiff could have obtained a class certification order and proceeded to trial, victory before the trier of fact would have been uncertain. Such uncertainty, moreover, was compounded by the appeals virtually certain to have followed any verdict. In short, while Class Counsel believe that the claims are viable and strong, there can be no denying the array of serious class-wide risks, any one of which could have precluded the Class and its counsel from recovering anything at all.

73. By any standard, this Settlement constitutes a favorable result made possible by the dedication and skill of Class Counsel under very difficult circumstances.

1. Levin Sedran's Lodestar

74. Levin Sedran's time incurred by each individual biller, categorized by type of work performed, recorded at its hourly rates is as follows as of September 30, 2022:

Certainteed Horizon Fiberglass Shingles Litigation
TIME REPORT
FIRM NAME: Levin Sedran & Berman
REPORTING PERIOD: Inception through September, 2022

Categories:
1. Investigation/Research
2. Pleadings - research/drafting
3. All other law and briefing, including research
4. Discovery
5. Expert related work
6. Case related communication between counsel and/or Plaintiffs/Class Members
7. Settlement

NAME	STATUS	(1)	(2)	(3)	(4)	(5)	(6)	(7)	Current Hours	Current Hourly Rate	Current Lodestar
Charles E. Schaffer	P	136.00	23.50	265.25	127.50	134.50	16.00	172.25	875.00	975.00	853,125.00
David Magagna	A	0.75	0.50	-	-	0.75	-	-	2.00	550.00	1,100.00
Nicholas Elia	A	0.50	1.25	36.00	38.25	-	1.25	-	77.25	500.00	38,625.00
Thomas Shrack	IT	-	-	-	10.00	-	-	-	10.00	475.00	4,750.00
TOTALS		**137.25**	**25.25**	**301.25**	**175.75**	**135.25**	**17.25**	**172.25**	**964.25**		**897,600.00**

P=Partner; A=Associate; IT = Information Technology

75. Shown above is a true and correct summary identifying the attorneys who have worked on this litigation, the number of hours, those individuals have worked, their regular hourly billing rates, and their respective lodestar values. The detailed descriptions of the time spent by the attorneys and other professionals of my firm in this litigation was prepared from contemporaneous, daily time records prepared and maintained by my firm. The lodestar figure is based on the ordinary professional billing rates that my law office charges clients in class action litigation. Expenses are accounted for and billed separately, without markup, and are not duplicated in the professional billing rates. Further detail regarding the litigation and trial experience of each professional can be found, to the extent available, in the firm resume (ECF No. 31-5).

76. The hourly rates shown the Summary Chart above are the usual and customary lodestar rates charged in Philadelphia, and the national venues in which the firm typically handles cases for each individual doing the type of work performed in this litigation. These rates were not adjusted, notwithstanding the complexity of this litigation, the skill and tenacity of the opposition, the preclusion of other employment, the delay in payment, or any other factors that could be used to justify higher hourly compensation. The rates reflect Levin Sedran's experience in the field, the complexity of the matters involved in this litigation and have not been adjusted.

77. These lodestar amounts were derived from contemporaneous daily time records compiled on this matter, which are recorded in our computerized database. The firm requires regular and contemporaneous recording of time records, which occurred in this case. I oversaw the day-to-day activities in the litigation and reviewed these printouts and backup documentation when necessary. The purpose of the reviews were to confirm both the accuracy of the entries on the records as well as the necessity for, and reasonableness of the time and expenses that my firm committed to the litigation. I believe that the time reflected in the firm's lodestar calculation and the expense for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of this litigation.

78. The lodestar summary reflects Levin Sedran's experience in the field, the complexity of the matters involved in this litigation, and the prevailing rate for providing such services.

79. The number of hours that Levin Sedran has devoted to pursuing this litigation is reasonable and appropriate, considering, among other factors: (a) the scope and high stake's nature of this proceeding; and b) the novelty and complexity of the claims asserted in the litigation.

80. The hourly rates of Levin Sedran are appropriate for complex, nationwide litigation.

81. Levin Sedran is a well-respected leader in the fields of product liability, consumer fraud, antitrust, securities, financial, commercial and other complex class-action litigation. The Levin Sedran rates, which were used for purposes of calculating the lodestar here, are based on prevailing rates for national class-action work and have been approved by multiple courts across the country. For instance, Levin Sedran's and Charles E. Schaffer's rates were approved by courts in the following cases: *In re Vioxx Products Liability Litigation*, MDL No. 1657 (E.D. La. 2011); *In re Propulsid Products Liability Litigation*, MDL No. 1355 (E.D. La); *In re: CertainTeed Roofing Shingle Products Liability Litig.*, No. 07-MDL-1817 (E.D. Pa. 2010); *Davis v. SOH Distribution Company, Inc.*, No. 09-CV-237 (M.D. Pa. 2010); *In re Wellbutrin SR Antitrust Litigation*, No. 04-5525 (E.D. Pa. 2011); *Gwaizdowski v. County of Chester*, No. 08-CV-4463 (E.D. Pa. 2012); *Meneghin v. The Exxon Mobile Corporation*, No. OCN-002697-07 (Superior Court, Ocean County, NJ 2012); *Melillo v. Building Products of Canada Corp.*, No. 1:12-CV-00016-JGM (D. Vt. Dec. 2012); *Vought v. Bank of America*, No. 10-CV-2052 (C.D. Il. 2013); *Eliason v. Gentek Building Products, Inc.*, No. 10-2093 (N.D. OH. 2013); and *In re: Navistar Diesel Engine Products Liability Litigation*, MDL No. 2223 (N.D. Ill. 2013).

82. Numerous courts have recently approved significant fee awards for Levin Sedran and Charles E. Schaffer, based on their customary hourly rate. Eleven recent decisions are: *Smith v. Volkswagen Group of America, Inc.*, No. 13-cv-370 (S.D. Ill. 2014); *In re: CertainTeed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. PA. 2014); *In re: JP Morgan Chase Mortgage Modification Litigation*, No. 11-md-2290 (D. Mass. 2014); *United Desert Charities v. Sloan Valve Company*, No. 12-6878 (C.D. Cal. 2014); *Gulbankian v. MW Manufacturers, Inc.*, No. 10-10392 (D. Mass.); *Pollard v. Remington Arms Company*, LLC, No. 4:13-cv-00086-ODS (W.D. M.O. 2017); *Leach v. Honeywell International, Inc.*, No. 1:14-cv-12245-LTS (D. Mass); *In Re IKO*

Roofing Shingle Products Liability Litigation, MDL No. 2104 (C.D. Ill.); *Newman v. Metropolitan Life Insurance Company*, No. 1:11-cv-03530 (N.D. Ill. 2019); *In re Apple Inc. Device Performance Litigation*, MDL 2827 (N.D. Cal. 2020); *Hill v. Canidae Corporation*, No. 20-1374 (C.D. Cal. 2021); *Herrera v. Wells Fargo Bank, N.A.*, No. 8:18-cv-00332(C.D. 2021); and *Erby v. Allstate Fire and Casualty Ins. Co.*, No. 2:18-cv 04944 (E.D. Pa. 2022) (ECF No. 63) (approving the hourly rates ranging from $450 - $975 and the number of hours worked as reasonable).

83. In *Erby*, the United States District Court for the Eastern District of Pennsylvania approved the 2022 rates of Charles E. Schaffer ($975.00), Daniel C. Levin ($975.00), David Magagna ($550), and Nicholas Elia ($500). In *In re: CertainTeed Fiber Cement Siding Litigation*, the United States District Court for the Eastern District of Pennsylvania, approved the entire requested fee of $18.5 million dollars, including the 2014 rates of Charles E. Schaffer ($950.00). In *Pollard v. Remington Arms Company*, the United States District Court for the Western District of Missouri approved the entire requested fee of $12.5 million dollars, including the 2017 rates of Charles E. Schaffer ($975.00), and Sammi McCurtain (document reviewer) ($450.00), and in *Leach v. Honeywell International, Inc.*, the United States District Court for the District of Massachusetts approved the entire requested fee award of $1.15 million dollars, including the 2017 rates of Charles E. Schaffer ($975.00) and Michael MacBride (attorney) ($475.00). More recently in *In Re IKO Roofing Shingle Products Liability Litigation*, the United States District Court for the Central District of Illinois approved the entire requested fee award of $7.5 million dollars, including the 2019 rates of Charles E. Schaffer ($975.00) and Michael MacBride (attorney) ($475); in *Newman v. Metropolitan Life Insurance Company*, the United States District Court for the Northern District of Illinois approved the entire requested fee award of $5 million dollars, including the 2019 rates of Charles E. Schaffer ($975.00); and in *In re Apple Inc. Device*

Performance Litigation, the United States District Court for the Northern District of California approved the fee award of $80.6 million dollars, including the submitted rates of Charles E. Schaffer ($950), other members of the firm and paralegals. *Id.*, ECF No. 609 at 15. Those rates are consistent with rates that have been awarded in this District. *See, e.g.*, *Dickey v. Advanced Micro Devices, Inc.*, 2020 WL 870928, at *8 (N.D. Cal. Feb. 21, 2020) (finding rates between $275 and $1,000 for attorneys reasonable); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *2 (N.D. Cal. Sept. 20, 2018) (finding rates between $300 and $1,050 for attorneys reasonable). In 2021, the United States District Court for the Central District of California in *Hill v. Canidae Corporation*, No. 20-1374 (C.D. Cal. 2021) approved the submitted rates of Charles E. Schaffer ($975) and associate David Magagna ($550). *See* ECF No. 79 at 16. (Plaintiffs also submit Class Counsel's billing rates that other courts have approved, which show that one of the partners who is counsel for Plaintiffs has consistently been approved at an hourly rate of $950.00 to $975.00 per hour, while a non-partner attorney was consistently approved at an hourly rate of $450.00 to $475.00. (Schaffer Decl. ¶ 28.) Accordingly, the Court determines that the hourly rates used to calculate the lodestar are reasonable.). In November of 2021, the United States District Court for Central District of California in *Herrera v. Wells Fargo Bank, N.A.*, No. 8:18-cv-00332 (C.D. 2021), approved the entire requested fee award of $23.1 million dollars, including the 2021 rates of Charles E. Schaffer ($975.00), associate David Magagna ($550) and IT specialist Thomas Shrack ($475). *See* ECF No. 208 adopting the Tentative Order Regarding Final Approval of Class Settlement and Final Approval of Attorneys' Fees at 21-22.

2. Audet & Partners Lodestar

84. Audet & Partner's time incurred by each individual biller and categorized by type of work performed is as follows as of September 30, 2022, recorded at its hourly rates:

Certainteed Horizon Fiberglass Shingles Litigation
TIME REPORT
FIRM NAME: Audet & Partners LLP
REPORTING PERIOD: Inception through September, 2022

Categories:
1. Investigation/Research
2. Pleadings - research/drafting
3. All other law and briefing, including research
4. Discovery
5. Expert related work
6. Case related communication between counsel and/or Plaintiffs/Class Members
7. Settlement

NAME	STATUS	(1)	(2)	(3)	(4)	(5)	(6)	(7)	Current Hours	Current Hourly Rate	Current Lodestar
Kurt Kessler	A	1.00		30.00	14.25			1.50	46.75	325.00	15,193.76
Ling (David) Kuang	A	1.50	11.00	6.25	12.25		12.75	4.25	48.00	400.00	19,200.00
Michael McShane	P	114.50	77.25	52.00	41.00	58.50	81.00	147.25	571.50	975.00	557,212.50
Harold Darling	Paralegal		5.25	0.75	3.00		0.50		9.50	110.00	1,045.00
TOTALS		**117.00**	**93.50**	**89.00**	**70.50**	**58.50**	**94.25**	**153.00**	**675.75**		**592,651.26**

P=Partner; A=Associate; IT = Information Technology

85. Shown above is a true and correct summary identifying the attorneys who have worked on this litigation, the number of hours, those individuals have worked, their regular hourly billing rates, and their respective lodestar values. The detailed descriptions of the time spent by the attorneys and other professionals of my firm in this litigation reflect regularly kept, contemporaneous time regards. The hourly rates are the actual rates appropriate for the location of Audet & Partners offices in San Francisco, California and are not adjusted based on the particular venue of a class action. Expenses are accounted for and billed separately, without markup, and are not duplicated in the professional billing rates. Further detail regarding the litigation experience of each professional can be found, to the extent available, in the firm resume (ECF. No. 31-7) attached with Plaintiffs' Motion for preliminary approval.

86. Numerous courts have approved Audet and Partner's fees and rates over the years in similar cases such as: *In re Toll Roads Litigation*, No. 8:16-cv-00262 (C.D. Cal.); *Torch v. Windsor Surry Company*, No. 3:19-cv-00918 (D. Or.); *In re: CertainTeed Corporation Roofing Shingles Products Liability Litigation*, MDL No. 1817; *In re: Kitec Plumbing System Products Liability Litig.*, MDL No. 2098 (N.D. Tex.); *Gold v. Lumber Liquidators*, No. 15-cv-5373 (N.D. Cal.); *In re: IKO Roofing Shingle Products Liability Litigation*, MDL No. 2104; *In re: CertainTeed*

Corp. Roofing Shingle Products Liability Litig., MDL No. 1817 (E.D. Pa.); *In re Building Materials Corp. of Amer. Asphalt Roofing Shingle Prods. Liab. Litig.*, MDL No. 2283 (D.S.C.).

3. Cuneo Gilbert & LaDuca, LLP's Lodestar

87. CGL's time incurred by each individual biller and categorized by type of work performed is as follows as of September 30, 2022, recorded at its hourly rates:

Certainteed Horizon Fiberglass Shingles Litigation
TIME REPORT
FIRM NAME: Cuneo Gilbert & LaDuca, LLP
REPORTING PERIOD: Inception through September, 2022

Categories:
1. Investigation/Research
2. Pleadings - research/drafting
3. All other law and briefing, including research
4. Discovery
5. Expert related work
6. Case related communication between counsel and/or Plaintiffs/Class Members
7. Settlement

NAME	STATUS	(1)	(2)	(3)	(4)	(5)	(6)	(7)	Current Hours	Current Hourly Rate	Current Lodestar
Jonathan Cuneo	P	1.00							1.00	1,250.00	1,250.00
Pamela Gilbert	P						1.00		1.00	575.00	575.00
Charles LaDuca	P	57.25	69.50	4.50	97.00	67.50	68.00		363.75	895.00	325,556.25
Alexandra Warren	P	0.25					0.50	0.25	1.00	800.00	800.00
Brendan Thompson	P	111.25	88.75	16.00	70.00	33.75	73.25	18.75	411.75	750.00	308,812.50
Aaron Zoellick	LC	0.50							0.50	325.00	162.50
John Yuill	PL	0.50	0.25	1.25					2.00	275.00	550.00
Benjamin Apelbaum	PL	4.50	1.00	0.25	3.00				8.75	225.00	1,968.75
Noah Bray	PL	1.80							1.80	225.00	405.00
Camile Trotter	PL						1.25		1.25	225.00	281.25
Natasha Vij	PL	2.50							2.50	225.00	562.50
TOTALS		**179.55**	**159.50**	**22.00**	**170.00**	**101.25**	**144.00**	**19.00**	**795.30**		**640,923.75**

P=Partner; A=Associate; IT = Information Technology

88. Shown above is a true and correct summary identifying the attorneys who have worked on this litigation, the number of hours, those individuals have worked, their regular hourly billing rates, and their respective lodestar values. The detailed descriptions of the time spent by the attorneys and other professionals of my firm in this litigation was prepared from contemporaneous, daily time records prepared and maintained by my firm. The lodestar figure is based on the ordinary professional billing rates that my law office charges clients in class action litigation. Expenses are accounted for and billed separately, without markup, and are not duplicated in the professional billing rates. Further detail regarding the litigation experience of

each professional can be found, to the extent available, in the firm resume (ECF. No. 31-6) attached with Plaintiffs' Motion for preliminary approval.

89. Numerous courts have approved CGL's fees over the years in similar cases such as: *In re: CertainTeed Corporation Roofing Shingles Products Liability Litigation*, MDL No. 1817 (approved requested fee of $18.5 million); *In re: Kitec Plumbing System Products Liability Litig*., MDL No. 2098 (N.D. Tex.) (approved requested fee of $25 million); *Gold v. Lumber Liquidators*, No. 15-cv-5373 (N.D. Cal.) (approved requested fee percentage of $14 million cash fund); *In re: IKO Roofing Shingle Products Liability Litigation*, MDL No. 2104 (approved requested fee of $7.5 million); *In re: CertainTeed Corp. Roofing Shingle Products Liability Litig*., MDL No. 1817 (E.D. Pa.); *In re Building Materials Corp. of Amer. Asphalt Roofing Shingle Prods. Liab. Litig*., MDL No. 2283 (D.S.C.); *In re Zurn Pex Plumbing Litig*., MDL No. 1958 (D. Minn.); *In re Uponor, Inc. F1807 Plumbing Prods. Liab. Litig*., MDL No. 2247 (D. Minn.); *Melillo v. Building Products of Canada*, No. 618-11 (Vermont St. Ct.); *Gulbankian v. MW Manufacturers, Inc*., No. 10-10392 (D. Mass.); *In re: Groupon, Inc. Mktg and Sales Practices Litig.*, MDL No. 2238 (D.D.C.).

B. Litigation Expenses

90. This litigation also required Class Counsel to advance costs. Because the risk of advancing costs in this type of litigation is significant, doing so is often cost prohibitive to many attorneys and law firms. Through September 30, 2022, Class Counsel's out-of-pocket expenses totaled $113,928.97, consisting of $27,689.55 for Levin Sedran & Berman, LLP, $$44,103.11 for Cuneo Gilbert and LaDuca, LLP, and $42,136.31 for Audet & Partners, LLP. Reimbursement of these expenses will not detract from any settlement benefits made available to the Class.

91. The following chart summarized the applicable expenses incurred by Class Counsel as of September 30, 2022:

CertainTeed Horizon Fiberglass Shingles Litigation
Expense Analysis (All Firms)
Inception through September, 2022

Expense Category	Amount
Court Transcript	$27.30
Expert Services	$61,881.12
Filing Fees, Service	$735.68
Long Distance Phone, Facsimile	$903.23
Meals, Hotels and Transportation	$42,809.83
Mediation Charges (JAMS)	$2,791.67
Messenger, Express Mail, Postage	$162.84
Miscellaneous: Shingle Samples	$1,911.66
Photocopy	$421.90
Westlaw/Lexis-Nexis/PACER research	$2,283.74
TOTAL	**$113,928.97**

92. The expenses incurred by Class Counsel are reflected in the books and records of each firm. The books and records are prepared from expenses vouchers, invoices, receipts, and other reasonable supporting records and are an accurate record of the expenses incurred.

93. These expenses were reasonably and necessarily incurred in connection with the prosecution of this litigation.

C. Service Awards

94. Class Counsel request a $7,500 Service Award for each of the two Class Representative Plaintiffs for their commitment, time, and effort pursuing this case on behalf of the Class.

95. CertainTeed consents to funding these payments from the $1.69 million lump sum. The $15,000 aggregate amount will not reduce settlement benefit made available to the Class. *Id.*

96. The Representative Plaintiffs (1) underwent lengthy initial and follow-up interviews by Class Counsel to gather their and their neighbor's underlying facts regarding the

installation of the shingles, premature failure of the shingles, warranty claims, repair/replacement of the shingles; (2) searched for, revieing, and produced their and their neighbor's documents regarding installation of the shingles, premature failure of the shingles, warranty claims, repair/replacement of the shingles and dealings with builder and CertainTeed; (3) allowed their homes to be inspected by experts and shingles removed for testing; (4) arranged for their neighbor's homes to be inspected by exerts and shingles removed for testing; (5) agreed to the burdensome evidence preservation obligations regarding hard copy documents, emails, records and other ESI; (6) reviewing and approving the complaint; (7) monitored the overall progress of the litigation; (8) responded to discovery; (9) engaged in frequent communications with Class Counsel especially during the settlement negotiations; (10) approved all material terms of the settlement and (11) kept fellow class members apprised of the status of the litigation and settlement.

97. Notably, Mr. Segebarth and Ms. Stone fully cooperated with a two-day inspection of their property and arranged for inspections of their neighbors' property, during which Class Counsel's Experts inspected, removed and then tested their roofing shingles. Due to the passing of Mr. Segebarth, Ms. Eloff who is the administrator of his estate, was substituted to act as the class representative and see this settlement through to final approval. She has also responsibilities in exemplary fashion and demonstrated the highest degree of responsiveness to inquiries and requests from Class Counsel.

98. It was necessary for Mr. Segebarth and Ms. Stone to take the time to learn from me about both the basic science of how roofing shingles are supposed to work and why they prematurely fail. Mr. Segebarth and Ms. Stone helped Class investigate the alleged premature failure of the roofing shingles and also reviewed key documents in this case, including the

complaints, the proposed settlement agreement, and claim protocols. Mr. Segebarth and Ms. Stone conscientiously participated throughout this case, in order to understand the complexities of the case and the benefits offered by the settlement. In this regard both Mr. Segebarth and Ms. Stone each spent over a hundred hours working with and assisting Class Counsel in this litigation. After the passing of Mr. Segebarth, Class Counsel had multiple discussions with Ms. Eloff regarding the history of litigation, settlement negotiations, Mr. Segebarth's role and involvement in settlement, benefits offered by the settlement and risks of continued litigation. Ms. Eloff also prepared all of the necessary court filings to allow her to be substituted as the plaintiff on behalf of Mr. Segebarth. She has spent approximately 15 hours working with and assisting Class counsel in seeing the settlement though to final approval.

* * *

99. Throughout this case, Charles Schaffer conferred with proposed class representatives, Mr. Segebarth and Ms. Stone and they are in support of the proposed settlement. After the passing of Mr. Segebarth, Charles Schaffer conferred with Ms. Eloff and she is in support of the proposed settlement.

100. Attached hereto as Exhibit 1 is a true and correct copy of the proposed Amended Settlement Agreement.

Dated: November 2, 2022

Respectfully submitted,

/s/ Charles E. Schaffer

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIM SEGEBARTH and SUSAN STONE, individually and on behalf of all others similarly situated, Plaintiffs, v. CERTAINTEED LLC, Defendant.	Case No. 19-cv-5500

[PROPOSED] ORDER

AND NOW, on this _____ day of _____, 2022 upon consideration of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Service Awards, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs are awarded attorneys' fees as follows: (i) $1,561,071.03 for Class Counsel's attorneys' fees, (ii) $113.928.97 for Class Counsel's litigation expenses, and (iii) $7,500 Service Awards to each of the two Class representatives, totaling $15,000.

BY THE COURT:

_____
J.