

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE: REALPAGE, INC., RENTAL	)	Case No. 3:23-md-3071
SOFTWARE ANTITRUST LITIGATION	)	MDL No. 3071
(NO. II)	)	
	)	JURY DEMAND
	)	
	)	Judge Waverly D. Crenshaw, Jr.
	)	
	)	This Document Relates to:
	)	ALL CASES
	)	

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR INTERIM ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, FUTURE LITIGATION EXPENSE FUND, AND SERVICE AWARDS FOR NAMED PLAINTIFFS

After sending over 7 million direct notices and instituting a social media and publication notice plan that delivered over 210 million impressions, Settlement Class Counsel received a single objection to their Motion seeking fees, expenses, a future litigation expense fund, and service awards (Dkt. 1476, “Fee Petition”), from Class Member Nicholas Clemm.¹ In substance, his objection asks the Court to review the fee request. Settlement Class Counsel appreciates his desire that the Court provide meaningful oversight. That oversight is already required, and Settlement Class Counsel’s Fee Petition enables the Court to undertake the inquiries he seeks. Settlement Class Counsel therefore respectfully requests that the Court deny Mr. Clemm’s objection.

I. THE REQUESTED FEE AWARD IS REASONABLE

A. The Requested Percentage Award Is Reasonable.

As laid out in more detail in Settlement Class Counsel’s Fee Petition and supporting materials, Settlement Class Counsel undertook years of litigation on a fully contingent basis, including over 100,000 hours (and counting) of work. They expended \$105,063,090.50 in lodestar² to develop the case, research and draft the complaint, brief multiple rounds of dispositive motions, negotiate document and data production, review millions of documents, take 176 fact depositions, develop expert evidence, and submit hundreds of pages of expert reports. Settlement Class Counsel spent years investigating, developing, and initially prosecuting this case before any government entity filed suit. In parallel with that work, Settlement Class Counsel attended 11 formal mediations, held numerous bilateral settlement discussions, and negotiated and finalized 37 settlements with 41 Defendants. Over nearly four years of litigation, Settlement Class Counsel

¹ Nearly four months before the Fee Petition was filed, Ollisha Jones filed a form objection that “[t]he requested attorney’s fees appear disproportionately high” Dkt. 1390 at 1. Putting aside the procedural defects arising from her failure to follow the Court-ordered objection procedures, to the extent the Court construes this as a validly submitted objection, it should be overruled on the merits for the reasons articulated *infra* § I(A).

² This amount does not include the lodestar accrued by supporting PSC firms.

undertook significant risk and outlaid over \$14 million in expenses out of their own pockets, with no guarantee of reimbursement. Time spent working on this case meant time that those attorneys could not bill to other cases. The result of this outlay of time and money is extraordinary—a \$359,925,000 common fund for the benefit of the proposed Settlement Class. While vigorously litigating this case, Settlement Class Counsel followed the Court-ordered Protocol for Common Benefit Work and Expenses (Dkt. 302) to keep contemporaneous records of their time and expense entries and report them on a monthly basis. These efforts are explained in detail in Settlement Class Counsel’s Fee Petition and supporting materials. Fee Petition at 17-19, Dkt. 1477-1481.

Courts in the Sixth Circuit typically apply a percentage-of-the-fund method for determining fees where a substantial common fund, like the one here, is established.³ Here, Settlement Class Counsel seeks a fee of one-third of the common fund, which is supported by authority within the Sixth Circuit.⁴ In contrast, Mr. Clemm has identified no basis to limit a fee award to 25% under these circumstances or that fee awards should be capped at that level as a general matter.

Mr. Clemm suggests that, because the common fund is so big, a smaller fee is warranted. But the Sixth Circuit has not endorsed such an approach, nor has it been utilized in this District. To the contrary, as the *Milk* court cogently explained, reducing the fee percentage solely because the common fund is large creates perverse incentives, including encouraging counsel “to settle

³ *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) (“*Milk*”).

⁴ *Milk*, 2013 WL 2155387 at *3 (“[O]ne-third of the settlement fund . . . is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit.”); *In re Foundry Resins Antitrust Litig.*, No. 04-md-1638, Dkt. 247 (S.D. Ohio Mar. 31, 2008); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *3 (E.D. Tenn. June 30, 2014); *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015); *In re Cast Iron Soil Pipe & Fittings Antitrust Litig.*, 2017 WL 11681193 (E.D. Tenn. May 26, 2017); *Hosp. Auth. of Met. Gov’t of Nashville v. Momenta Pharms., Inc.*, 2020 WL 3053468, at *1 (M.D. Tenn. May 29, 2020); *Fusion Elite All Stars v. Varsity Brands, LLC*, 2023 WL 6466398 (W.D. Tenn. Oct. 4, 2023); *Jones v. Varsity Brands, LLC*, 2024 WL 5010412 (W.D. Tenn. Dec. 6, 2024).

quickly and cheaply when the returns to effort are highest” rather than “investing additional time and maximizing plaintiffs’ recovery.”⁵ And courts around the country have approved one-third fee awards on common funds as large as the one Settlement Class Counsel achieved here.⁶ The Court should therefore overrule Mr. Clemm’s objection to the size of the fee award.

B. The Court Already Must Review Counsel’s Time, Rates, and Expenses, And That Obligation Does Not Justify Reducing the Requested Award.

Mr. Clemm asks this Court to “carefully review the analysis of Plaintiffs’ Counsel’s time, billing rates, and expenses before determining that the fee request is reasonable. . . .” Obj. at 4. That review is fully supported by the record before the Court. Settlement Class Counsel and Liaison Counsel submitted declarations and detailed accountings of their time, billing rates, and expenses, providing the Court and the proposed Settlement Class with the information necessary to evaluate the requested fee and expense award. *See* Dkts. 1477–81. Those submissions reflect compliance with the timekeeping and expense protocol the Court entered to govern this litigation. Mr. Clemm identifies no deficiency in those materials, challenges none of the billing rates or categories of time presented, and identifies no category of expenses that he contends is improper.

Mr. Clemm also states that the Court “should be able to see clearly how much of the claimed amount results from actual hours worked and how much results from applying current rates to work performed over the course of the litigation.” Obj. at 3. However, the Fee Petition provides precisely that information, including a detailed breakdown of hours expended by each Settlement Class Counsel and the rates used to calculate the resulting lodestar. *See* Dkts. 1477–81. Also, to the extent that he objects to the use of current rather than historic rates, Settlement Class

⁵ 2013 WL 2155387, at *8.

⁶ *See, e.g., In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d at 1110-12 (1/3 fee of \$1.51 billion), *aff’d*, 61 F. 4th 1126 (10th Cir. 2023); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *8 (D. Kan. July 29, 2016) (1/3 fee of \$835 million); *Jien v. Perdue Farms, Inc.*, 2025 WL 3725489 (33.33% fee of \$398,050,000 overall settlement fund, plus accrued interest).

Counsel request that the objection be overruled because the use of current rates appropriately “compensate[s] for the delay in payment during the pendency of the litigation.”⁷

C. Parallel Government Investigations Are Irrelevant.

Finally, Mr. Clemm asks the Court to consider parallel government enforcement actions in evaluating the requested fee. Obj. at 2-3. Those actions do not diminish Settlement Class Counsel’s efforts or the risk they assumed in undertaking this litigation. Settlement Class Counsel initiated this litigation in October 2022 without the benefit of a preceding government enforcement action, and litigated it on a fully contingent basis. The first government enforcement action was not filed until November 2023, over a year later, and involved only a subset of the defendants named in this MDL.⁸ As Mr. Clemm acknowledges, the U.S. Department of Justice did not file its own action until August 2024. Obj. at 2. By then, Settlement Class Counsel had already successfully defended against a first-of-its kind motion to dismiss and advanced the litigation well into discovery.

The chronology runs contrary to the premise of Mr. Clemm’s argument. Settlement Class Counsel did not follow a government investigation or rely on a government enforcement action to develop the claims asserted here. Courts recognize that the absence of a preceding government investigation increases the risk borne by counsel prosecuting a contingent antitrust case.⁹ That principle applies with particular force here, where Settlement Class Counsel pursued their claims against over 50 defendants without an existing government case to provide a roadmap or reduce the considerable uncertainty inherent in the litigation. *See also* Fee Petition at 13–14. The later-

⁷ *Momenta*, 2020 WL 3053468, at *1 (quoting *In re Unum Provident Corp. Deriv. Litig.*, 2010 WL 289179, at *9 (E.D. Tenn. Jan. 20, 2010)).

⁸ *See D.C. v. RealPage, Inc.*, No. 2023-CAB-6762, Dkt. 1 (D.C. Super. Ct. Nov. 1, 2023).

⁹ *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *11 (E.D. Pa. June 2, 2004) (recognizing greater risk of nonpayment where an antitrust class action “did not benefit from the fruits of a prior government investigation”); *In re Flint Water Cases*, 583 F. Supp. 3d 911, 938 (E.D. Mich. 2022) (awarding requested fees where “[t]here are no other cases that the Court or the parties can look to that are on all fours with the claims in this litigation to assist them in predicting the outcome.”).

filed government actions therefore provide no basis to discount the requested fee; if anything, the sequence of events underscores both the risk Settlement Class Counsel assumed at the outset and the work required to advance this litigation without the benefit of prior government enforcement.

II. SETTLEMENT CLASS COUNSEL'S EXPENSE REQUEST IS REASONABLE.

Mr. Clemm also asks the Court to review Settlement Class Counsel's request for reimbursement of \$14,674,964.91 in expenses. Obj. at 4.¹⁰ Settlement Class Counsel and Liaison Counsel have provided the Court with sworn declarations detailing the expenses by category and confirming that those expenses were actually incurred in prosecuting this litigation. *See* Fee Petition at 19, Dkts. 1477-4, 1477-5, 1478-81. Those affidavits allow the Court to fully address his concern, and his generalized request for review does not justify reducing the expense award.

Mr. Clemm does not challenge the requested set-aside, and such set-asides are commonly awarded. *See* Fee Petition, at 21 n.56. He instead asks the Court to review the request and direct that any unused funds "be returned to the Settlement Fund for the benefit of the Class." Obj. at 4. The Fee Petition already addresses this point: if the funds are not fully used when the litigation concludes, Co-Lead Counsel will advise the Court and propose that the remaining funds be returned for the benefit of the Settlement Class. Fee Petition at 21. Accordingly, Mr. Clemm identifies no substantive disagreement with the requested set-aside and seeks a safeguard that Settlement Class Counsel have already proposed.

III. CONCLUSION

From 7 seven million direct notices delivered, only one objection to the Fee Petition arose. That fact is strong evidence that the request is reasonable. Settlement Class Counsel respectfully urge the Court to overrule that lone objection and award the requested fees and expenses.

¹⁰ He does not identify any unreasonable expenses, challenge any category of expenses, or identify any deficiencies in the supporting materials.

Dated: September 25, 2026

/s/ Tricia R. Herzfeld

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Plaintiffs' Steering Committee Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

/s/ Tricia R. Herzfeld

Tricia R. Herzfeld