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SUPPLY LLC, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

ALTUGLAS LLC and TRINSEO LLC,

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JANUARY TERM 2024

CASE NO.: 00060

CLASS ACTION

**[Proposed] ORDER GRANTING PLAINTIFFS' CO-LEAD CLASS COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
LITIGATION COSTS AND EXPENSES, AND SERVICE AWARDS TO THE CLASS
REPRESENTATIVES**

AND NOW, this _____ day of _____, 2024, upon consideration of Plaintiffs'

Counsel's Motion for an award of attorneys' fees, reimbursement of litigation costs and expenses, and service awards to the Class Representatives in the above-captioned class action, it is hereby **ORDERED** as follows:

1. The Court awards Plaintiffs' Counsel, Berger Montague P.C., Kohn, Swift & Graf, P.C., Levin, Sedran & Berman LLP, and Spector, Roseman & Kodroff, P.C. attorneys' fees of \$900,000.00 which is one-third of the \$2.7 million Settlement Fund.
2. The Court awards Plaintiffs' Counsel \$18,034.13 in litigation costs and expenses from the Settlement Fund.
3. The Court awards a \$2,000 service award to each of the four Class Representatives, Timothy McGraw, Emily Cohen, Danielle Byrd, and Greenhill Supply LLC, from the Settlement Fund.

BY THE COURT:

CRUMLISH, III, J.

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JANUARY TERM 2024

CASE NO.: 00060

CLASS ACTION

**MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD CLASS COUNSEL'S MOTION
FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION
COSTS AND EXPENSES, AND SERVICE AWARDS TO THE CLASS
REPRESENTATIVES**

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I. INTRODUCTION

Plaintiffs' Co-Lead Class Counsel¹ attained a \$2.7 million non-reversionary cash settlement on behalf of a Settlement Class² with Defendants Altuglas LLC and Trinseo LLC. This Settlement is for the economic loss claims of individuals and entities arising out of the accidental release of chemicals into the Delaware River from Defendants' facility in March 2023 and the attendant public advisories and publicity about the spill and the use of bottled water.

The Settlement is an excellent result for the Class, because achieving an amount equal to or better than the \$2.7 million settlement through continued litigation faced substantial hurdles, including because, although threatened, Settlement Class Members' drinking water was never contaminated. Defendants also deny that they violated the law and were vigorously defending themselves.

On March 15, 2024, this Court entered an Order Preliminarily Approving Settlement and Providing for Notice to the Settlement Class ("March 15 Order"). In the March 15 Order the Court set May 17, 2024, as the Notice Date, and set June 17, 2024 as the deadline for Co-Lead Class Counsel to file a request for attorneys' fees, reimbursement of litigation costs and expenses, and service awards for the Class representatives. On May 17, 2024, the Settlement Administrator implemented the Notice Plan, including mailing the Summary Postcard Notice to over 600,000 addresses.

So far there has been a positive reaction to the Settlement. As of June 15, 7,436 total claims have been received compared to only 18 requests for exclusion, and no objections.

¹ The Court appointed Berger Montague PC, Kohn, Swift & Graf, P.C., and Levin, Sedran & Berman LLP as Co-Lead Class Counsel. March 15 Order at ¶4. Co-Lead Class Counsel and the firm of Spector, Roseman & Kodroff, P.C. are referred to herein as Plaintiffs' Counsel.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

Plaintiffs' Co-Lead Class Counsel now respectfully move the Court for an order awarding: 1) their attorneys' fees of one-third of the Settlement Fund created through their efforts on behalf of the Settlement Class, 2) reimbursement of \$18,034.13 in litigation costs and expenses, and 3) a \$2,000 service award to each of the four Class Representatives, Timothy McGraw, Emily Cohen, Danielle Byrd, and Greenhill Supply LLC, from the Settlement Fund. For the reasons set forth herein, Co-Lead Class Counsel submit that the requested fee, expense, and service awards are reasonable and fair under the circumstances and consistent with well-established precedent concerning such awards in class action litigation. Plaintiffs' Counsel, accordingly, respectfully requests that the Court grant this motion.

II. BACKGROUND OF THE CASE

On March 24, 2023, Defendants' chemical plant in Bristol, Pennsylvania released latex emulsion solution into Otter Creek, a tributary of the Delaware River. The latex solution contained butyl acetate, ethyl acetate, and methyl methacrylate. These chemicals migrated downstream and into the Delaware River. The release of chemicals resulted from an "equipment failure" at Defendants' facility. The spill occurred approximately eight miles upstream from the Baxter Water Treatment Plant (the "Baxter Plant"), which supplies drinking water to much of the City of Philadelphia. On March 26, 2023, as a direct response to Defendants' chemical spill, the City of Philadelphia sent a mobile public safety alert to phones throughout Philadelphia advising residents to use bottled water until further notice instead of the potentially contaminated tap water sourced from the Delaware River.

The news media widely reported on the chemical spill and the advisories, informing the public of the City's recommendation to use bottled water instead of tap water. Plaintiffs allege that the chemical spill and the related advisories regarding and publicity about the spill caused

residents and businesses to purchase bottled water and incur related expenses that they would not have incurred absent the spill. At the time, the Plaintiffs and the other residents and businesses in the City had no knowledge of how long the situation might last, or if their drinking water would remain free of contamination.

Over the following hours and days, new reports indicated that the tap water that had already been processed by the Baxter Plant before the spill was safe to drink for a limited amount of time. The first report stated that tap water was safe until 11:59 p.m., Monday, March 27, 2023. A subsequent report stated that tap water was safe until 3:30 p.m., Tuesday, March 28, 2023. A third report stated that tap water was safe until 11:59 p.m., Wednesday, March 29, 2023. Each of these messages reasonably implied that the municipal water supply might not be safe after the stated time. The City sent these messages to Philadelphia residents as a direct response to Defendants' alleged negligence in causing the chemical spill and risk to the City's supply of drinking water.

Because of the chemical spill and related notices to the public, the Settlement Class Members incurred costs in purchasing bottled water as well as additional expenses including, for example, transportation costs to travel to stores to purchase bottled water and the value of time spent doing so. Additionally, affected businesses were alleged to have experienced lost revenues and lost profits.

III. PROCEDURAL HISTORY

Plaintiffs filed a class action complaint against Defendants in the Court of Common Pleas of Philadelphia County on March 29, 2023. The complaint asserted Pennsylvania state law causes of action for negligence, private nuisance, and public nuisance on behalf of a proposed class of persons and entities that reside in the area served by the Baxter Plant.

On May 12, 2023, Defendants filed a Notice of Removal to Federal Court, asserting subject matter jurisdiction pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Defendants then filed a motion to dismiss the removed case on May 19, 2023, in which they argued that the Federal Court should dismiss the negligence count under the economic loss doctrine. Defendants also argued that the nuisance claims were deficient. Plaintiffs filed their opposition to Defendants’ motion to dismiss on June 2, 2023. Defendants filed their reply on June 12, 2023, and Plaintiffs filed a sur-reply on June 20, 2023.³ A very real chance existed that the Federal Court would dismiss some or all of Plaintiffs’ claims.

Plaintiffs opposed removal and on June 2 filed a Motion to Remand the case based on CAFA’s home state and local controversy exceptions. Defendants opposed the remand motion and Plaintiffs filed their reply brief on June 30, 2023. Although Plaintiffs believed the removal was improper, there existed the possibility that the Federal Court would not remand the action to this Court.

While those motions were pending, the Parties began settlement negotiations. On the Parties’ initiative, and after the exchange and review of informal discovery, they engaged in a full-day mediation before the respected mediator Hon. Diane M. Welsh (Ret.) of JAMS Philadelphia, which ultimately culminated in the Settlement Agreement. After the mediation, the Parties continued to negotiate additional details and draft the Settlement Agreement and related orders and notices. Plaintiffs’ Counsel also worked with Defendants, and the Settlement

³ On June 8, 2023, the Parties filed a joint status report in the removed case pursuant to Rule 26(f) that included a proposed discovery and class certification schedule. The Parties exchanged initial disclosures on June 23, 2023. Further, Plaintiffs drafted and sent Defendants with written discovery, including Requests for Production and Interrogatories.

Administrator regarding appropriate notice to the Settlement Class members and how inquiries from Class members and claims would be handled.

The Settlement Agreement was executed on December 29, 2023. Consistent with that agreement, Plaintiffs voluntarily dismissed the case in Federal Court and, on January 2, 2024, refiled their case in this Court with an additional class representative, Greenhill Supply LLC.

On January 3, 2024, Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement was accepted for E-Filing by this Court. Plaintiffs' Motion was filed together with a Memorandum of Law in Support, a Copy of the Settlement Agreement (with its Exhibits), a Declaration in connection with the Proposed Notice Plan, and a Proposed Order.⁴

On January 23, 2024, the Parties filed a stipulation agreeing to suspend Defendants' deadline to plead, move, or otherwise respond to the complaint while Plaintiffs' Preliminary Approval Motion was pending before this Court. The Court approved that stipulation on February 6, 2024.

Also, after this Court entered its Class Action Initiation Order, the Parties conferred regarding the Case Management Memorandum and the scheduled April 5, 2024, Zoom Case Management Conference. The Parties agreed that resolution of Plaintiffs' Unopposed Settlement Motion was the only issue pending in the litigation. Plaintiffs, thereafter, filed a Case Management Conference and Supplemental Case Management Conference Memorandum on February 28, 2024. This Court then signed the March 15 Order preliminarily approving the Settlement.

⁴ The Settlement Agreement is also available on the Settlement website at (<https://www.phillywatersettlement.com/>).

IV. THE SETTLEMENT

The Settlement Agreement preliminarily approved by the Court by the March 15 Order sets forth the details of the Settlement, including the compensation for economic losses available to Settlement Class Members, the Settlement Class definition, the (now implemented) Notice Plan, and the claims procedure that is currently being utilized by Settlement Class Members and the Settlement Administrator. The Settlement was negotiated at arm's length, after mediation-related discovery, and in good faith with the assistance of an experienced mediator, the Hon. Diane M. Welsh (Ret.) of JAMS Philadelphia.

The Settlement provides a non-reversionary \$2.7 million to settle economic loss claims by Settlement Class Members resulting from the chemical spill and the advisories and publicity regarding using bottled water in lieu of the potentially contaminated public water supply. Settlement Agreement Section IV, ¶ 3-6. The Settlement Class definition captures those most likely to have been affected economically from the release and resulting public announcements. The Settlement Class is defined as “all persons that resided in, or entities that operated a physical business location in, the Impacted Area during the Relevant Time Period.” March 15 Order at ¶3.⁵ The Impacted Area is comprised of geographic areas for which the Baxter Plant provides drinking water, located east of the Schuylkill River, and covering 38 Zip Codes that the City of Philadelphia Water Department identified that could potentially have been affected by the chemical spill. Settlement Agreement, ¶ 1(Q).

⁵ The Settlement Class definition excludes: (i) governmental entities; (ii) counsel of record for the Parties; (iii) Defendants' officers, directors, and employees; (iv) any judge to whom the Litigation is assigned and any mediator in this Litigation, and their respective staffs.” March 15 Order at ¶3.

The claims process is streamlined and designed to be easy for Settlement Class Members to submit claims. To receive a \$25 Base Payment⁶, Settlement Class Members need only timely submit a valid Claim Form attesting that they: 1) resided in or had a physical business location in the Impacted Area in March 2023; 2) suffered an economic loss as a result of the release of chemicals from the Altuglas chemical plant in Bristol, Pennsylvania into the Delaware River in March 2023, or because of the public notice and drinking water advisories issued in connection with that release; and 3) have not already been compensated by another person, or insurance company for the losses they are seeking to recover. Absent certain limited circumstances,⁷ Settlement Class Members need not submit additional documentation to receive a Base Payment Amount. Settlement Agreement, Exh. A (Claim Form).⁸

In addition, Settlement Class members may submit proof of economic harm above the amount of the Base Payment. To be eligible for additional compensation, a Settlement Class Member must demonstrate through the submission of reasonable documentary proof that the Settlement Class Member suffered economic harm (meaning non-reimbursed out-of-pocket expenses or business loss) more than the amount of the Base Payment. Settlement Agreement, ¶¶ 1(Z), 4-6, and Ex. A at Part II.

Defendants did not agree to pay Class Counsel's request for attorneys' fees and costs, and Plaintiffs' service awards separately. Even so there was no discussion of attorneys' fees,

⁶ The Base Payment is initially set at \$25. The Base Payment Amount may be adjusted up or down depending on the number of and type of claims ultimately submitted but is capped at \$50.

⁷ In order to prevent fraud, if a Settlement Class Members' current mailing address is not now within the Impacted Area, or a Settlement Class Member did not receive a Summary Postcard Notice, to receive a Base Payment such Settlement Class Member must attach to the Claim Form a copy of documentary proof of having resided in the Impacted Area (or in the case of an entity, operating a physical business location in the Impacted Area) in March 2023.

⁸ The Claim Form is available on the Settlement website.

expenses, or service awards until “after the material terms for the relief to the Settlement Class were agreed upon.” Settlement Agreement, ¶ 35.

V. PRELIMINARY APPROVAL AND NOTICE

The March 15 Order granted preliminary approval of the Settlement and conditionally certified the Settlement Class, appointed Plaintiffs as representatives of the Settlement Class, appointed Co-Lead Class Counsel, appointed Angeion Group as the Settlement Administrator to implement notice and to process claims, and set dates for: (i) Class notice to be issued, (ii) completed Claims Form to be received, (iii) the filing of a motion for Co-Lead Class Counsel to seek an award of attorneys’ fees, litigation cost and expense reimbursement and service awards to the Class Representatives, (iv) the filing of a motion for final approval, (v) requests for exclusion from the Settlement Class, and/or objections to the Settlement to be postmarked by July 17. March 15 Order. The Court also set September 23, 2024 as the date for a Final Approval Hearing. *Id.* at ¶ 15.

In accordance with the March 15 Order, the Settlement Administrator has implemented the Notice Plan, including mailing Summary Postcard Notice to over 600,000 addresses in the Impacted Area, implementing the Media Notice plan, implementing a Toll-Free Number, and establishing the Settlement website (<https://www.phillywatersettlement.com>).

In addition to all other aspects of the Settlement, the disseminated Summary Postcard Notice, the frequently asked questions (“FAQs”) responses on the website, and the Long Form Notice also posted on the website provide the Settlement Class members ample notice of Plaintiffs’ Counsel’s fee, expense and service award requests. The Notice Plan also provides information on how Settlement Class Members may object or exclude themselves from the Settlement if they so choose.

The mailed Summary Postcard Notice provides a broad set of details to the class members about the Settlement. Settlement Agreement, Exh. C. It informed Settlement Class members of the basis for the lawsuit, the general terms of the Settlement, their right to either request exclusion from the Settlement Class or object to the Settlement, and how to make a claim if they remain in the Class. The mailed notice also identified Co-Lead Class Counsel and stated that any Court approved attorneys' fees and expenses and service awards to the Class Representatives would be paid from the Settlement fund of \$2.7 million. The mailed notice further stated that Co-Lead Class Counsel would "petition [the Court] to be paid legal fees and their reasonable expenses from the Settlement fund." Class members were also told that the mailed notice only provided a summary and instructed them to visit www.PhillyWaterSettlement for more information.

The Settlement Website itself contains information about the Settlement, including a FAQs page that explains all aspects of the Settlement and Settlement Class Members' rights and responsibilities. With respect to attorneys' fees, Question Number 4 of the FAQs section provides that as part of the "Terms of the Settlement" the \$2.7 million Settlement Fund "will be used to pay: (a) all Settlement Payments to Settlement Class Members; (b) all settlement administration fees and costs as approved by the Court, estimated to be \$365,155; (c) Class Counsel's attorneys' fees, not to exceed 33 1/3% of the Settlement Fund, plus costs, subject to the approval of the Court; and (d) service awards to the four Class Representatives that are approved by the Court in an aggregate amount not to exceed \$8,000." Question number 6 is "What Are My Rights" and the answer is, among other things, that Class members may object to the Settlement or exclude themselves from it by July 17, 2024, and provides the objection and exclusion procedures. Question number 7 asks "Who Are The Attorneys Representing The Class?" and the answer

identifies Co-Lead Class Counsel and their addresses, telephone numbers, and e-mail addresses for the individual attorneys working on the case. Question number 8 is “How Will The Attorneys For The Settlement Class Be Paid?” The answer provided is that “You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that attorneys’ fees and costs will be paid from the Settlement Fund subject to the approval of the Court. The attorneys’ request for fees will not exceed thirty-three and one-third (33 1/3%) of the Settlement Fund plus reimbursement of reasonable out-of-pocket costs.”

The Settlement website also provides the Long Form Notice (in both English and Spanish) for download. Like the FAQs section, Section 4 of the Long Form Notice advises that “[t]he Settlement Fund will be used to pay: (a) all Settlement Payments to Settlement Class Members; (b) all settlement administration fees and costs as approved by the Court, estimated to be \$365,155; (c) Class Counsel’s attorneys’ fees, not to exceed 33 1/3 percent of the Settlement Fund, plus costs, subject to the approval of the Court; and (d) service awards to the four Class Representatives that are approved by the Court in an aggregate amount not to exceed \$8,000.” Section 6 informs Class members that they may object to or exclude themselves from Settlement and the procedures for doing so. Section 7 identifies Co-Lead Class Counsel. Section 8 represents that “[y]ou do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that attorneys’ fees and costs will be paid from the Settlement Fund subject to the approval of the Court. The attorneys’ request for fees will not exceed thirty-three and one-third (33 1/3%) of the Settlement Fund plus reimbursement of reasonable out-of-pocket costs.”⁹

⁹ This fee motion will also be added to the Settlement website.

The deadline for objections and requests for exclusion from the Settlement Class is July 17, 2024. To date, there have been no objections to the proposed Settlement or to the request for attorneys' fees, litigation expenses, or incentive awards. And there have been only eighteen requests for exclusion from the Settlement Class. Co-Lead Class Counsel will provide the Court with a final report on any objections or requests for exclusion in their final approval motion, which will be filed on September 3, 2024.

VI. PLAINTIFFS' COUNSEL'S FEE REQUEST IS REASONABLE AND SHOULD BE APPROVED

Plaintiffs' Counsel obtained a \$2.7 million Settlement that provides cash benefits to Settlement Class Members who were economically affected by the chemical spill and related warnings and recommendations and submit a valid claim form.¹⁰ This is a highly favorable result for the Settlement Class Members when weighed against the facts of the case and the significant risks of continued litigation. The Settlement was obtained through hard work and skill, and Plaintiffs' Counsel's requested fee is amply supported by applicable case law.

1. Legal standards

It is well-established that a "litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Class counsel are entitled to a fee based on the funds available to be claimed by class members regardless of the amount claimed. The class members' "right to share the harvest of the lawsuit upon proof of

¹⁰ It should also be noted that at this juncture, Plaintiffs' Counsel anticipate that the entire Net Settlement Fund will be distributed to Eligible Claimants. However, because the Base Payment Amount is capped at \$50, the Settlement also includes provisions for distribution of residual net funds if needed. Settlement Agreement, ¶ 4.

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.

The Third Circuit and District Courts have followed this precedent. Citing *Boeing*, the Court in *Landsman & Funk, P.C. v. Skinder-Strauss Associates*, 639 Fed. Appx. 880, 884 (3d Cir. 2016), 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. *E.g., Teh Shou Kao v. CardConnect Corp.*, 2021 WL 698173, at *8-9 (E.D. Pa. Feb. 23, 2021).¹¹

Pennsylvania law also provides for the payment of attorneys’ fees out of a common fund. *Nagle v. Pennsylvania Insurance Department*, 406 A.2d 1229 (Pa. Commw. Ct. 1979), *aff’d in part, rev’d in part on other grounds*). The goal of a court in awarding fees is to estimate the amount that counsel would have received in the normal course:

The object in awarding a reasonable attorney's fee, as we have been at pains to stress, is to give the lawyer what he would have gotten in the way of a fee in an arm’s length negotiation, had one been feasible. In other words the object is to simulate the market where a direct market determination is infeasible. It is infeasible in a class action because no member of the class has a sufficient stake to drive a hard-or any-bargain with the lawyer. So the judge has to step in and play surrogate client.

Milkman v. Am. Travellers Life Ins. Co., 2002 WL 778272, at *5 (Pa. Com. Pl. Apr. 1, 2002) (quoting *Matter of Cont’l Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992)).

Plaintiffs’ Counsel are requesting an award of attorneys’ fees and expenses as part of the Settlement approval process. In connection with approval of a class action settlement, a court must also approve payment of any requests for attorneys’ fees and litigation expenses to class

¹¹ Federal opinions interpreting the federal class action Rule 23 can have a persuasive value in Pennsylvania courts. *McMonagle v. Allstate Insurance Co.*, 460 Pa. 159, 167, 331 A.2d 467, 471-72 (Pa. 1975).

counsel. Rule 1717 of Pennsylvania Rules of Civil procedure provides factors for a court to evaluate when considering approval of a fee request. These factors are:

- (1) the time and effort reasonably expended by the attorney in the litigation;
- (2) the quality of the services rendered;
- (3) the results achieved and benefits conferred upon the class or upon the public;
- (4) the magnitude, complexity and uniqueness of the litigation; and
- (5) whether the receipt of a fee was contingent on success.

The Official Note to Rule 1717 provides that the “order in which these factors are listed in the Rule is not in any way intended to suggest an order of priority on comparative importance in the determination of the fee.” It is, however, customary to start by considering the benefits conferred upon the class by the efforts of the plaintiffs and class counsel.

Courts award fees using either the percentage-of-the-recovery or the lodestar approach. *See, e.g., Pennsylvania Orthopaedic Soc. v. Indep. Blue Cross*, 2004 WL 2445370, at *2 (Pa. Com. Pl. Sept. 7, 2004) (awarding \$5 million in fees and noting that “under the lodestar method and the percentage of recovery method the fees requested are similarly appropriate.”). Under the percentage-of-the-recovery approach, a court evaluates the fee as a percentage of the overall benefit provided by the settlement. *See, e.g., In re. Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005). The percentage-of-the-recovery approach is the preferred method in common fund cases such as this. *See Sullivan v. DB Investments*, 667 F.3d 273, 330 (3d Cir. 2011) (stating that percentage of recovery method “is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”) (internal citation omitted); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 553 F. Supp. 442, 466 (E.D. Pa. 2008).

Under the lodestar method, the court starts 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. 18-cv-00274, 2019 WL 4677954, at *11 (E.D. Pa. Sept. 24, 2019) (citation omitted). “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.” *Gonzalez v. Account Resolution Servs., LLC*, 2021 WL 3007257, at *2 (E.D. Pa. July 15, 2021) (citation omitted). Courts often increase the lodestar amount by an appropriate multiplier to account for the risk of non-payment and the results achieved, with a typical multiplier being between 2.4 and 4.5. *See In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. at 486-87 (awarding a multiplier of 2.6 and charting nine similar settlements with multipliers ranging from 2.4 to 4.5). The lodestar “calculation need entail neither mathematical precision nor bean-counting. The [trial] courts may rely on summaries submitted by the attorneys and need not review actual billing records.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005), *as amended* (Feb. 25, 2005).

Regardless of the method, the court’s goal is to determine a fee that is reasonable to both class counsel and the class. Here, because there is a cash common fund instead of potentially difficult relief to evaluate, such as an injunction, Plaintiffs’ Counsel respectfully suggest use of the preferred percentage-of-the-recovery method and that a one-third is a reasonable fee. Indeed, one of the recognized benefits of using the percentage-of-the-recovery method is that it better aligns the interests of class counsel with the interests of class members and eliminates any incentive to unnecessarily expend hours.

In this case Plaintiffs’ Counsel are seeking a fee award of one-third of the \$2.7 million Settlement Fund, which is \$900,000. Fee awards to class counsel of one-third of the common

benefit obtained for the class are common. *See, e.g., In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) (awarding one-third of \$190 million settlement and \$2.95 million in expenses); *In re Fasteners Antitrust Litig.*, 2014 WL 296954, *7 (E.D. Pa. Jan. 27, 2014); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-56 (E.D. Pa. 2013) (noting that “in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees,” and awarding one-third fee from \$150 million fund, a 2.99 multiplier); *In re OSB Antitrust Litig.*, Master File No. 06-826 (E.D. Pa.) (fee of one-third of \$120 million in settlement funds); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *5 (E.D. Pa., Dec. 1, 2004) (awarding a 33% fee and noting that “[t]he requested percentage is in line with percentages awarded in other cases”); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 433-44 (E.D. Pa. 2001) (awarding one-third of a \$48 million settlement fund).

The requested fee is also reasonable when compared to a fee calculated under the lodestar method. Courts utilize a lodestar cross-check against a percentage award in order to confirm that the percentage award is not excessive in comparison to time spent on the litigation.¹² Plaintiffs’ Counsel submit that the hours expended on this case since inception, while substantial, were reasonable and necessary. Plaintiffs’ Counsel’s hourly rates are their normal hourly rates for class action matters. Plaintiffs’ Counsel’s lodestar as of May 31, 2024, was \$939,289, an amount in excess of the requested one-third fee, which represents what is referred to a negative multiplier on Plaintiffs’ Counsel’s lodestar in this matter.¹³

¹² This has been referred to as the lodestar cross-check. *See, e.g., In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *15 (E.D. Pa. 2004) (“While the Court adopts the percentage of recovery method, the Court will also subject petitioners’ proposed fee to a cross-check using the lodestar method.”).

¹³ Plaintiffs’ Counsel’s lodestar is based on current rates. The Supreme Court has held that the use of current rates, as opposed to historical rates, is appropriate to compensate counsel for inflation

Regardless of the method or factors considered, a trial court's award of attorneys' fees is subject to an abuse-of-discretion standard of review. *See In re Bridgeport Fire Litig.*, 8 A.3d 1270, 1285, 1289 (Pa. Super. Ct. 2010) (citation omitted) (affirming award of \$11.67 million, which represented one-third of the benefits recovered). Here, the Court should approve both the requested fees and expenses and service awards because the amounts are reasonable and comparable with amounts awarded in other cases.

2. The Court should approve the requested attorneys' fees and expenses.

Under the factors set forth in Rule 1717, the requested attorneys' fees are reasonable.

a. Plaintiffs' Counsel achieved an excellent result and conferred substantial benefits upon the Class.

Plaintiffs' Counsel's efforts on behalf of the Class have resulted in a \$2.7 million Settlement. This Settlement is an excellent result that confers a substantial cash benefit upon the Settlement Class for economic losses incurred due to the chemical spill and advisories and publicity about the water supply. Plaintiffs allege the losses stem from heeding the advisories about the public drinking water and buying bottled water and attendant expenses such as gas to travel to the store to purchase the water, and any business losses. Class members who submit a valid claim form are entitled to receive the \$25 Base Payment (which may be adjusted up or down depending on the number of and type of claims submitted). In addition, Settlement Class members may submit proof of economic harm above the amount of the Base Payment to make them eligible for an additional monetary recovery.

and the delay in receipt of the funds. *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 716 (1987).

Making a claim is easy. The Claim Forms are available on the website, or by contacting the claims administrator or Plaintiffs' Counsel. Claims may be submitted electronically or by mail, and Class members have three months to make a claim for their share of the Settlement.

The size and structure of the Settlement Fund enables compensation for economic losses as Base Payments to Class members and enables recovery of additional losses that Class members incurred above the Base Payment amount. Moreover, the Settlement is exceptional based upon the results achieved in light of the legitimate obstacles faced. Notably, it was eventually determined that the spill did not affect Settlement Class Members' drinking water, and it may have been difficult to get a class certified in this case absent this Settlement considering that the damages that each member of the Settlement Class suffered, while uniform in nature, may be individualized based on the quantity of water purchased (and other economic damages suffered).

The Settlement avoids the litigation risks and confers the cash compensation to Class members in an amount that likely compensates them for all or most of their economic losses. This factor of Rule 1717 supports awarding the requested fee.

b. Plaintiffs' Counsel expended significant time and effort to achieve the Settlement.

As set forth in Plaintiffs' Counsel's Declarations, attached hereto as Exhibit A, 1-4, the attorneys for the Class have expended hundreds of hours in this litigation, incurred expenses, and will continue to expend additional time through final approval and settlement administration. As attested to in the Declarations, the hourly rates for the attorneys are the same as those charged by the attorneys in similar matters. The lodestar of Plaintiffs' Counsel from inception through May 31 is \$939,289. Moreover, because the matter was purely contingent Plaintiffs' Counsel were incentivized not only to incur nothing but necessary expenses (because their repayment was not

guaranteed) but also to spend the appropriate time needed to make the litigation a success for the Class.

Plaintiffs' Counsel investigated the facts and researched the law before filing the action. Defendants did not roll over after being served, actively litigating the case before agreeing to settle. Defendants are represented by Morgan Lewis, a large firm with an enviable reputation. Defendants' first move was to remove the action from this Court to Federal Court and once there, to file a motion to dismiss. Plaintiffs' Counsel spent a significant amount of time opposing both the removal and the motion to dismiss. Further, to move the case forward while awaiting the rulings by the Federal Court, Plaintiffs' Counsel drafted and provided Defendants with document requests and interrogatories. After Defendants agreed to mediate, they supplied Plaintiffs' Counsel with informal discovery as part of the mediation process. The mediation, with the help of the mediator, was successful.

Thereafter, Plaintiffs' Counsel worked on the many settlement documents. With Defendants' Counsel they drafted the Settlement Agreement and the notices and proposed order preliminarily approving the Settlement, and worked closely with the notice and claims administrator to craft an appropriate notice and claims administration plan. Once these documents were finalized, Plaintiffs' Counsel dismissed the complaint in Federal Court and refiled in the Court of Common Pleas. Soon thereafter they filed the motion for preliminary approval and the case management memorandum. Plaintiffs' Counsel have also been continuously working with the notice and claims administrator regarding notice and claims filing. Finally, Plaintiffs' Counsel will prepare the final approval motion and related documents and appear at the fairness hearing to argue for final approval. Even after final approval,

Plaintiffs' Counsel will still be involved in the claims administration process and any necessary work to close out the matter on behalf of the Settlement Class.

Plaintiffs' Counsel's common benefit work is of a magnitude that justifies the requested fee, which is less than the aggregate lodestar of Plaintiffs' Counsel that represents a negative multiplier to the lodestar. Accordingly, this Rule 1717 factor favors approval of the requested fees.

c. Plaintiffs' Counsel rendered high quality services that made the Settlement possible.

As set forth in the Declarations, Plaintiffs' Counsel, Berger Montague, Levin Sedran & Berman, Kohn, Swift & Graf, and Spector Roseman & Kodroff, are highly regarded law firms experienced in class actions, including environmental contamination matters, that used their skill and experience to achieve the Settlement.

Further, the results obtained in this action demonstrate the quality of the services that Plaintiffs' Counsel provided. As more than one court has noted, "[t]he result achieved is the clearest reflection of petitioners' skill and expertise." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *5 (E.D. Pa. 2004).

Here, Plaintiffs' Counsel obtained a \$2.7 million Settlement in a case that faced legitimate challenges and required proving a set of potentially difficult causation factors. In the face of these potentially serious obstacles, the Settlement provides meaningful compensation to Settlement Class members for the economic injuries they suffered as a result Defendants' chemical spill and the ensuing public recommendations and warnings.

d. The magnitude, complexity and uniqueness of the litigation weigh in favor of awarding the requested fees.

Plaintiffs brought negligence and nuisance claims for economic losses from the chemical

spill that made its way into the Delaware River and threatened the purity of drinking water supplied to a large part of Philadelphia. Plaintiffs' theory was that the spill prompted the City to recommend the use of bottled water from March 26, 2023 until further notice, which recommendation was widely publicized. These events caused people to purchase bottled water that they otherwise would not have bought, resulting in Class members suffering economic losses. Water testing, however, eventually concluded that the risk of contamination did not materialize.

Plaintiffs' claims were being tested by a motion to dismiss at the time the Settlement was reached and absent a settlement, Defendants were sure to challenge not only liability but also causation and damages, not to mention class certification. It is fair to say that litigating this action was risky given challenges relating to causation and damages. *In re Citrix Data Breach Litig.*, 2021 WL 2410651, at *3 (S.D. Fla. June 10, 2021). These factors favor awarding the requested fee. Thus, Class Counsel's fee petition should be granted.

e. The receipt of a fee was contingent on success.

The final factor of Rule 1717 further supports the reasonableness of the requested fee. Plaintiffs' Counsel took this litigation on a purely contingent basis as to expenses and fees. That means that Plaintiffs' Counsel invested their time in prosecuting the case and their money in advancing the necessary litigation expenses, all with no guarantee that they would receive any payment. Had the case not resulted in a judgement or settlement in favor of the Class, Plaintiffs' Counsel would have expended hundreds of thousands, and possibly millions, of dollars in attorney time and case related expenses but receive no fees and be out the litigation expenses they advanced. That Plaintiffs' Counsel took on the risk of litigation without any guarantee of

compensation further supports the reasonableness of the requested fee. *See, e.g., Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 566 (Com. Pl. 2002) (“The high risk of bringing this action, including the fact that this case was brought on a contingency basis, as well as the relief obtained for the class and class counsel’s involvement in and contribution to settlement negotiations...support the application of a considerable multiplier.”); *Accolade*, 2019 WL 4677954, at *13 (“Class Counsel invested considerable resources into this case with no guarantee that they would recover those costs given that they were retained on a contingency fee basis. This factor again weighs in favor of determining that the fee is reasonable.”).

VII. IN ADDITION TO ATTORNEYS’ FEES, THE COURT SHOULD AWARD THE REQUESTED LITIGATION EXPENSES.

Plaintiffs’ Counsel also incurred necessary and reasonable expenses on behalf of the Class. The accompanying Declarations itemize the expenses that each law firm incurred in moving the litigation forward. Those expenses include filing and mediation fees and legal research costs. Exhibit A, 1-4. In total, Plaintiffs’ Counsel have expended \$18,034.13 for the benefit of the Class in connection with the litigation. These expenses were reasonable and necessary to pursue the case and to obtain the substantial Settlement reached in this litigation.

The common fund doctrine authorizes reimbursement of the reasonable amounts paid out-of-pocket to achieve a class recovery or to advance the common goals of plaintiffs’ litigation. *See Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 166-67 (1939) (recognizing a federal court’s equity power to award costs from a common fund); *Waldner v. Shulman*, 1989 WL 100184, at *3 (E.D. Pa. Aug. 28, 1989) (“Counsel creating a common fund may also be reimbursed from the fund for the litigation costs incurred in creating, preserving or protecting the fund...and for reasonable litigation expenses.”) (internal citations omitted).

The expense categories here are consistent with the types of expenses commonly approved by courts. *E.g.*, *Cunningham v. Wawa, Inc.*, 2021 WL 1626482, at *8 (E.D. Pa. Apr. 21, 2021) (approving class counsel’s request for reimbursement of, *e.g.*, “filing fees, . . . mediation fees, and other similar, ordinary litigation expenses”); *Acevedo v. Brightview Landscapes, LLC*, 2017 WL 4354809, at *20 (M.D. Pa. Oct. 2, 2017) (approving class counsel’s request for reimbursement of, *e.g.*, filing fees, mediation fees, and legal research costs); *Glaberson v. Comcast Corp.*, 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. Investors Life Ins. Co. Annuity Mktg. & Sales Pracs. Litig.*, 263 F.R.D. 226, 245 (E.D. Pa. 2009) (approving class counsel’s request for reimbursement of, *e.g.*, “expert witness fees; mediation fees; . . . legal research[;] . . . and service of process”).

Therefore, Plaintiffs’ Counsel request an award of \$18,034.13 to reimburse them for reasonable litigation expenses incurred in pursuing the claims for the Class members.

VIII. THE COURT SHOULD APPROVE THE REQUESTED SERVICE AWARDS

The Court should also approve the requested service awards of \$2,000 to each of the Plaintiffs. The Plaintiffs were a key part of the lawsuit, without whom there would be no recovery for the thousands of other Class members. The Plaintiffs communicated with Plaintiffs’ Counsel in bringing the lawsuit, provided relevant facts, and were informed about Settlement discussions, as necessary. It is appropriate to authorize awards to class representatives in recognition of the services that they perform in successful class litigation. It has long been recognized that “as a matter of practice, courts routinely approve incentive awards [otherwise known as service awards] to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 665 (E.D. Pa. 2015) (quotation and citation omitted) (approving \$2,500

service award). *E.g., In re CertainTeed Corp. Roofing Shingle Prod. Liab. Litig.*, 269 F.R.D. 468, 476 (E.D. Pa. 2010) (“if the named plaintiff was not deposed, the . . . incentive payment will be \$2,500”); *In re GNC Shareholder Litig.*, 668 F. Supp. 450, 451 (W.D. Pa. 1987) (granting \$3,000 incentive awards to three class representatives); *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (granting incentive award to named plaintiffs and discussing how courts “routinely approve incentive awards to compensate named plaintiffs[.]”); *Tenuto v. Transworld Systems, Inc.*, 2002 WL 188569 (E.D. Pa. Jan. 31, 2002) (awarding \$2,000 and considering the amount reasonable and appropriate).

Now that the lawsuit has resulted in benefit for the Class, the Court should recognize the efforts of Plaintiffs with a \$2,000 service award, which is comparable with amounts awarded in other litigation, and is reasonable.

IX. CONCLUSION

For the reasons set forth above, Plaintiffs’ Co-Lead Class Counsel request that as part of final approval of the Settlement the Court award Plaintiffs’ Counsel one-third of the Settlement Fund for attorneys’ fees, \$18,034.13 for reimbursement of reasonable litigation costs and expenses, and \$2,000 service awards to each of the Plaintiffs.

Dated: June 17, 2024

Respectfully submitted,

/s/ Daniel C. Levin

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2024 the foregoing Motion has been served upon all counsel via the Court's Electronic Notification System.

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all others similarly situated,

Plaintiffs,

v.

ALTUGLAS LLC and TRINSEO LLC,

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JANUARY TERM 2024

CASE NO.: 00060

CLASS ACTION

**PLAINTIFFS' CO-LEAD CLASS COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES,
AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES**

1. Plaintiffs' Co-Lead Class Counsel¹ respectfully move this Court for an award of attorneys' fees, reimbursement of litigation costs and expenses, and service awards to the Class Representatives from the \$2.7 million Settlement Fund.

2. Plaintiffs' Counsel seek an award of attorneys' fees in the amount of \$900,000, which is one-third of the \$2.7 million Settlement Fund.

3. Plaintiffs' Counsel also request an award of \$18,034.13 in litigation costs and expenses.

4. Plaintiffs' Counsel also ask the Court to authorize a \$2,000 service award to each of the four Class Representatives, Timothy McGraw, Emily Cohen, Danielle Byrd, and Greenhill Supply LLC, a total of \$8,000.

5. In support of their Motion, Plaintiffs' Counsel incorporate their Memorandum of Law in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Costs and Expenses, and Service Awards to the Class Representatives.

¹ The Court appointed Berger Montague PC, Kohn, Swift & Graf, P.C., and Levin, Sedran & Berman LLP as Co-Lead Class Counsel. Co-Lead Class Counsel and the firm of Spector, Roseman & Kodroff, P.C. are referred to herein as Plaintiffs' Counsel.

WHEREFORE Plaintiffs' Counsel respectfully request that the Court grant Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Costs and Expenses, and Service Awards to the Class Representatives.

Dated: June 17, 2024

Respectfully submitted,

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