UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

IN RE PEANUT FARMERS ANTITRUST LITIGATION	No. 2:19-cv-00463-RAJ-LRL

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

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I. INTRODUCTION

Unlike the many civil antitrust cases that follow Department of Justice ("DOJ") investigations and prosecutions, this case came exclusively from Class Counsel's own extensive, independent investigation into the shelling industry and pricing of raw, harvested runner peanuts ("Runners").[1] Based on their own steam, Class Counsel, in conjunction with Plaintiffs, recovered over $100 million for the Class.

In vigorously litigating this case to its successful conclusion, in the challenging "Rocket Docket" and during the emerging pandemic, Class Counsel incurred significant risk, committing substantial time and money—without any guarantee of recovery. In fact, Class Counsel incurred $1,875,614.86 in out-of-pocket costs and nearly $12 million of attorney and staff time (more than 20,866 hours). Clark Decl. ¶ 54.

Class Counsel's $100 million plus recovery was never foretold. This case was layered with risk from start to finish, beginning with Defendants' motion to dismiss Plaintiffs' complaint. Even before the motion was decided, Class Counsel launched into extensive discovery, subpoenaing phone records, analyzing, producing, and reviewing hundreds of thousands of documents, and engaging experts. Class Counsel did all of that—and more—leading up to Plaintiffs' motion for class certification, another major hurdle Plaintiffs had to overcome. The Court's granting of the class certification motion did not alleviate the risk, as Defendants promptly appealed the Court's certification ruling and filed motions for summary judgment. At no point was this case without substantial risk, making the ultimate $102.75 million recovery an excellent result that will return

[1] "Class Counsel" includes the two firms appointed as Co-Lead Counsel, Lockridge Grindal Nauen PLLP and Freed Kanner London & Millen LLC (hereinafter, "Co-Lead Counsel"), the firm appointed as Liaison Counsel, Durrette, Arkema, Gerson & Gill PC, as well as the other firms representing the Class that assisted with the prosecution of this litigation. *See* Declaration of Brian D. Clark ("Clark Decl."), filed herewith.

substantial monies to the Class.[2]

Plaintiffs obtained the $102.75 million in settlements only after prolonged and difficult negotiations with large and sophisticated Defendants represented by nationally recognized, highly experienced, and well-staffed law firms.[3] Since negotiating and executing the settlements, Co-Lead Counsel (with defense counsel) prepared the settlement agreements, prepared the preliminary approval motions and supporting documents, including the Class notices, and have been supervising the settlement administrator. The work is, of course, not over. Co-Lead Counsel will spend many additional hours preparing for the July 26, 2021 Fairness Hearing and overseeing the processing of claims and distribution of settlement funds to Class members.

Plaintiffs D&M Farms, Mark Hasty, Dustin Land, Rocky Creek Peanut Farms, LLC, Daniel Howell, and Lonnie Gilbert (together, "Class Representatives" or "Plaintiffs"), as representatives of the Class,[4] respectfully move the Court for an Order (1) awarding Class Counsel one-third of the Settlement Fund as attorneys' fees, (2) reimbursing Class Counsel $7,688.02 in

[2] The Court has approved settlements with Defendants Olam Peanut Shelling Company, Inc., and Birdsong Corporation totaling $57,750,000 (ECF No. 590) and has preliminarily approved a settlement with Defendant Golden Peanut Company, LLC in the amount of $45,000,000 (ECF No. 595). If the Court grants final approval for the Golden Peanut settlement, the total settlement amount will be $102,750,000 ("Settlement Fund").

[3] The Golden Peanut settlement was achieved with the assistance of Professor Eric Green, a nationally renowned mediator.

[4] The "Class" is defined as:

> All persons or entities in the United States who sold raw, harvested runner peanuts to any of the Defendants, their subsidiaries or joint-ventures, from January 1, 2014 through December 31, 2019 (the "Class Period"). Specifically excluded from this Class are the Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant.

Certification Order at 18. (ECF No. 496).

additional litigation costs and expenses,[5] and (3) awarding each Class Representative a service award of $40,000 for his or its respective contributions to the case, all to be paid from the Settlement Fund.

As discussed more thoroughly below, the record fully supports Class Counsel's request for a fee award of $34,250,000.00, or one-third of the Settlement Fund. Courts in this Circuit regularly award one-third of common funds as attorneys' fees in class action antitrust cases, and all relevant factors favor such an award here. This fee request represents a 2.92 multiple of Class Counsel's lodestar, based on historical hourly rates and time expended through May 31, 2021.[6] The record also shows that the litigation expenses for which Class Counsel seek reimbursement were reasonable and necessary for the prosecution of this case. Finally, the record shows that the Class Representatives have earned the requested service awards.

II. HISTORY OF THE LITIGATION

Plaintiffs are peanut farmers in the United States who sold Runners to peanut shelling companies. Plaintiffs alleged, among other things, that Defendants Golden Peanut, Olam, and Birdsong conspired to depress prices paid to the Class for Runners during the Class Period, in

[5] On April 8, 2021, the Court granted Plaintiffs' initial motion for reimbursement of costs. (ECF No. 591.) The instant motion only seeks an award of expenses not included in the prior costs motion. *See* Clark Decl. ¶¶ 62-64.

[6] Based on prior fee rulings by the Court and the time and expense protocol submitted to the Court in conjunction with the request to appoint lead counsel, Co-Lead Counsel proactively cut more than $280,563.25 Class Counsel time; the inclusion of such time would have resulted in a higher lodestar and a lower multiplier. Clark Decl. ¶ 59. Further, the effective multiplier will decrease as Co-Lead Counsel continue to work towards fully resolving this litigation, including responding to Class member inquiries, and working with the settlement administrator on claims processing and distribution of settlement funds to Class members. None of that time is reflected in the total lodestar amount of $11,716,258.50, and Class Counsel will not be seeking any additional fees from the Settlement Fund in connection with such future work.

violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Defendants vigorously deny these allegations.

A. Complaints and Motions to Dismiss

After conducting an independent investigation, Plaintiffs filed a complaint on September 5, 2019 (ECF No. 1) against Defendants Golden Peanut and Birdsong, which they moved to dismiss (ECF Nos. 47-50). Class Counsel successfully briefed oppositions to the motions to dismiss, which the Court denied on May 14, 2020 (ECF No. 135). Plaintiffs filed a Second Amended Class Action Complaint on May 27, 2020 (ECF No. 148), naming Olam as a Defendant for the first time; all Defendants answered this complaint on June 26, 2020 (ECF Nos. 178-180).

B. Discovery

At the outset of discovery, Class Counsel worked with a firm specializing in technology-assisted methods of review and negotiated a comprehensive protocol for producing electronically stored information; additionally, Class Counsel negotiated and drafted a Stipulated Protective Order governing confidential information. Clark Decl. ¶ 9. Thereafter, Class Counsel drafted and served discovery requests on Defendants and the parties participated in extensive meet-and-confers to negotiate the parameters of the requests; Class Counsel also worked with the Class Representatives to prepare their responses to Defendants' discovery requests. *Id.* Class Counsel also prepared and served discovery requests on various third parties, including telephone service providers and non-party participants in the peanut shelling industry. Class Counsel created, reviewed, and analyzed a database containing more than 1,740,000 documents and other records produced by Defendants and third parties. Further, working with an outside consultant, Class Counsel developed a database of voluminous telephone records to better sift through millions of phone calls for the purpose of culling out the thousands of relevant calls between Defendants. *Id.* ¶¶ 11, 13-15.

Through these databases, Class Counsel learned about numerous inter-Defendant communications relating to Runner pricing and used this information to question deponents from each Defendant.[7] *Id*. ¶ 15. Armed with this valuable information, Class Counsel took thirty-one depositions of defense witnesses and third parties. *Id*. ¶¶ 15-18. Class Counsel also spent a considerable amount of time preparing the six Class Representatives for their depositions and defending same. *Id*. ¶¶ 16-18.

C. Class Certification

In connection with the class certification process, Class Counsel worked extensively with Plaintiffs' economist expert, Dr. Michael A. Williams, in producing three expert reports and defending his deposition. Class Counsel also spent a considerable amount time and effort preparing for and deposing Defendants' three economist experts: Drs. Michelle Burtis, Robert Topel, and Kevin Murphy. *Id*. ¶¶ 21-23. On December 2, 2020, after the parties fully briefed Plaintiffs' class certification motion, the Court certified the case as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure. (ECF No. 496.)[8]

D. Olam and Birdsong Settlements

In October and November 2020 respectively, Plaintiffs reached settlements with Olam and Birdsong totaling $57,750,000. *Id.* ¶¶ 33-34. On December 23, 2020, the Court entered orders

[7] Class Counsel's extensive work with the databases was also invaluable to their efforts to oppose Defendants' summary judgment motions, as well as settlement negotiations.

[8] On December 16, 2020, Golden Peanut petitioned the United States Court of Appeals for the Fourth Circuit for permission to appeal the Certification Order under Fed. R. Civ. P. 23(f), and Plaintiffs filed their opposition on December 28, 2020. On January 27, 2021, the Fourth Circuit deferred ruling on the petition, but ordered formal briefing of the appeal. *Golden Peanut Co., LLC v. D&M Farms*, No. 20-00502 (4th Cir. Jan. 27, 2021), ECF No. 30. Pending approval of the Settlement Agreement, Golden Peanut filed a motion with the Fourth Circuit requesting that its appeal be stayed, which the Fourth Circuit granted on February 26, 2021. *Golden Peanut Co., LLC v. D&M Farms*, No. 20-00502 (4th Cir. Feb. 26, 2021), ECF No. 40.

preliminarily approving the Olam and Birdsong settlements, certifying Olam and Birdsong Settlement Classes, and authorizing dissemination of notice to the Olam and Birdsong Settlement Classes, as well as notice to potential members of the litigation Class certified in the Court's December 2, 2020 order regarding class certification. (ECF Nos. 514-515.) On March 25, 2021, the Court held a Fairness Hearing to determine whether to finally approve the Olam and Birdsong settlements, and whether to grant Class Counsel's initial request for reimbursement of litigation costs and expenses. (ECF No. 586.) On April 5, 2021, the Court entered a Memorandum Opinion and Order granting final approval to the Olam and Birdsong settlements. (ECF No. 590.)[9]

E. Trial Preparation and Summary Judgment

Throughout nearly all of 2020 (during a global pandemic), Class Counsel devoted an enormous amount of time and expense preparing for a January 19, 2021 trial and opposing summary judgment. Clark Decl. ¶¶ 25-28, 30-32. Trial preparation was not minimized by the Olam and Birdsong settlements, because at trial Plaintiffs would need to prove the entire conspiracy against remaining Defendant Golden Peanut. *Id*. ¶ 31. On December 7, 2020, the Court notified the parties that the trial would be postponed but explicitly instructed the parties to continue litigating the case. And that is precisely what Class Counsel did. The following provides a summary of the work Class Counsel did in connection with trial preparation and summary judgment:

- Worked extensively with a jury consultant to prepare for and conduct a mock trial before multiple jury panels;

[9] Class Counsel did not request attorneys' fees or service awards for the Class Representatives at the time they sought preliminary or final approval of the Olam and Birdsong settlements, but did request reimbursement of litigation costs and expenses. On April 8, 2021, the Court entered an order granting Class Counsel's motion for litigation costs and expenses. (ECF No. 591.) At this time, Class Counsel seek only a small amount of additional expenses incurred that were not addressed by the Court's April 8, 2021 Order.

- Prepared briefs in opposition to Defendants' joint motion for summary judgment and Golden Peanut's subsequent motion for summary judgment;
- Prepared a brief in opposition to Defendants' *Daubert* motion to exclude Dr. Williams' testimony;
- Prepared briefs in support of and in opposition to more than fifteen motions *in limine*;
- Prepared a lengthy pretrial statement and met and conferred with Golden Peanut counsel regarding same;
- Reviewed deposition transcripts, designated portions for use at trial, and exchanged same with Golden Peanut's counsel;
- Prepared video deposition clips for use at trial;
- Designated potential trial exhibits and coordinated with Golden Peanut's counsel to negotiate admissibility of approximately 2,500 such exhibits;
- Drafted proposed *voir dire* questions; and
- Drafted proposed jury instructions.

Id. ¶ 32.

F. Golden Peanut Settlement

On March 4, 2021, Plaintiffs reached a settlement with Golden Peanut for $45,000,000. *Id.* ¶ 41. On April 23, 2021, the Court preliminarily approved the settlement with Golden Peanut and scheduled a Fairness Hearing for July 26, 2021 to determine whether to finally approve the Golden Peanut settlement, and whether to grant Class Counsel's request for attorneys' fees, litigation costs and expenses, and service awards to the Class Representatives. (ECF No. 595.)

G. Work Related to the Settlements

In addition to the litigation work described above, Class Counsel did the following on behalf of the Class in connection with the three settlements:

- Over several months, negotiated with counsel for Olam, Birdsong, and Golden Peanut, and worked with them to prepare and execute the settlement agreements (Clark Decl. ¶¶ 33-34, 39-41);

- Conducted a bidding process to select a claims administrator and worked with the claims administrator to establish a settlement website for the benefit of the Class (*id*. ¶ 35);

- Selected an escrow agent and prepared and executed the necessary paperwork to facilitate settlement payments (*id*. ¶¶ 33-35, 41);

- Prepared Plaintiffs' motions for preliminary approval and final approval, and supporting papers regarding the Olam and Birdsong settlements, including the related notice papers and proposed orders, and presented those motions to the Court (*id*. ¶¶ 33-38);

- Engaged experienced and renowned mediator Eric Green of Resolutions, LLC, and prepared for and participated in an all-day mediation, which resulted in the settlement with Golden Peanut (*id.* ¶¶ 39-40); and

- Prepared Plaintiffs' motions for preliminary approval and final approval, and supporting papers regarding the Golden Peanut settlement, including the related notice papers and proposed orders, and presented those motions to the Court. *Id*. ¶¶ 41, 44-46).

H. Motion for Attorneys' Fees and Expenses and for Class Representative Service Awards

In its order preliminarily approving the settlement with Golden Peanut, the Court approved the dissemination of notice to Class members (the "Notice"). As required by Fed. R. Civ. P. 23(h), the Notice (copy attached as Exhibit 9) informed Class members that Co-Lead Counsel would request attorneys' fees not to exceed one-third of the Settlement Fund, reimbursement of litigation expenses, and service awards for the Class Representatives for each Class Representative. *See* Notice (Question 14). The Notice explains how Class members can object to Plaintiffs' fee, expense, and service award requests. *Id.* (Question 18). The deadline for objections is July 13, 2021; thus far, no objections have been filed.[10]

Consistent with the Notice provided to Class members (by mail, email, and publication), Class Counsel seeks attorneys' fees in the amount of one-third of the Settlement Fund, or $34,250,000.00, an award of unreimbursed costs and expenses, and service awards for each of the

[10] After the applicable deadline has passed and prior to the Fairness Hearing, Co-Lead Counsel will file a report with the Court on any objections.

Class Representatives in the amount of $40,000.[11] As set forth below, Plaintiffs' request for attorneys' fees, expense reimbursement, and service awards for the Class Representatives is reasonable and should be approved.

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER CONTROLLING LAW.

A. The Settlements Create a Common Fund from Which Percentage-of-the-Fund Is the Appropriate Method for Awarding Attorneys' Fees.

Under Fed. R. Civ. P. 23(h), "[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." As the Supreme Court recognized, "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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The common fund doctrine is based on the inherent powers of the federal court to "prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Id.*

Two methods of calculating attorneys' fees in class actions are: (1) the percentage-of-the-fund method; and (2) the lodestar method. *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260 (E.D. Va. 2009). The percentage-of-the-fund method involves an award based on a percentage of the Class's recovery, set by the court based on several factors. *Id*. The lodestar method requires multiplying the number of hours worked by a reasonable hourly rate, the product of which the Court can then adjust by employing a "multiplier." *Id.*

The Supreme Court has suggested that the percentage-of-the-fund is the appropriate

[11] Plaintiffs are also seeking an award of litigation costs and expenses in the amount of $7,688.02. This is the amount of costs and expenses that were not included in Plaintiffs' initial cost and expense motion (ECF No. 529) and awarded by the Court in its April 8, 2021 Order (ECF No. 591).

method for awarding fees under the common fund doctrine. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class . . . ."). Most federal courts of appeals have also endorsed the percentage-of-the-fund method as an appropriate method for determining an award of attorneys' fees in common fund cases.[12]

"While the Fourth Circuit has not definitively answered this debate, other districts within this Circuit, and the vast majority of courts in other jurisdictions consistently apply a percentage of the fund method for calculating attorneys' fees in common fund cases." *Mills*, 265 F.R.D. at 260; *see, e.g., Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 3:14CV238 (DJN), 2016 WL 1070819, at *5 (E.D. Va. Mar. 15, 2016) ("District Courts within this Circuit have also favored the percentage method."); *Krakauer v. Dish Network, L.L.C.*, No. 1:14-cv-333, 2018 WL 6305785, at *2 (M.D.N.C. Dec. 3, 2018) ("District courts in the Fourth Circuit overwhelmingly prefer the percentage method in common-fund cases . . . ."); *Archbold v. Wells Fargo Bank, N.A.*, No. 3:13-CV-24599, 2015 WL 4276295, at *5 (S.D.W. Va. July 14, 2015) ("[T]here is a clear consensus among the federal and state courts, consistent with Supreme Court precedent, that the award of attorneys' fees in common fund cases should be based on a percentage of the recovery."); *Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 502 (E.D. Va. 1995) ("Although the Fourth Circuit has not yet ruled on this issue, the current trend among the courts of appeal favors the use

[12] *See, e.g., Heien v. Archstone*, 837 F.3d 97, 100 (1st Cir. 2016); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49-50 (2d Cir. 2000); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821-22 (3d Cir. 1995); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515-16 (6th Cir. 1993); *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Camden I. Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1268-70 (D.C. Cir. 1993).

of a percentage method to calculate an award of attorneys' fees in common fund cases."); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 758 (S.D.W. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases.").[13]

These courts recognize that the percentage-of-the-fund method is "more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases." *Strang*, 890 F. Supp. at 503. It also better aligns the interests of class counsel and class members because it ties the attorneys' fees award to the overall result achieved, rather than hours expended by the attorneys. *Thomas v. FTS USA, LLC*, No. 3:13cv825 (REP), 2017 WL 1148283, at *3 (E.D. Va. Jan. 9, 2017), *report and recommendation adopted*, 2017 WL 1147460 (E.D. Va. Mar. 27, 2017); *see also Deem v. Ames True Temper, Inc.*, No. 6:10-CV-01339, 2013 WL 2285972, at *5 (S.D.W. Va. May 23, 2013) ("The percentage method 'is designed to allow courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.'" (quoting *In re Prudential Ins. Co. Am. Sales Litig.*, 148 F.3d 283, 333 (3d Cir. 1998))).

"Some courts incorporate the lodestar analysis into the percentage method by cross-checking the lodestar calculation against the percentage calculation." *Thomas*, 2017 WL 1148283, at *4 (citing *Jones*, 601 F. Supp. 2d at 759; Manual for Complex Litigation § 14.122 (4th ed. 2004)). The lodestar calculation "adds an extra layer of assurance as to reasonableness by ensuring that 'the fee award is still roughly aligned with the amount of work the attorneys contributed.'" *Id.* (quoting *Jones*, 601 F. Supp. 2d at 759).

[13] *See, also,* Brian T. Fitzpatrick, *The Conservative Case for Class Actions*, p. 92, FN. 38 (2019) ("Today, most judges use the percentage method").

Class Counsel's application for the percentage-of-fund method is therefore consistent with the law in this and other circuits. As explained below, the factors courts consider when assessing percentage-of-fund requests demonstrate the reasonableness of Class Counsel's requested fee, which is further confirmed by cross-checking the requested amount against the calculated lodestar.

B. Class Counsel's Fee Request Is Fair and Reasonable Under Fourth Circuit Authority.

"In determining the reasonableness of attorneys' fees, courts look at the following factors: (1) the result obtained for the class; (2) the presence or absence of substantial objections by members of the class to the 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 the plaintiffs' counsel; and (7) awards in similar cases." *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 843 (E.D. Va. 2016). Some district courts in this Circuit have applied a slightly different version of this standard, replacing the sixth factor with public policy considerations. *See, e.g.*, *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-CV-00361, 2018 WL 2382091, at *4 (E.D. Va. Apr. 18, 2018); *Mills*, 265 F.R.D. at 261 (citing, *inter alia*, *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000)).

There is some disagreement as to whether to apply these seven factors, which were adopted from the Third Circuit, *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 & n.1 (3d Cir. 2000), or the 12-factor test from the Fifth Circuit adopted in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)).[14] *See Galloway v. Williams*, No. 3:19-CV-470, 2020 WL 7482191, at *5 (E.D. Va. Dec.

[14] The *Johnson*/*Barber* factors are "(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time

18, 2020) (Payne, J.); 5 Newberg on Class Actions § 15:82 (5th ed.) ("The Fourth Circuit utilized the Fifth Circuit's *Johnson* factors in a statutory fee-shifting case, so some district courts have utilized those factors in setting a percentage in common fund cases, while other district courts have used the Second Circuit's *Goldberger* factors and/or the Third Circuit's *Gunter* factors." (footnotes omitted)). However, many of the *Johnson/Barber* factors overlap with factors in the Third Circuit test or are "subsumed in the calculation of the hours reasonably expended and the reasonableness of the hourly rate." *Galloway*, 2020 WL 7482191, at *6, *10-11; *see also Genworth*, 210 F. Supp. 3d at 843 (using the seven-factor Third Circuit test in evaluating the reasonableness of the requested fee and incorporating the *Johnson*/*Barber* factors into the lodestar cross-check). Notably, "fee award reasonableness factors 'need not be applied in a formulaic way' because each case is different, 'and in certain cases, one factor may outweigh the rest.'" *Boyd v. Coventry Health Care Inc*., 299 F.R.D. 451, 463 (D. Md. 2014) (citations omitted). Given the overlap in the factors, a consideration of the relevant factors under any standard supports Class Counsel's requested fee.

1. Class Counsel Obtained an Excellent Result for the Class.

"The first and most important factor for a court to consider when making a fee award is the result achieved." *Genworth*, 210 F. Supp. 3d at 843; *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("[T]he most critical factor is the degree of success obtained."); *McKnight v. Circuit City Stores, Inc*., 14 F. App'x. 147, 149 (4th Cir. 2001) (same).

Class Counsel's effective and efficient prosecution of this case through fact and expert discovery, class certification, summary judgment (fully briefed), and the completion of trial

limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases." *Barber*, 577 F.2d at 226 n.28.

preparation resulted in settlements totaling $102,750,000, by any measure an excellent result for the Class. Not only does it assure that Class members will receive a substantial cash payment to compensate them for their injuries, but it also eliminates the risk of adverse rulings on summary judgment, at trial, or on appeal. For example, although Plaintiffs presented evidence, including numerous communications between Defendants' employees relating to the Runner pricing, from which they believe a jury could infer a conspiracy, Defendants argued that the depressed Runner prices they offered to farmers were instead a consequence of the 2014 Farm Bill. Defendants asserted that the Farm Bill incentivized farmers to grow more peanuts, which led to an oversupply of Runners and naturally resulting lower prices; in other words, Defendants claimed that the decrease in pricing was not caused by antitrust violations but was the result of natural market conditions created by the Farm Bill. Any or some combination of rulings in Defendants' favor on these issues could have resulted in Plaintiffs and the Class receiving no compensation whatsoever.[15] Under these circumstances, the settlements are an excellent result for the Class.

Notably, Class Counsel achieved this result without the benefit of a prior governmental investigation. Many antitrust class actions—especially those alleging price-fixing—follow a government investigation, where the risk in bringing related private action is comparatively limited. *See, e.g.*, *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 460-61 (D.P.R. 2011) (noting that preceding DOJ investigation and FBI raids mitigated counsel's risk); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 147 (S.D.N.Y. 2010) ("Risk is not uniform in all class actions" and for "certain antitrust class actions filed in the wake of a Department of Justice consent decree . . . . the risk is limited."). Class Counsel investigated this case from the ground up without

[15] Although the Court denied Defendants' *Daubert* motion, Golden Peanut's motion to reconsider the Court's *Daubert* ruling was pending at the time the parties agreed to a settlement in principle.

the benefit of a government investigation, which significantly increased the risk of bringing this action. *See, e.g.*, *In re Auto. Refinishing Paint Antitrust Litig*., MDL No. 1426, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008) ("The risk of nonpayment is even higher when a defendants' *prima facie* liability has not been established by the government in a criminal action.").

Balanced against the many significant risks, and compared to the results achieved in many other price-fixing class action settlements, the settlement value here provides an exceptional result for the Class and supports Class Counsel's request for attorneys' fees.

2. To Date No Class Member Has Objected to Class Counsel's Fee Request.

"A lack of objections by class members as to fees requested by counsel weighs in favor of the reasonableness of the fees." *Genworth*, 210 F. Supp. 3d at 844. As noted above, the Court-approved notice of the Golden Peanut settlement informed Class members that Co-Lead Counsel would request attorneys' fees not to exceed one-third of the Settlement Fund (as well as reimbursement of litigation expenses, and service awards for the Class Representatives). Although the deadline for objections to the Golden Peanut settlement and Class Counsel's fee request has not yet passed, it is notable that no objections have been received thus far, and not a single Class member objected to the Olam and Birdsong settlements.[16]

3. Class Counsel Are Skilled and Efficient Litigators.

The quality of the representation is another significant factor supporting Class Counsel's fee request. *See id.* ("The skill required in complex cases such as this involving massive discovery efforts and complicated issues of fact and law also weighs in favor of supporting the substantial attorneys' fees award in this case."). Class Counsel have substantial experience litigating complex

[16] The deadline for objections is July 13, 2021. Co-Lead Counsel will inform the Court of any objections in advance of the Fairness Hearing.

class actions and antitrust cases.[17] Additionally, "the result achieved is the clearest reflection of petitioners' skill and expertise." *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004). The creation of the $102,750,000 Settlement Fund speaks volumes.

Further, courts often evaluate the quality of the work performed by plaintiff's counsel in light of the quality of the opposition's representation. *See, e.g.*, *Mills*, 265 F.R.D. at 262 (noting that counsel reached a favorable settlement against "experienced and sophisticated defense attorneys"); *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05cv00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007) ("Additional skill is required when the opponent is a sophisticated corporation with sophisticated counsel."). Defendants here were represented by highly skilled and experienced antitrust litigators from some of the leading defense law firms in the United States, two of which are ranked among the Vault Law 100 for most prestigious law firms (https://www.vault.com/best-companies-to-work-for/law/top-100-law-firms-rankings). It was in the face of such skilled and vigorous opposition that Class Counsel obtained the benefits for the Class that they did. This factor weighs in favor of the requested fee award.

4. The Duration and Complexity of This Litigation Supports the Requested Fee.

Courts recognize that "there are good reasons to award higher-than-typical fees when the issues in a case are particularly 'novel and complex.'" *Good v. W. Virginia-Am. Water Co.*, No. 14-1374, 2017 WL 2884535, at *25 (S.D.W. Va. July 6, 2017). As to the complexity of the case, "'[a]n antitrust class action is arguably the most complex action to prosecute. . . . The legal and

[17] *See* Memorandum in Support of Plaintiffs' Motion to Appoint Interim Co-Lead Class Counsel and Liaison Counsel, supporting declarations of Brian D. Clark, Kimberly A. Justice, and Wyatt B. Durette, Jr., and firm resumes attached as exhibits thereto (ECF Nos. 44, 44-1 through 44-2 through 44-4 through 44-7).

factual issues involved are always numerous and uncertain in outcome.'" *Linerboard*, 2004 WL 1221350, at *10 (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)).

"In evaluating the complexity and duration of the litigation, courts consider not only the time between filing the complaint and reaching settlement, but also the amount of motions practice prior to settlement and the amount and nature of discovery." *Jones*, 601 F. Supp. 2d at 761. As this Court noted, Class Counsel not only worked extremely hard in pursuit of the Class's claims, but did so efficiently, achieving the settlements in less than two years of hard-fought litigation.[18] Since filing this case in September 2019, Class Counsel (1) fully and successfully briefed Defendants' joint motion to dismiss, (2) completed all fact and expert discovery under an aggressive schedule, (3) successfully briefed Plaintiffs' class certification motion; (4) fully briefed oppositions to Defendants' summary judgment motions; and (5) were fully prepared to begin a three-week trial. This case's complexity and duration strongly support the reasonableness of Class Counsel's request.

5. Class Counsel Faced the Risk of Nonpayment.

Class Counsel undertook this case on a wholly contingent basis and ran a substantial risk of no recovery whatsoever. The risk of receiving little or no recovery—which was magnified here because there was no preceding DOJ investigation or prosecution—is an important factor courts in this Circuit consider when awarding attorneys' fees. *See, e.g.*, *Mills*, 265 F.R.D. at 263 ("[C]ounsel bore a substantial risk of nonpayment . . . . [t]he outcome of the case was hardly a

[18] *See* Dec. 16, 2020 Prelim. Approval Hr'g Tr. 13:25-14:4 ("[T]he Court is aware that there are so many entries in the ECF reflecting the vigorous nature with which [Class Counsel] have pursued this litigation, that the Court has no doubt that counsel has definitely been working this case."); March 25, 2021 Fairness Hr'g Tr. 6:3-4 ("The Court appreciates the efficiency and speed."), 11:19-20 ("I want to thank counsel for efficiently moving through this case . . . .").

foregone conclusion, but nonetheless counsel accepted representation of the plaintiff and the class on a contingent fee basis, fronting the costs of litigation." (citation omitted)); *Phillips v. Triad Guar. Inc.*, No. 1:09CV71, 2016 WL 2636289, at *6 (M.D.N.C. May 9, 2016) (finding fee award justified where, "Lead Counsel bore the risks involved with surviving dispositive motions, obtaining class certification, proving liability, causation, and damages, prevailing with experts, and litigating through trial and possible appeals" knowing "that the only way [they] would be compensated was to achieve a successful result"). In addition to the risk of non-recovery at trial, "any victory at trial in this case would have to withstand appeals which could reverse or limit any award by a jury." *Genworth*, 210 F. Supp. 3d at 844. Courts have also recognized that there is a greater risk of nonpayment where an antitrust class action "did not benefit from the fruits of a prior government investigation," as is the case here. *See Linerboard*, 2004 WL 1221350, at *11. In the face of these risks, Class Counsel vigorously represented Plaintiffs and obtained a substantial recovery on behalf of the Class.

Additionally, Class Counsel incurred $1,875,614.86 in total expenses to prosecute the litigation, which would not have been reimbursed absent a successful result. *See Mills*, 265 F.R.D. at 263 (noting uncertainty of the case outcome, defendants' rigorous defense, and that "Lead Counsel devoted thousands of hours on the case and fronted nearly $3 million in costs in the process" to conclude that factor weighed in favor of awarding the requested fee); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 516 (W.D. Pa. 2003) ("Aside from investing their time, counsel had to front copious sums of money . . . . Thus, the risks that counsel incurred in prosecuting this case were substantial and further support the requested fee award."). The risk of nonpayment weighs heavily in favor of the requested fee award.

6. Class Counsel Necessarily Devoted 20,866.3 Hours Prosecuting this Action.

Class Counsel devoted considerable time and effort researching, investigating, and litigating this case. Clark Decl. ¶¶ 5, 8-46. As set forth in the accompanying Clark Declaration (and Class Counsel declarations attached as Exhibits 3-8), through May 31, 2021, Class Counsel devoted 20,866.3 hours to prosecuting this case, resulting in a total lodestar of $11,716,258.50. *Id*. ¶ 54. Additionally, more than 556.5 hours were devoted to this case by Class Counsel but are not being submitted for the lodestar calculation consistent with the Court's rulings in prior cases (and the time and expense protocol put into place by Co-Lead Counsel). *Id*. ¶ 59. Class Counsel could have spent those attorney hours litigating other matters, which weighs in favor of awarding the requested fees. *See, e.g.*, *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758, at *4 (M.D.N.C. Sept. 25, 2019) (explaining that the "attorneys and staff have worked over 12,500 hours since it began" and "spent over $3 million from their own pockets litigating this case," which "was time and money the attorneys could have directed to other simpler and less risky opportunities" supported the fee request); *Genworth*, 210 F. Supp. 3d at 844-45 (finding that "counsel for plaintiffs devoted an enormous amount of time and effort into this case, totaling more than 66,000 hours and investing more than three million dollars in fees towards consulting experts" to be among the considerations that "support the attorneys' fees award"). The prodigious time and resources Class Counsel committed to this case weigh in favor of the requested fee.

7. Public Policy Considerations Support the Requested Fee.

"[A] central factor in fixing the amount of attorneys' fees is to ensure that competent, experienced counsel will be encouraged to undertake the often risky and arduous task of representing a class . . . ." *Mills*, 265 F.R.D. at 260. "Congress has expressed its belief that private antitrust litigation is one of the surest weapons for effective enforcement of the antitrust laws."

Minnesota Mining & Mfg. Co. v. New Jersey Wood Finishing Co., 381 U.S. 311, 318 (1965). In complex cases, fee awards have been enhanced by courts "to provide an incentive for competent lawyers to pursue such actions in the future." *In re Microstrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778, 788 (E.D. Va. 2001). Public policy "generally favors attorneys' fees that will induce attorneys to act and protect individuals who may not be able to act for themselves but also will not create an incentive to bring unmeritorious actions." *Jones*, 601 F. Supp. 2d at 765 (citing *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 142 (S.D.N.Y. 2008); *Microstrategy*, 172 F. Supp. 2d at 789 n.36). "The cost and difficulty [of bringing a meritorious complex class action] naturally stands as a deterrent from doing so, and one object of an award of attorneys' fees should be to counteract this deterrence and incentivize competent attorneys to pursue these cases when necessary." *Mills*, 265 F.R.D. at 263; *see also In re Se. Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155387, at *5 (E.D. Tenn. May 17, 2013) ("[F]ailing to fully compensate class counsel for the excellent work done and the various substantial risks taken would undermine society's interest in the private litigation of antitrust cases."). Public policy considerations support awarding the requested fee.

8. One-Third of the Settlement Fund Is a Typical and Reasonable Fee Award for Cases Similar to this One.

A fee award of one-third of the Settlement Fund reflects a real-world arm's length transaction between the Class and Class Counsel and is a generally accepted percentage in the Fourth Circuit, as evidenced by Judge Gibney's recent ruling in the similar nationwide price-fixing class action *In re: Interior Molded Doors Antitrust Litig.*, No. 3:18-cv-00718-JAG (E.D. Va. June 3, 2021), in which he awarded class counsel attorneys' fees of one-third of a $61,600,000 settlement, plus interest (a copy of the order is attached as Clark Decl. Ex. 10); *see also Seaman*, 2019 WL 4674758, at *3; *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318(RDB), 2013

WL 6577029, at *1 (D. Md. Dec. 13, 2013); *In re Polyester Staple Antitrust Litig.*, MDL 3:03CV1516, Order and Final Judgment ¶ 10 (W.D.N.C. June 24, 2008) (a copy of the order is attached as Clark Decl. Ex. 11. Here, the requested fee award is 1) well within the acceptable range of attorneys' fee awards in protracted, complex, and expensive litigation such as this, and 2) justified by the remarkable results obtained for the Class and the risks faced by Class Counsel.

Class Counsel's fee request is consistent with awards in similar cases. District courts in this Circuit have frequently found a percentage award of one-third of a common fund to be within the range of reasonable percentage awards. *See, e.g.*, *In re: Allura Fiber Cement Siding Litig.*, 2:19-mn-02886-DCN, 2021 WL 2043531, at *4 (D.S.C. May 21, 2021) ("Courts in the Fourth Circuit have held that attorneys' fees in the amount of 1/3 of the settlement fund are reasonable."); *Muhammad v. Nat'l City Mortg., Inc.*, No. 2:07-0423, 2008 WL 5377783, at *6 (S.D.W Va. Dec. 19, 2008) ("[T]he requested award of one-third of the common fund, plus costs, is reasonable under the circumstances of this case."); *Smith*, 2007 WL 119157, at *2 ("In this jurisdiction, contingent fees of one-third . . . are common.").

In particular, "[a]n award of one-third is also common in antitrust class actions." *Seaman*, 2019 WL 4674758, at *3; *see, e.g.*, *In re: Interior Molded Doors Antitrust Litig.*, No. 3:18-cv-00718-JAG (awarding one-third of $61,600,000 settlement); *In re Anadarko Basin Oil & Gas Lease Antitrust Litig.*, No. CIV-16-209-HE, 2019 WL 1867446, at *2 (W.D. Okla. Apr. 25, 2019) (awarding one-third of $6,950,000 settlement); *In re Domestic Drywall Antitrust Litig.*, No. 13-MD-2437, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) (awarding one-third of $190,059,056 settlement); *In re: Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *5 (D. Kan. July 29, 2016) (awarding one-third of $835 million settlement, noting "a one-third fee is customary in contingent-fee cases"); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214,

2014 WL 7781572, at *3 (N.D. Ill. Oct. 22, 2014) (awarding 33% of $163.9 million settlement); *In re OSB Antitrust Litig.*, 2:06-cv-00826-PD, Order at 3 (E.D. Pa. Dec. 9, 2008), ECF No. 947 (approving requested one-third of $120 million settlement fund), attached as Clark Decl. Ex. 12.

As shown in the following chart, recent antitrust class actions in this Circuit have awarded one-third of the common fund in attorneys' fees.

Case	Settlement Amount	Attorney Fee Award	Percentage Fee Award
In re: Interior Molded Doors Antitrust Litig., No. 3:18-cv-00718-JAG (E.D. Va. June 3, 2021)	$61.6 million	$20.53 million	33 1/3%
Seaman v. Duke University, 2019 WL 4674758 (M.D.N.C. Sept. 25, 2019)	$54.5 million	$18.16 million	33 1/3%
In re Celebrex (Celecoxib) Antitrust Litig., 2018 WL 2382091 (E.D. Va. 2018)	$94 million	$30.72 million	33 1/3%
In re Titanium Dioxide Antitrust Litig., 2013 WL 6577029 (D. Md. Dec. 13, 2013)	$163.5 million	$54.5 million	33 1/3%
In re Polyester Staple Antitrust Litig., MDL 3:03CV1516, Order and Final Judgment ¶ 10 (W.D.N.C. June 24, 2008)	$33M	$10.89M	33%

Additionally, "[t]he percentage-of-the-fund method of awarding attorneys' fees in class actions should approximate the fee which would be negotiated if the lawyer were offering his or her services in the private marketplace." *In re Remeron Direct Purchaser Antitrust Litig.*, No. CIV.03-0085 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." *Id.*; *see also Montague v. Dixie Nat'l Life Ins. Co.*, No. 3:09-00687-JFA, 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011) ("A 33% fee award from the common fund in this case is consistent with

what is routinely privately negotiated in contingency fee litigation.").[19] Given that "a one-third contingency is standard in individual litigation; in antitrust litigation, a higher contingency would be reasonable, given the complexities and risks involved." *Mylan Pharm., Inc. v. Warner Chilcott Pub. Ltd. Co.*, No. CV 12-3824, 2014 WL 12778314, at *7 (E.D. Pa. Sept. 15, 2014). Consideration of the awards in similar cases supports the requested award of one-third of the Settlement Fund.

Other courts have determined that a higher percentage rate is appropriate where discovery has been completed and the case is ready for trial. *See Trombley v. Bank of America Corp.*, No. 08-cv-456-JD, 2012 WL 1599041, at *3 n.3 (D.R.I. May 4, 2012) ("Higher percentage rates for attorneys' fees generally are reserved for cases that settle after the completion of formal discovery when the case is close to trial.").[20] Class Counsel reached settlements with Olam and Birdsong *after* the close of discovery and continued preparing for trial against Golden Peanut; and, at the time of the Golden Peanut settlement, Class Counsel was ready for trial. Accordingly, the one-third award requested by Class Counsel is appropriate.

C. A Cross-Check of Class Counsel's Lodestar Confirms the Reasonableness of the Fee Request.

Courts often supplement their analysis of the percentage-of-fund method with the lodestar

[19] A one-third fee is a standard percentage in many fee agreements, including large, complex non-class cases. *See* Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks,* 65 Fordham L. Rev. 247, 248 (1996) (noting that "standard contingency fees" are "usually thirty-three percent to forty percent of gross recoveries"); *see also Blum,* 465 U.S. at 903 (Brennan, J., concurring) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.").

[20] *See also Puerto Rican Cabotage*, 815 F. Supp. 2d at 463 ("[T]he Court maintains that attorneys' fee awards reasonably close to 33 1/3% should be reserved for cases which actually proceed to trial or settle on the eve of trial. The instant case did not even reach the discovery phase much less approach a trial date."); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1113 (D. Kan. 2018) ("The Court finds that a one-third fee is customary in contingent-fee cases (factor 5), or is even on the low side, as that figure is often higher in complex cases or cases that proceed to trial.").

cross-check. "The purpose of a lodestar cross-check is to determine whether a proposed fee award is excessive relative to the hours reportedly worked by counsel, or whether the fee is within some reasonable multiplier of the lodestar." *Boyd*, 299 F.R.D. at 467. "A lodestar cross-check first computes the plaintiffs' attorneys' reasonable hourly rate for the litigation and multiplies that rate by the number of hours dedicated to the case," and "then compares that figure with the attorneys' fees award, typically resulting in a positive multiplier." *Genworth*, 210 F. Supp. 3d at 845. When using the lodestar as a cross-check, courts "take a somewhat truncated approach to the lodestar analysis" and "generally do not apply the same scrutiny in a lodestar cross-check as they do when using the lodestar method to calculate the fee." *Thomas*, 2017 WL 1148283, at *6; *see also Jones*, 601 F. Supp. 2d 765 (explaining that when "using the lodestar method as a cross-check," the court "need not apply the 'exhaustive scrutiny' normally required by that method").

A lodestar cross-check in this case supports the requested fee. Despite the risks, complexities, and challenges posed by this litigation, Class Counsel invested 20,866.3 hours of attorney and other professional time on behalf of the Class from case inception through May 31, 2021. (Clark Decl. ¶ 54; Clark Decl. Exs. 2-9). The work by Class Counsel was non-duplicative and performed at the direction of Co-Lead Counsel, who also audited and confirmed the validity of Class Counsels' time and expense submissions and removed unapproved hours (and hours inconsistent with the Court's fee orders in prior cases) and expenses where appropriate. *Id*. at ¶¶ 50, 52, 59.

The historical hourly rates charged by Class Counsel are reasonable, based on each person's position, experience level, and location (and Co-Lead Counsel capped the hourly rate of attorneys conducting first-level document review at $350), and have been approved by multiple

courts in similar antitrust class actions. (Clark Decl. ¶¶ 49-50).[21] These rates are comparable to the rates charged by other law firms with similar experience, expertise, and reputation, for similar services in the nation's leading legal markets. *See, e.g.*, *Seaman*, 2019 WL 4674758, at *5 (listing comparable rates from national class action firm based in San Francisco).[22]

Based on Class Counsel's lodestar of $11,716,258.50, one-third of the Settlement Fund would result in a fee award of $34,250,000, which would be a multiplier of 2.92. Such a multiplier is well within accepted ranges for antitrust class actions generally, and is consistent with the fee rulings in similar cases within the Fourth Circuit. Indeed, "[d]istrict courts within the Fourth Circuit have regularly approved attorneys' fees awards with 2–3 times lodestar multipliers."

[21] Co-Lead Counsel elected to use lower, historical rates even though cases in the Fourth Circuit have deemed it appropriate to use current rates to account for the risk and delay in payment. *See Daly v. Hill*, 790 F.2d 1071, 1081 (4th Cir. 1986); *Reaching Hearts Int'l, Inc. v. Prince George's Cty.*, 478 F. App'x 54, 60 (4th Cir. 2012).

[22] Co-Lead Counsel recognize that in some instances, Class Counsel's rates may be higher than the prevailing rates in Norfolk, Virginia. While a reasonable hourly rate is generally calculated by looking at the local market rates, in cases involving "complex issues requiring specialized experience"—such as this case—"it is reasonable to look beyond local rates in calculating the reasonable rate for a lodestar comparison." *Seaman*, 2019 WL 4674758, at *5; *see also Sims v. BB&T Corp.*, 15-cv-732, 2019 WL 1993519, at *2 (M.D.N.C. May 6, 2019) (stating that "a national market rate is appropriate for matters involving complex issues requiring specialized expertise"); *Kruger v. Novant Health, Inc.*, 1:14CV208, 2016 WL 6769066, at *4 (M.D.N.C. Sept. 29, 2016) ("This court finds the relevant market rate for cases such as the present case to be a nationwide market rate."). Class Counsel's hourly rates reflect their national class action practices specializing in complex, high-risk antitrust cases and are the rates they customarily charge in these types of cases. *See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 689 n.12 (D. Md. 2013) (finding hourly rates to be reasonable because, "while somewhat high for this district, [they] are within a reasonable range for firms with national class action practices"). Class Counsel's rates also likely compare favorably with those of Golden Peanut's and Olam's lead counsel, global law firms Kirkland & Ellis LLP and Latham & Watkins, LLP, based in Chicago and San Francisco respectively. *See, e.g.*, First Interim Fee Appl. of Kirkland & Ellis at 9-10 & 62, *In re: Barneys New York, Inc.*, No. 19-cv-36300 (S.D.N.Y. Bankr. Nov. 18, 2019), ECF No. 534 (listing average hourly rates for Kirkland & Ellis in bankruptcy matter as $1,332 for partner and $877 for associate, describing these rates as "equivalent to the hourly rates and corresponding rate structure used by K&E for other restructuring matters, as well as similar complex . . . litigation matters," and stating that "[t]he rates and rate structure reflect that such . . . complex matters are national in scope and typically involve great complexity, high stakes, and severe time pressures").

Genworth, 210 F. Supp. 3d at 845; *see, e.g.*, *Titanium Dioxide*, 2013 WL 6577029 (court awarded attorneys' fees of one-third of settlement fund, which resulted in a multiplier of 2.39); *In re Massey Energy Co. Sec. Litig.*, 3:12–cv–004560, Order Awarding Attorneys' Fees and Expenses at 2 (S.D.W. Va. June 4, 2014), ECF No. 203 (approving a 2.9 times lodestar multiplier); *Microstrategy*, 172 F. Supp. 2d at 789 (approving a 2.6 times lodestar multiplier); *Deloach v. Philip Morris Cos.*, No. 1:00CV01235, 2003 WL 23094907, at *11 (M.D.N.C. Dec. 19, 2003) (approving a 4.45 times lodestar multiplier); *Seaman*, 2019 WL 4674758, at *6 (approving a 2.89 times lodestar multiplier); *see also Singleton*, 976 F. Supp. 2d at 689 ("Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee."). Further, the lodestar figure above does not include the substantial amount of time that Class Counsel will be required to devote to overseeing the claims administration process and the distribution of settlement funds to the Class. These additional hours, for which Class Counsel will not receive any additional compensation from the Settlement Fund, effectively reduce the multiplier, and should be considered in evaluating the reasonableness of the fee request.

Consideration of all the lodestar cross-check factors confirms the reasonableness of the requested fee.

IV. CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF LITIGATION EXPENSES IS REASONABLE.

Class Counsel also request reimbursement of reasonable and necessary litigation costs in the amount of $7,688.02. As set forth in the Clark Decl., ¶¶ 62-64, $3,052.78 of these costs relate to three invoices that were received after the filing and amendment of Plaintiffs' initial motion for an award of costs and expenses and thus were not part of the costs and expenses previously awarded by the Court on April 8, 2021. The remaining $4,635.24 in costs relate to expenses paid directly by Class Counsel firms after the cut-off date for firm-specific costs that were included in

Plaintiffs' first request for reimbursement. *Id*.

"It is well-established that plaintiffs who are entitled to recover attorneys' fees are also entitled to recover reasonable litigation-related expenses as part of their overall award." *Singleton*, 976 F. Supp. 2d at 689. Such costs may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988) (internal quotations omitted).

Class Counsel's request for the reimbursement of $7,688.02 in expenses from the Settlement Fund is reasonable and should be approved.

V. THE REQUESTED SERVICE AWARDS ARE REASONABLE.

Plaintiffs also request approval for a $40,000 service award for each of the six Class Representatives. "At the end of a successful class action, it is common for trial courts to compensate class representatives for the time and effort they invested to benefit the class." *Reynolds v. Fidelity Invs. Institutional Operations Co.*, 1:18-CV-423, 2020 WL 92092, at *4 (M.D.N.C. Jan. 8, 2020). Service awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 578 (E.D. Va. 2016) (quoting *Manuel*, 2016 WL 1070819, at *6). Among the factors to be considered in determining the reasonableness of a service award are "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Manuel*, 2016 WL 1070819, at *6 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)). Service awards are particularly appropriate where, as here, "there was no preceding governmental action alleging a conspiracy and taking a high-profile role threatened to jeopardize class representatives' relationships with their suppliers."

Linerboard, 2004 WL 1221350, at *18.

Here, in a unique circumstance, it was the Class Representatives, not a government agency, that helped initiate this case, followed by important assistance in the investigation and prosecution of Plaintiffs' claims against Defendants. Put simply, this case would not exist without the Class Representatives, all of whom spent significant time assisting this case. They (1) responded to written discovery and collected, reviewed, and produced documents relating to their claims; (2) prepared for and sat for lengthy depositions by defense counsel; (3) reviewed and approved the complaint and other substantive pleadings; and (4) considered and approved the settlements. Clark Decl. ¶¶ 65-75. The Class Representatives pursued the litigation knowing that Defendants might retaliate against them, thus risking their livelihoods. They assumed this risk and responsibility to benefit the entire Class, even though their claims were not among the largest. *See Archbold*, 2015 WL 4276295, at *6 ("Had the Plaintiff not stepped forward to prosecute these claims, the rest of the class would have received nothing."). By stepping forward and diligently performing their duties as Class Representatives, they have performed a valuable public service that will benefit thousands of peanut farmers.

The requested service awards are also in accord with amounts approved in other class action litigations in this Circuit and around the country, including most recently in the *Interior Molded Doors Antitrust Litig.*, where Judge Gibney approved $75,000 service awards to each class representative. *See* Clark Decl. Ex. 10. *See, e.g.*, *Seaman*, 2019 WL 4674758, at *7 (awarding class representative $125,000); *Celebrex*, 2018 WL 2382091, at *5 (three class representatives each awarded $100,000); *Titanium Dioxide*, 2013 WL 6577029, at *1 (one class representative awarded $125,000 and two class representatives awarded $25,000 each); *see also In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02555509-LHK, 2015 WL 5158730, at *17 (awarding one class

representative $140,000 and four class representatives $100,000 each); *Marchbanks Truck Serv. v. Comdata Network, Inc.*, No. 07-1078-JKG, 2014 WL 12738907, at *3-4 (E.D. Pa. July 14, 2014) (awarding $150,000 to one class representative and $75,000 each to two others).

VI. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that the Court: (1) award Class Counsel one-third of the Settlement Fund as attorneys' fees; (2) order reimbursement of litigation expenses incurred by Class Counsel in the amount of $7,688.02; and (3) award each Class Representative a service award of $40,000.

Dated: June 7, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically email notification of such filing to all counsel of record.

To the best of my knowledge, there are no other attorneys or parties who require service by U.S. Mail.

Dated: June 7, 2021

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Liaison Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically e-mail notification of such filing to all counsel of record.

To the best of my knowledge, there are no other attorneys or parties who require service by U.S. Mail.

/s/ Kevin J. Funk
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