IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MELISSA ARMSTRONG, *et al.*, individually and on behalf of other similarly situated persons,

Plaintiffs,

v.

KIMBERLY-CLARK CORPORATION,

Defendant.

Civil Action No. 3:20-CV-3150-M
LEAD CASE

(Consolidated With Civil Action No. 3:21-cv-01484-M)

PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS AND MEMORANDUM IN SUPPORT THEREOF

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I. INTRODUCTION

Having vigorously prosecuted this case for nearly three years, resulting in a strong class settlement that provides substantial relief to consumers nationwide who comprise the Settlement Class,[1] Plaintiffs respectfully move the Court for an award of $3,547,157.00 in attorneys' fees and $102,843.00 in reasonably-expended litigation expenses. All fees and expenses awarded to Interim Class Counsel will be paid by Kimberly-Clark *in addition* to the money allocated to pay Settlement Class Members who purchased recalled Wipes. Accounting for the $4,000,000 in refunds already issued to class members, these amounts include a minimum of $10,000,000 and up to $17,500,000 reimbursing consumers who purchased recalled Wipes. Claimants with proof of purchase are expected to receive 100% of their economic damages in this case and those without proof of purchase can receive $5.00 per household by simply attesting they purchased recalled Wipes. Importantly, the award of attorneys' fees and expenses will not reduce class members' recovery in any way.

The requested award was based upon a proposal of a well-respected mediator, the Honorable Deborah Hankinson (Ret.), and agreed to only after terms of the Settlement for the Class were determined. The fee is fair, reasonable, and appropriate under applicable law and represents 24.3% of the minimum value of the Settlement and 16.2% of the maximum value of the Settlement, which is significantly lower than the percentage for fees regularly awarded in the Fifth Circuit and substantially less than Interim Class Counsel's lodestar. The fee also is well-justified under the *Johnson* factors that courts in this Circuit apply, including, among others: the novelty and complexity of this case; the extensive commitment of Interim Class Counsel's time and

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[1] All capitalized terms are as defined in the Settlement Agreement, Doc. 117-1 (the "Agreement").

resources that were required in prosecuting this case; the strong result achieved for the Settlement Class; and the significant risks that Interim Class Counsel assumed in pursuing this case on a purely contingency basis.

For the foregoing reasons and those detailed below, Interim Class Counsel respectfully requests that the Court grant their motion for attorneys' fees and expenses, and grant service awards in the amount of $2,500 each for Settlement Class Representative to compensate them for their commitment and efforts on behalf of the Settlement Class.[2]

II. HISTORY OF THE LITIGATION.

A. The Consolidated Case.

On October 16, 2020, Wipes users Melissa Armstrong and Roland Nadeau filed a class action complaint against Kimberly-Clark in the Northern District of Texas on behalf of a putative nationwide class of Wipes purchasers, along with a California subclass, alleging that the Wipes were contaminated with a bacterial strain called *Pluralibacter gergoviae*. *See, e.g.,* Doc. 116-1 ¶¶ 4, 10, 56. On November 19, 2020, New York resident Dawn Rothfeld filed a putative class action in the Eastern District of New York asserting similar allegations. While the cases initially proceeded separately, the *Rothfeld* action was transferred to the Northern District of Texas. After transfer, this Court entered an order consolidating *Rothfeld* with *Armstrong* on July 9, 2021, and Interim Class Counsel then worked cooperatively to jointly prosecute a consolidated action. Declaration of Interim Class Counsel ("Class Counsel Dec."), Ex. 1 ¶¶ 4–5.

Interim Class Counsel conducted intake on more than 1,700 potential clients located across the country to ensure there were class representatives for as many states as possible. *Id.* at

[2] In support of this motion, Plaintiffs submit herewith the Joint Declaration of Interim Class Counsel as Exhibit 1 ("Ex. 1"). Plaintiffs will submit a proposed order in conjunction with moving for final approval of the Settlement following the opt-out and objection deadlines.

¶ 6. These efforts included interviewing potential clients, gathering and reviewing documents like product recall letters and proofs of purchase, and creating a consolidated database of retailers that sold recalled products. Interim Class Counsel also had to research potential claims and applicable statutory causes of action from various states where the purchasers resided. *Id*.

As a result of their extensive plaintiff vetting efforts, on March 22, 2022, Interim Class filed a consolidated complaint that included 22 plaintiffs from 17 states, asserting 26 causes of action. *Id.*; *See* Doc. 64.

B. Kimberly-Clark's Refund Program.

Soon after the initial case was filed, Interim Class Counsel learned that Kimberly-Clark was quietly offering refunds in the form of prepaid Visa cards to certain customers who were able to navigate Kimberly-Clark's customer service department. Ex. 1 ¶ 7. Initially, Kimberly-Clark informed inquiring consumers that receipt of the card would release Kimberly-Clark from legal liability if the card was not returned within 15 days. *Id*. To ensure class members were not pressured into releasing their claims, Interim Class Counsel sent a letter to Kimberly-Clark's counsel threatening court intervention if Kimberly-Clark attempted to enforce the release. Kimberly-Clark thereafter committed to not seeking a release in conjunction with the refund cards. *Id.*

Interim Class Counsel also advocated for recipients of the refund cards as part of settlement negotiations, with the Parties ultimately agreeing that class members who received refund cards but did not activate them would still be eligible to seek a cash refund under the Settlement. *Id.* at ¶ 8. Additionally, claimants who activated their refund cards are only precluded from seeking compensation for the refunded purchases; they are not precluded from seeking compensation for additional purchases of recalled Wipes under the Settlement. *Id.*

C. Settlement Negotiations.

Since late 2020, the Parties have pursued resolution through arm's length settlement negotiations. *Id.* at ¶ 9. These efforts culminated in substantial exchanges of information (including information about the cause of the contaminations, consumer complaints and sales data) and settlement proposals, including four, full-day mediations guided by Justice Hankinson between December 2021 and May 2023. *Id.*

Discovery efforts were significant and included seeking sales data from independent third parties as well as gathering information from thousands of individuals who contacted Interim Class Counsel and reviewing complaints received by Kimberly-Clark. *Id.* at ¶ 10. After several productive Rule 408 exchanges, Interim Class Counsel sent Kimberly-Clark a comprehensive global settlement demand letter on August 23, 2021. *Id.* Shortly thereafter, the Parties agreed to mediate, and engaged the services of a highly respected mediator, Justice Hankinson (Ret.). *Id.* On December 7, 2021, the Parties participated in the first all-day, in-person mediation session in Dallas, Texas before Justice Hankinson after exchanging detailed mediation briefs setting forth the Parties' respective positions. *Id.* While the Parties were unable to reach a resolution at that first session, the Parties continued to negotiate with the assistance of Justice Hankinson, including through several telephone conferences from January through May of 2022 in advance of a second mediation session. *Id.*

D. Interim Class Counsel Issue Subpoenas to More than 30 Retailers.

Through these negotiations, Interim Class Counsel became aware that they would need additional data to negotiate an informed Settlement. Because Kimberly-Clark did not sell the Wipes directly to consumers, the Parties needed this discovery to obtain additional sales data and identify purchasers of recalled Wipes, including for purposes of providing class notice. *Id.* at ¶

11. Thus, the Parties sought, and the Court ordered on January 31, 2022, the entry of a scheduling order frontloading certain third-party discovery (Docs. 46–47). *Id.* Interim Class Counsel then served subpoenas on over 30 retailers seeking, among other information, "the name, address, email address, and telephone number of every individual who purchased" a recalled product along with the "date of purchase" and "amount of purchase." *Id.* at ¶ 12; *see, e.g.*, Docs. 48-63, 66-71, 73, 74, 76-78, 82-84. During this time, Plaintiffs also filed their Consolidated Class Action Complaint on March 29, 2022. *Id.*; *see also* Doc. 64.

After serving the subpoenas, Interim Class Counsel dedicated substantial time and effort to working with third party retailers to obtain sales data relating to the Wipes and class member contact information for purposes of providing settlement notice. Ex. 1 ¶ 13. These efforts required months of individual negotiations with dozens of retailers, all of which were represented by counsel. *Id.* While these efforts were time consuming, they had a material benefit for class members as Interim Class Counsel were able to obtain information from numerous major retailers that ultimately allowed the Parties to provide direct settlement notice to more than 5,1500,000 potential class members. *Id.*

E. Ongoing Litigation and Settlement Discussions.

On June 1, 2022, the Parties participated in a second all-day mediation session with Justice Hankinson. *Id.* at ¶ 14. After no resolution was reached, the Parties focused efforts on discovery and motion practice. *Id.* The Parties negotiated a protective order and briefed Kimberly-Clark's product preservation sampling methodology. *Id.*; Docs. 95, 97. Interim Class Counsel also served document requests on Kimberly-Clark and continued seeking class member contact information from retailers. Ex. 1 ¶ 14. Kimberly-Clark also filed a motion to dismiss, which the Parties fully briefed and then argued before this Court on September 7, 2022. *Id.* at ¶ 15.

After the argument on the motion to dismiss, the Parties agreed that the time was ripe to re-engage in settlement negotiations. *Id.* As a result, the Parties jointly requested a stay of proceedings, which the Court granted. *Id.*; Doc. 101. On January 10, 2023, the Parties participated in a third, full-day mediation session with Justice Hankinson. Ex. 1 ¶ 16. Prior to the mediation, on January 9, 2023, the Parties advocated for their respective positions during separate telephone conferences with Justice Hankison. *Id.* Though the Parties did not reach agreement at the mediation, Justice Hankinson made a mediator's proposal on the monetary terms of settlement that was ultimately accepted by both Parties. *Id.*

Thereafter, the Parties continued to negotiate the other terms of settlement with the assistance of Justice Hankinson. *Id.* at ¶ 17. On May 1, 2023, the Parties participated in a fourth mediation session with Justice Hankinson to assist negotiations with attorneys' fees and costs. *Id.* Following that session, Justice Hankinson issued a mediator's proposal on fees and costs that was accepted by both Parties. *Id.* Thereafter, after hard-fought negotiations occurring over almost three years, the Parties finalized a term sheet reflecting the essential terms of the Settlement. *Id.*

F. Settlement Administration.

On September 22, 2023, Plaintiffs filed their Unopposed Motion for Preliminary Approval and to Direct Notice of Proposed Settlement to the Class and Memorandum in Support Thereof. Ex. 1 ¶ 18; Doc. 117. On September 27, 2023, the Court entered its Order granting Plaintiffs' motion, finding that the Court would likely be able to: (1) approve the Settlement as fair, reasonable, and adequate, and (2) certify the Settlement Class for purposes of judgment on the Settlement. Ex. 1 ¶ 18; Doc. 120. The Court also appointed J. Austin Moore of Stueve Siegel Hanson, LLP; Joshua L. Hedrick of Hedrick Kring Bailey PLLC (now of Spencer Fane LLP); Michael R. Reese of Reese LLP; and Jordan S. Palatiello of Lewis Johs Avallone Aviles, LLP

as Interim Class Counsel pursuant to Fed. R. Civ. P. 23(g)(3) to act on behalf of the Settlement Class. Ex. 1 ¶ 18; Doc. 120 at ¶ 10.

On September 29, 2023, the Court-appointed Settlement Administrator served notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act, 28 U.S.C. § 1715(b). Ex. 1 ¶ 19. On November 9-10, 2023, the Settlement Administrator also mailed and emailed the Court-approved Class Notice to members of the Settlement Class. Because of Interim Class Counsel's efforts, more than 5.1 million potential Class Members received direct notice of the Settlement via email or mail. *Id.*

The Class Notice informs members of the Settlement Class that Interim Class Counsel will seek combined attorneys' fees and expenses totaling $3,650,000.00 and service award payments of $2,500 for each Plaintiff for their service as representatives on behalf of the Settlement Class. *Id.* at ¶ 20. The deadline for Settlement Class Members to object or exclude themselves from the Settlement is December 26, 2023. *Id.* As of the filing of this motion, there have been no objections and only three requests for exclusion. *Id.*

III. SUMMARY OF THE RESULTS ACHIEVED THROUGH THE SETTLEMENT.

The Agreement represents a compromise between Plaintiffs and the proposed Settlement Class and Kimberly-Clark regarding the claims pled in the First Amended Consolidated Class Action Complaint (Doc. 119).

A. The Settlement Class.

The Parties' proposed and preliminarily approved Settlement will provide benefits to members of the following Settlement Class:

> All persons in the United States and United States territories who purchased recalled lots of Cottonelle Flushable Wipes ("Wipes") between February 7, 2020 and December 31, 2020 for personal use and not for resale, and any persons residing in the same household.

Ex. 1 ¶ 21; Doc. 120 ¶ 8; Agreement ¶ 3.1. Excluded from the Settlement Class are: (1) Kimberly-Clark, its subsidiaries, parent companies, successors, predecessors, and any entity in which Kimberly-Clark or its parents have a controlling interest and their current or former officers, directors, and employees; (2) the Court and its officers and employees; and (3) any Settlement Class Members who submit a valid Request for Exclusion on or before the Opt-Out Deadline. Ex. 1 ¶ 21 n. 2; Doc. 120 ¶ 8; Agreement ¶ 3.2.

B. The Settlement Benefits.

1. Non-Reversionary Cash Settlement Fund.

Accounting for the $4,000,000 Kimberly-Clark already paid in activated cards through its refund program, Kimberly-Clark will pay at least $10,000,000, and up to $17,500,000, in connection with refunds to consumers who purchased recalled lots of Wipes. Ex. 1 ¶ 22; Agreement ¶¶ 2.18, 2.17 (respectively, the "Minimum Settlement Amount" and "Maximum Settlement Amount"). These amounts include a non-reversionary minimum of $6,000,000 in new dollars, and a maximum of $13,500,000, to pay valid Claims submitted as part of the Settlement. Ex. 1 ¶ 22; Agreement ¶¶ 2.18, 2.17. Settlement Class Members who submit a valid Claim with proof of purchase are eligible for reimbursement up to a maximum of 100% of the amount for which they provide proof of purchase. Ex. 1 ¶ 22; Agreement ¶ 7.5(b). Settlement Class Members who submit a valid Claim without proof of purchase are eligible for reimbursement of up to five dollars ($5.00) per household. Ex. 1 ¶ 22; Agreement ¶ 7.5(a). If the sum of the Amount Payable for Approved Claims exceeds $13,500,000 (which is the Maximum Settlement Amount less the $4,000,000 credit for previously-paid claims), payments to Settlement Class Members will be reduced *pro rata* so that the total of all payments for valid Claims does not exceed the Maximum Settlement Amount. Ex. 1 ¶ 22; Agreement ¶ 6.4. If the Amount Payable for Approved Claims is

less than the Minimum Settlement Amount, Kimberly-Clark shall receive a credit towards its other obligations: first to Notice and Administration Expenses, and second to attorneys' fees and expenses. Ex. 1 ¶ 22; Agreement ¶ 6.4.

2. Attorneys' Fees and Costs, Class Notice and Administration, and Service Awards.

As of the date of filing, the Settlement Administrator estimates that fees, expenses, and Notice and Administration Expenses will be $1,361,405. Ex. 1 ¶ 23. Pursuant to the Agreement, Kimberly-Clark will pay costs of Notice and Administration Expenses and any Fee Award and Costs separately from the Minimum or Maximum Settlement Amounts, unless the sum of the Amount Payable for Approved Claims is less than $6,000,000 to pay new Claims, in which case Kimberly-Clark will receive a credit towards its other obligations under the Settlement, first to Notice and Administration Expenses, and second to the Fee Award and Costs. *Id.* at ¶ 23; Agreement ¶¶ 6.4, 12.2. The attorneys' fee and costs provision was separately and independently negotiated by the Parties only after the Class relief was agreed upon, with the assistance of Justice Hankinson, and the Settlement Agreement is not conditioned on its approval. Ex. 1 ¶ 23.

Likewise, subject to this Court's approval, Kimberly-Clark will pay Service Awards of up to $2,500 for each proposed Settlement Class Representative, which are intended to compensate such individuals for their efforts in the litigation. Ex. 1 ¶ 24; Agreement ¶ 12.1. Any Service Awards approved by the Court will count toward the Minimum Settlement Amount; however, if Approved Claims exceed the Maximum Settlement Amount, Service Awards will not count toward the Maximum Settlement Amount. Ex. 1 ¶ 24; Agreement ¶ 12.1.

IV. INTERIM CLASS COUNSEL'S ATTORNEYS' FEE REQUEST SHOULD BE APPROVED.

When class counsel's efforts have conferred a substantial benefit upon a class, counsel is entitled to attorneys' fees for achieving that benefit. *Boeing Co. v. Van Gernert*, 444 U.S. 472, 478

(1980). Courts in this Circuit have recognized that parties to a class settlement are encouraged to agree on the amount of the fees, as Interim Class Counsel and Kimberly-Clark have done in this case. *See, e.g., DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322–23 (W.D. Tex. 2007). Even where there is an agreement on fees, however, the Court must still evaluate the requested fee amount under applicable standards to ensure that the fee awarded is reasonable. *Lopez v. Consulting Servs. LLC*, 2018 WL 3301683, *2 (E.D. Tex. Feb. 6, 2018) (explaining "district courts generally begin by looking to the parties' proposed percentage as the starting point to determine the benchmark fee," before applying *Johnson* factors to ensure the requested fee is reasonable).

Where, as here, a class settlement provides a monetary recovery for the class, the Court has discretion to use either the "percentage-of-the-fund" or the "lodestar-multiplier" approach (or a combination of the two) to determine a reasonable fee. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012). Courts in this Circuit have repeatedly recognized that in common fund and constructive common fund cases (such as this case) the most appropriate method to use is the percentage-of-the-fund approach, often with the lodestar-multiplier approach used as a "cross-check." *Id.* at 643 (recognizing that the percentage method "brings certain advantages…because it allows for easy computation" and "aligns the interests of class counsel with those of the class members."); *SEC v. Stanford Int'l Bank, Ltd.*, 2019 WL 289370, at *2 (N.W. Tex. Jan. 18, 2019) ("there is a strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery."); *In re Heartland Payment Systems, Inc.*, 851 F. Supp. 2d 1040, 1072–73, 1078 (S.D. Tex. 2012) (applying the percentage approach, with a lodestar cross-check, to determine reasonable fee for settlement in constructive common fund case) (citing cases).

In the Fifth Circuit, the court also must evaluate the reasonableness of the fee in light of the applicable "*Johnson* factors," which include: (1) the time and labor required; (2) the novelty

and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974).

As discussed below, the requested fee and expense award, which was agreed to by the Parties through mediation with Justice Hankinson, is reasonable under both a percentage-of-the-fund analysis and lodestar cross-check and is supported by the relevant *Johnson* factors.

A. Interim Class Counsel's Fee Request is Reasonable Under the Percentage-of-the-Fund Method.

In determining the reasonableness of the fee award sought here, "[t]he first step under the [percentage] method requires determining the actual monetary value conferred to the class members by the settlement." *In re Heartland*, 851 F. Supp. 2d at 1075. "The next step is to determine the appropriate percentage benchmark." *Id.* at 1080. "The final step in applying the percentage method is to determine whether the benchmark . . . should be adjusted in light of the *Johnson* factors." *Id.* at 1086.

1. Interim Class Counsel Obtained Substantial Value to be Conferred to the Class.

Where, as here, the defendant in a class settlement agrees to separately pay class notice and administration costs and attorneys' fees and expenses on top of the monetary relief provided to the class (as opposed paying both the class and class counsel from a traditional "common settlement fund"), it is proper to include those expenses in determining the value of the constructive fund. *See* Federal Judicial Center, Manual for Complex Litigation, § 21.7, p. 335 (4th ed. 2004)

("If an agreement is reached on the amount of a settlement fund and a separate amount for attorney fees and expenses…the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class, with the agreed-on fee amount constituting the upper limit on the fees that can be awarded to counsel."); *In re Heartland*, 851 F. Supp. 2d at 1072 (where settlement provides for separate payment by defendant of attorneys' fees on top of the class payments, proper to treat the combination of the class payments and attorneys' fees as a "constructive common fund" used in applying percentage method); *In re Deepwater Horizon*, 2016 WL 6215974, at *15 (E.D. La. Oct. 25, 2016) ("when, as here, the settlement calls for the defendant to fund the payment of attorneys' fees to class counsel, it relieves the class of the burden of paying those fees from the recovery otherwise available to class members. As such . . . that amount is properly included in the value of the settlement for fee award purposes.").

In this case, the constructive fund can be fairly valued at a minimum of $15,011,405. Ex. 1 ¶ 26. This figure includes: (1) the minimum of $10,000,000 allocated to pay customers who purchased recalled Wipes (which includes $4,000,000 in activated refund cards and $6,000,000 in new dollars made available under the Settlement);[3] (2) $3,650,000 in attorneys' fees and expenses; and (3) and $1,361,405 in class Notice and Administration Expenses to be separately paid under the Settlement. *Id.* Under this valuation, the fee request is 24.3% of the minimum fund. *Id.*

[3] It is appropriate and reasonable to value Kimberly-Clark's refund program as part of the Settlement here given that Kimberly-Clark began issuing refunds to address the conduct and pay the types of damages asserted in this action, Interim Class Counsel negotiated aspects of the program including the release of liability initially attached to accepting refund cards, and Interim Class Counsel negotiated the ability of class members to forego activating their refund cards in favor of making a cash claim under this Settlement without compromising their ability to submit a claim. Moreover, the amount of refunds claimed and ultimately accepted was accounted for when negotiating the monetary terms of the Settlement.

If valid Claims exceed $10,000,000, then Kimberly-Clark is obligated to pay up to an additional $7,500,000 to pay valid Claims, totaling $17,500,000, in addition to separately paying (1) attorneys' fees and expenses, (2) Notice and Administration Expenses, and (3) Service Awards totaling $55,000. *Id.* at ¶ 27. Under this scenario, the constructive fund would be valued at $22,566,405, resulting in a fee request equaling 16.2% of the fund. *Id.* In either scenario, the fee request is well within the range of reasonableness and less than typical benchmark fee awards in this Circuit. *Id.*

2. The Requested Fee is a Reasonable Percentage of the Value of the Settlement.

Here, Interim Class Counsel's request for between 16.2% and 24.3% of the value of the Settlement is a reasonable percentage benchmark. Even at 24.3%, this percentage is lower than the percentage fees regularly awarded in this Circuit in comparable cases, which typically range between 30% and 33%. *See, e.g. Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227, at *9–10 (N.D. Tex. Apr. 25, 2018) (Lynn J.) (citing cases) (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range."); *Torregano v. Sader Power, LLC*, 2019 WL 969822, at *3 (E.D. La. Feb. 28, 2019) ("awards in this circuit in the range of 33% are commonplace.").

For comparison, a typical contingent fee arrangement in non-class action cases provides that the representing attorney receives one-third or more of the plaintiffs' recovery, exclusive of costs. Ex. 1 ¶ 28; *see Arete Partners, L.P. v. Gunnerman*, 2010 WL 11614545, at *2 (W.D. Tex. June 23, 2010) (citing *Barger v. Sutton*, 2004 WL 825998, at *2 (W.D. Tex. Apr. 13, 2004)) ("a one-third contingency fee is customary in both Austin and San Antonio, Texas."). Moreover, Interim Class Counsel often represents sophisticated businesses in complex commercial litigation

on a contingency basis, where these business clients commonly agree to pay fees ranging from 35 to 50% of any recovery. Ex. 1 ¶ 28. This fact is relevant to determining the appropriateness of the award here because the Court's ultimate task is to approximate the reasonable fee that a competitive market would bear. Because the amount requested is below the percentage typically awarded, Interim Class Counsel's request for—at most—24.3% of the value of the Settlement is reasonable and should be approved. *See id.*

Further, as discussed below, the *Johnson* factors show that the requested fee is reasonable.

3. Interim Class Counsel's Fee Request is Reasonable Under a *Johnson* Factors Cross-Check.

a. The Time and Labor Required (*Johnson* Factor 1) Supports Approval of the Requested Fee.

Under this factor, courts examine whether "the time and labor expended was reasonably required for the results achieved" in the case. *See Bridges v. Ridge Natural Resources, LLC*, 2020 WL 7496843, at *4 (W.D. Tex. June 23, 2020). Interim Class Counsel has invested substantial time and resources into pursuing the Class's claims. Ex. 1 ¶¶ 37, 39, 41-60.

From the inception of the case through December 1, 2023, Interim Class Counsel and the attorneys and staff at their law firms have spent a combined 5,079 hours prosecuting this case, all of which were reasonably required to achieve the significant cash relief the Settlement will confer

on the Settlement Class Members.[4] *Id.* at ¶ 37. That figure does not include significant additional time Interim Class Counsel will spend, going forward, seeking final approval and on settlement implementation matters. *Id.* at ¶¶ 37, 55-56. As recounted above, Interim Class Counsel's efforts have included: conducting a thorough pre-filing factual and legal investigation that they continued throughout the course of the litigation; in-taking more than 1,700 potential clients, drafting the Consolidated Class Action Complaint; engaging opposing counsel in discovery efforts; opposing a motion to dismiss; briefing a motion for protective order; preparing for and participating in extensive mediation, including four full-day sessions and extensive follow up negotiations with the guidance of Justice Hankinson (Ret.); issuing subpoenas to third-party retailers and successfully negotiating the production of contact information for direct notice to over five

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[4] Several courts have suggested that the analysis of this factor should not be so detailed that it defeats the purpose of using the percentage method rather than the lodestar method. *See Di Giacomo v. Plains All Am. Pipeline*, 2001 WL 34633373, at *10 (S.D. Tex. Dec. 19, 2001) ("This court will not conduct a detailed analysis of charged hours and hourly rates. To do so would undermine the utility of the percentage fee method. However, this court does note that the hours spent and the average hourly rates are reasonable in light of the circumstances of this case and the results achieved for plaintiffs."). This is especially so in common fund contingency cases, in which the size of the fund created/results obtained is the most important factor. *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 747 (S.D. Tex. 2008) (citations omitted) ("One treatise writer has observed, 'A lodestar figure cannot fully compensate counsel' in a contingency common fund case 'because the resulting amount does not reflect the risk of nonpayment and thus is not equal to the fair market value of the counsel's services…Furthermore, risk must be assessed."); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 963 (E.D. Tex. 2000) (internal quotation marks and citations omitted) ("Unlike in a statutory fee analysis, where the lodestar is generally determinative, in a percentage fee award [from a common fund] *the amount of time may not be considered at all…*Even when hours expended receive some weight, the factor given the greatest emphasis is the size of the fund created, because a common fund is itself the measure of success…[and] represents the benchmark from which a reasonable fee will be awarded."). After all, the purpose of this factor is not to calculate the fee amount but to "help[] the Court to evaluate the work done" and "serve[]the injured claimants" by "help[ing to] guard against spurious claims and counsel rushing cases to settlement to obtain a fee that might not reflect the actual work done." *In re Actos (Pioglitazone) Prod. Liab. Litig.*, 274 F. Supp. 3d 485, 529 (W.D. La. 2017).

million consumers; along with Kimberly-Clark, drafting the written settlement agreement, notice and other exhibits; and working closely with the Settlement Administrator and Kimberly-Clark on notice and other implementation issues. *See id.* at ¶¶ 3-20. The substantial time and effort that Interim Class Counsel has devoted to this case supports the requested fee.

b. The Novelty and Difficulty of the Issues (*Johnson* Factor 2) Supports Approval of the Requested Fee.

Considerations courts analyze to determine uniqueness and difficulty of the issues involved in a case include, among others, the type of case, whether a case has a significant risk of no recovery, whether class counsel has litigated similar cases in the past, the volume of discovery and pretrial practice in the case, and the duration of the litigation. *See Bridges*, 2020 WL 7496843, at *4. This case presented novel, complex and difficult issues on several fronts.

Here, the proposed Settlement is the product of nearly three years of heavily contested litigation. While Plaintiffs are confident in the merits of their theory of liability and ability to prove the claims of the absent class members, there remain "substantial risks of continued litigation," (*see* Doc. 120 at ¶ 5), including significant obstacles to a class-wide judgment in favor of the class on liability and damages. Ex. 1 ¶ 34; *see* Doc. 81. Even if Plaintiffs survived Kimberly-Clark's motion to dismiss, achieved class certification, and prevailed at trial on behalf of the class, there is the risk that, after years-long litigation, that the Fifth Circuit could reverse on the merits. Ex. 1 ¶ 34.

Notwithstanding the novelty and complexity of this case and the challenges Interim Class Counsel faced, Interim Class Counsel took on representation in this case, prosecuted it on a fully contingent basis, and devoted substantial time and money to that prosecution. Ex. 1 ¶¶ 34, 37, 39. As a result, Interim Class Counsel have achieved an excellent recovery on behalf of the Settlement Class that will pay class members 100% of their economic damages sought in this case. *Id.* at ¶

36. Given the modest proof requirements necessary to submit a claim, a result this favorable could not even have been achieved at trial—a task that would have been costly, lengthy, inherently risky, and subjected Plaintiffs to much stricter proof requirements. *Id.*

c. The Skill Required to Perform the Legal Services Properly and the Experience, Reputation, and Ability of the Attorneys (*Johnson* Factors 3 and 9) Supports Approval of the Requested Fee.

"This factor is evidenced where 'counsel performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution.'" *In re Heartland*, 851 F. Supp. 2d at 1083 (quoting *King v. United SA Fed. Credit Union*, 744 F. Supp. 2d 607, 614 (W.D. Tex. 2010)).

Interim Class Counsel are highly experienced in litigating complex cases and have worked diligently to being this case to a successful resolution. In addition to other active cases, Interim Class Counsel have also been appointed and served as class counsel in several other consumer class actions across the country. Ex. 1 ¶¶ 29-33. Recognizing Interim Class Counsel's outstanding experience, reputation, and ability, this Court appointed these firms as Interim Class Counsel under Rule 23(g), noting Interim Class Counsel are "are highly experienced in complex class actions[.]" Doc. 120 at ¶ 3. Interim Class Counsel's experience litigating class actions, particularly on behalf of consumers, allowed them to fully understand the issues attendant to such litigation, properly value the risks of continued litigation compared to benefits derived from the Settlement, and efficiently resolve this case in a manner that achieves the goals of the litigation. Ex. 1 ¶¶ 29-39. The favorable recovery obtained for the class is a testament to Interim Class Counsel's skills, especially in light of defense counsel's quality work. *See Schwartz v. TXU Corp.*, 2005 WL 3148350, at *30 (N.D. Tex. Nov. 8, 2005) ("The ability of Plaintiff's Counsel to obtain such a

favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation.”). Thus, this factor supports approval of the requested fee.

d. The Preclusion of Other Employment and the Contingent Nature of the Fee (*Johnson* Factors 4 and 6) Supports Approval of the Requested Fee.

The fourth *Johnson* factor examines “the extent to which class counsel were precluded from accepting other work due to the responsibilities involved in litigating this case.” *See Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 677–78 (N.D. Tex. 2010). “The reality of complex cases is that work is not easily shifted to other attorneys in a firm not familiar with the matter, with the result that substantially less time becomes available to . . . Class Counsel to attend to other matters.” *In re Heartland*, 851 F. Supp. 2d at 1084. As a result, “[t]ime devoted to this litigation and its resolution necessarily limited the time available for other litigation.” *Id.*

Here, the work of Interim Class Counsel in the management and litigation of this complex proceeding “necessarily infringed upon the time and opportunity they would have had available to accept other employment.” *See id.* The contentiousness of this case and the many novel and complex issues raised required Interim Class Counsel to expend significant time and financial resources, which prevented Interim Class Counsel from pursuing other work. *See* Ex. 1 ¶¶ 34, 37. That thousands of hours Interim Class Counsel devoted to this matter as opposed to other efforts underscores that Interim Class Counsel had been “focused on this litigation to the exclusion of taking on other projects.” *See Melby v. Am.’s MHT, Inc.*, 2018 WL 10399003, at *3 (N.D. Tex. July 5, 2018).

Likewise, the sixth *Johnson* factor considers whether counsel took the case on a contingency basis. *Johnson*, 488 F.2d at 718. Here, Interim Class Counsel represented Plaintiffs and Settlement Class Members on a fully contingent basis for over three years, advancing the

time and expenses necessary to successfully prosecute this case without any compensation or guarantee of recovery. Ex. 1 ¶¶ 34, 39. This factor too supports the request fee.

e. The Customary Fee and Awards in Similar Cases (*Johnson* Factors 5 and 12) Supports Approval of the Requested Fee.

"Courts often look at fees awarded in comparable cases to determine if the fee requested is reasonable." *In re Heartland*, 851 F. Supp. 2d at 1086. As discussed above, in the Fifth Circuit, fee awards of 30%–33% in class action settlements are customary. *See In re Forterra Inc. Sec. Litig.*, 2020 WL 4727070, at *1 (N.D. Tex. Aug. 12, 2020) (33% fee award); *Parmelee v. Santander Consumer USA Holdings Inc.*, 2019 WL 2352837, at *1 (N.D. Tex. June 3, 2019) (same); *In re EZCORP, Inc. Sec. Litig.*, 2019 WL 6649017, at *1 (W.D. Tex. Dec. 6, 2019) (same); *Buettgen v. Harless*, 2013 WL 12303143, at *4 (N.D. Tex. Nov. 13, 2013) (30% of $33.75 million settlement); *City of Pontiac Gen. Employees' Ret. Sys. V. Dell Inc.*, 2020 WL 218518, at *1 (W.D. Tex. Jan. 10, 2020) (30% fee award); *Marcus v. J.C. Penney Co., Inc.*, 2018 WL 11275437, at *1 (E.D. Tex. Jan. 5, 2018) (same).

Interim Class Counsel's requested fees and costs, representing between 16.2% and 24.3% of the constructive fund, is well below ranges normally awarded in this Circuit. Thus, this factor supports approval of the requested fee. *See, e.g., Erica P. John*, 2018 WL 1942227, at *9–10 (approving 33⅓% fee as "within the range of percentage fees awarded in the Fifth Circuit in other complex cases" and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range.").

f. Time Limitations Imposed by the Client or Other Circumstances Factor (*Johnson* Factor 7) is Inapplicable.

Given the nature of class action representation this factor is "inapplicable to this case, and [is] therefore neutral." *In re Dell, Inc.*, 2010 WL 2371834, at *18 (W.D. Tex. June 11, 2010). However, Interim Class Counsel note that diligence in settling this matter was of the upmost

importance, given the difficulty attendant to individual class members locating proof of purchase for Wipes as time went on. Ex. 1 ¶ 35. It also is notoriously difficult to secure the identities of class members in cases involving consumer products. *Id.* Nonetheless, Interim Class Counsel worked diligently to identify putative class members through third party subpoenas, allowing them to provide direct notice of the Settlement to millions of class members. *Id.*; *see Melby*, 2018 WL 10399003, at *4.

g. The Monetary Amount and the Results Obtained (*Johnson* Factor 8) Supports Approval of the Requested Fee.

The Fifth Circuit has called this factor the "most critical" factor. *See Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998). Here, the Settlement resulted in a very favorable outcome for the class. The commitment of at least $6,000,000 in new dollars and up to $13,500,000 to pay valid Claims in addition to the $4,000,000 already paid is an excellent result for Settlement Class Members. Ex. 1 ¶ 36. Based on the data available, Interim Class Counsel is confident that Settlement Class Members who submit proof of purchase will recover one hundred percent (100%) of their economic damages in this case, whereas Settlement Class Members without any documentation still have the opportunity to recover five dollars per household by simply attesting they purchased recalled Wipes. *Id.* Given that there was significant risk that, absent the Settlement, class members would receive no recovery, the ability to recover 100% of economic damages with modest proof requirements is a substantial benefit for class members. *Id.*

h. The Undesirability of the Case Due to the Risk of Non-Recovery (*Johnson* Factor 10) Supports Approval of the Requested Fee.

"[T]he 'risk of non-recovery' and 'undertaking expensive litigation against…well-financed corporate defendants on a contingent fee' has been held to make a case undesirable, warranting a higher fee." *Erica P. John*, 2018 WL 1942227, at *12. Here, the risk of non-payment was high in this case. It would not have been economically feasible for Plaintiffs to retain lawyers

on an hourly basis or to pay the costs of litigation, which would quickly surpass the amount in controversy for an individual plaintiff. As a result, Interim Class Counsel undertook the representation of Plaintiffs and the class on a fully contingent basis and would recover nothing for expenses or time incurred unless the case succeeded. *See* Ex. 1 ¶ 39. Thus, in taking the case, Interim Class Counsel accepted a high risk of not being compensated for their efforts, supporting approval of the fee award here. *Id.* at ¶¶ 34, 39. Additionally, in pursuing this lawsuit on behalf of the Settlement Class, Interim Class Counsel undertook expensive litigation against a well-financed corporate defendant on a contingency fee basis. *Id.* at ¶ 34. This "case carried risks that required in-depth investigation and considerable…discovery to analyze the merits of" the class's claims, which further "justifies the benchmark percentage" Interim Class Counsel requests. *See Bridges*, 2020 WL 7496843, at *4.

i. The Nature and Duration of the Professional Relationship with the Client (*Johnson* Factor 11) Supports the Requested Fee.

Interim Class Counsel has represented Plaintiffs for the entirety of this action. From the very beginning, Interim Class Counsel has maintained a strong, positive professional relationship with Plaintiffs. Ex. 1 ¶ 38. Interim Class Counsel has also maintained positive relationships with class members who reached out about potentially joining the case, including keeping them apprised on the status of the litigation and providing instructions regarding how to submit a claim under the Settlement. *Id.*

B. A Lodestar-Multiplier Cross-Check Confirms the Reasonableness of the Requested Fee.

Under Fifth Circuit law, where a court applies the percentage-of-the-fund approach to determine a reasonable fee, the court may, but is not required, to conduct a lodestar-multiplier "cross-check." *See Deepwater Horizon*, 2016 WL 6215974 at *15 ("Virtually all of the recent common fund fee awards by district courts in the Fifth Circuit have utilized the percentage

method" with "[m]any of these courts includ[ing] an additional step, cross-checking the award against a 'rough lodestar analysis."); *Al's Pals Pet Care v. Woodforest National Bank,*, 2019 WL 387409, at *4–5 (S.D. Tex. Jan. 1, 2019) (approving 33% fee without a lodestar cross-check).

Application of the lodestar-multiplier method here—whether used directly or as a "cross check" on the percentage-of-the-fund method—further supports the reasonableness of the requested fee. The first step in the lodestar-multiplier approach is "multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." *Dell*, 669 F.3d at 642–43. Once this raw lodestar amount is calculated, the Court may then adjust that figure via a "multiplier" based on application of the *Johnson* factors. *Id.* In complex class actions like this case, courts regularly award positive multipliers to reflect, as applicable, the risks assumed by counsel in litigating on a contingency basis, the complexity of the issues involved, the undesirability of the case, and consideration of the other relevant *Johnson* factors. *See, e.g., DeHoyes*, 240 F.R.D. at 333; *Klein*, 705 F. Supp. 2d at 680.

1. Interim Class Counsel's Hourly Rates and Reasonable.

The accompanying Declaration sets forth the billing rates used to calculate their lodestars and summarizes the experience of the primary timekeepers who worked on this litigation. Ex. 1 ¶¶ 41-54. In assessing the reasonableness of an attorney's hourly rate, courts consider whether the claimed rate is in line with "prevailing market rates for lawyers with comparable experience and expertise in complex class litigation." *In re Heartland*, 851 F.Supp.2d at 1088 (citation and internal quotation marks omitted). It is appropriate to apply each biller's current rates for all hours of work performed, regardless of when the work was performed, as a means of compensating for the delay in payment. *See, e.g., Leroy v. City of Houston*, 831 F.2d 576, 584 (5th Cir. 1987); *Slipchenko v. Brunel Energy, Inc.*, 2015 WL 338358, at *19 (S.D. Tex. Jan. 23, 2015) ("An 'accepted method

of compensating for a long delay in paying for attorneys' services is to use their current billing rates in calculating the lodestar."').

Interim Class Counsel here are experienced, highly regarded members of the bar. Ex. 1 ¶¶ 29-33, 45, 48, 51, 54. They have brought to this case extensive experience in the area of consumer class actions and complex litigation. *Id.* Interim Class Counsel's rates, used in calculating the lodestar here, are in line with prevailing market rates for lawyers with comparable experience and expertise, have been approved by federal courts throughout the country, and/or are paid by hourly-paying clients. *Id.* at ¶¶ 45-46, 48-49, 51-52, 54; *see, e.g., In re Heartland*, 851 F. Supp. 2d at 1088 (rates *prima facie* reasonable if they are customary rates charged).

2. The Number of Hours that Interim Class Counsel Worked is Reasonable.

The accompanying Declaration also sets forth the number of hours that Interim Class Counsel have worked in this litigation and describes the work performed. Ex. 1 ¶¶ 41-54. As set forth therein, Interim Class Counsel and their staffs have already devoted more than 5,000 hours to this litigation and have a total unadjusted lodestar to date of approximately $4,617,070. *Id.* at. ¶¶ 41-42. These amounts do not include the additional time that Interim Class Counsel will have to spend going forward in obtaining final approval of, and implementing, the Settlement. *Id.* at ¶¶ 55-56. The number of hours spent by Interim Class Counsel was not only reasonable, but critical to the effective prosecution of the case and to achieving the Settlement for the Settlement Class.[5] *Id.* at ¶ 41. The numerous important tasks that Interim Class Counsel have had to spend significant

[5] It is well established that in moving for fees, counsel is "not required to record in great detail how each minute of his time was expended." *Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983). Instead, counsel need only "identify the general subject matter of his time expenditures." *Id.* If the Court prefers to review Class Counsel's detailed time records, Class Counsel will make them available for *in camera* review.

time on in this case are summarized above and in the accompanying Declaration. *See supra* Sections II; VI(A)(3)(a); Ex. 1 ¶¶ 3-20.

3. The Fee Requested Represents a Negative Multiplier on Class Counsel's Lodestar.

Here, Interim Class Counsel's lodestar is $4,617,070. Ex. 1 ¶ 42. Thus, the fee award requested is significantly less than Interim Class Counsel's lodestar, and actually results in a negative multiplier of .77. Courts have routinely recognized that a fractional multiplier strongly supports a finding that the fee award is reasonable. *See, e.g., Halliburton*, 2018 WL1942227, at *13 ("Because there is a strong presumption that the lodestar represents a reasonable fee…, the fact that Class Counsel seeks an award less than the lodestar supports finding that the fee award is reasonable"); *In re Heelys, Inc. Derivative Litig.*, 2009 WL 10704478, at *11 (N.D. Tex. Nov. 17, 2009) (finding fee award resulting in a negative multiplier of 0.94 on counsel's lodestar "demonstrably reasonable"). This is because positive multipliers of 1 to 4 are typically approved by courts within the Fifth Circuit in complex contingency fee litigation like this one. *See, e.g., DeHoyos*, 240 F.R.D. at 333 ("The average range of multipliers applied to other class actions has been from 1.0 to 4.5. The range of multipliers on large and complicated class actions have ranged from at least 2.26 to 4.5."); *Sistrunk v. TitleMax, Inc.*, 2018 WL 1773307, at *4 (W.D. Tex. Feb. 22, 2018) ("the fee award is approximately double the value of Class Counsel's lodestar valuation…which is consistent with multipliers approved of in other class action fee awards in this circuit"); *Klein*, 705 F. Supp. 2d at 680 (approving a 2.5 multiplier and noting that "[m]ultipliers in this range are not uncommon in class action settlements") (citing cases).

Additionally, Interim Class Counsel will continue to incur additional lodestar performing future work overseeing administration of the settlement, communicating with class members, preparing and arguing the motion for final approval, and defending the Court's entry of final

judgment if there is an appeal. *See* Ex. 1 ¶¶ 55-56. Thus, the negative multiplier will only increase as this matter approaches final approval, supporting the reasonableness of the requested fee. *Id.*

Moreover, as discussed above, application of the *Johnson* factors to the circumstances of this case fully support the requested fee—including the novelty and substantial difficulty of this case, the undesirability of the case, the strong result achieved for the Settlement Class under challenging circumstances, and the significant risks that Interim Class Counsel assumed in prosecuting this case for three years, and incurring substantial litigation expenses, on a purely contingent basis. *See supra* Section VI(A)(3) (discussing application of *Johnson* factors); *Klein*, 705 F. Supp. 2d at 680 (finding multiplier was warranted "due to the risks entailed in this lawsuit and the zealous efforts of the attorneys that resulted in a significant recovery for the class").[6]

4. Interim Class Counsel's Requested Expense Reimbursement Should Be Approved.

"In addition to being entitled to reasonable attorneys' fees, class counsel in common fund cases are also entitled to reasonable litigation expenses from that fund." *In re Heartland*, 851 F. Supp. 2d at 1089 (internal quotation marks omitted). As detailed in Interim Class Counsel's Declaration, Interim Class Counsel's request includes reimbursement for $102,843.00 in costs and expenses expended by Interim Class Counsel. *See* Ex. ¶ 57. These costs were reasonably and necessarily incurred in the prosecution of this case and are the types of costs typical in class action litigation. *Id.*

[6] Interim Class Counsel have an agreement governing the allocation of any attorneys' fees that are awarded by the Court. Since no other plaintiffs' counsel are involved in this case—i.e., all of the fees awarded will be allocated among the four Interim Class Counsel firms—there is no need for the Court to adjudicate the allocation.

V. THE COURT SHOULD APPROVE A $2,500 SERVICE AWARD FOR EACH SETTLEMENT CLASS REPRESENTATIVE.

"Service awards are used in class action lawsuits to compensate named plaintiffs for the services they provide." *Del Carmen v. R.A. Rogers, Inc.*, 2018 WL 6430835, at *2 n.2 (W.D. Tex. Oct. 18, 2018). *See also DeHoyos*, 24 F.R.D. at 339–40 (collecting cases) ("Federal courts consistently approve incentive awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they shoulder during litigation."). Service awards are supported by the text of Rule 23(e)(2)(D), which requires a court reviewing a proposed settlement to consider whether "the proposal treats class members equitably relative to each other." This requirement "also protects class representatives from having absent class members free ride on their efforts." Newberg on Class Actions § 17:4 (5th ed.) ("[I]f the class representatives face particular risks in serving the class and/or undertake valuable work on behalf of the class but cannot recover any of the costs of those efforts through an incentive award, they have a fair argument that the settlement is not treating them equitably relative to the absent class members.").

Interim Class Counsel request that the Court award each Settlement Class Representative a Service Award of $2,500. Such an award is "justified in light of [their] willingness to devote [their] time and energy to this . . . representative action and reasonable in consideration of the overall benefit conferred on the settlement class." *DeHoyos*, 24 F.R.D. at 339; *see, e.g.*, *Melby*, 2018 WL 10399003, at *7 (approving $2,000 incentive awards to each of the four named plaintiffs); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 973 (E.D. Tex. 2000) ("approving incentive awards of $25,000 to each of two named plaintiffs"). Each Settlement Class Representative made the difficult decision to put their name on a lawsuit against an abundantly resourced corporation, without which this lawsuit could not have been initiated. Ex. 1 ¶ 61. In addition, each Class Representative provided detailed information as to their claims and has

remained active in the case, communicating with Interim Class Counsel throughout the case, including review and approval of the terms of the Settlement as being in the best interests of the Settlement Class. *Id.* Thus, Interim Class Counsel's request for Service Awards of $2,500 for each Settlement Class Representative is reasonable, justified, and should be approved.

VI. CONCLUSION

For the reasons stated herein, Interim Class Counsel respectfully requests that the Court grant the Motion.

Dated: December 5, 2023

Respectfully submitted,

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Court Appointed Co-Lead Interim Class Counsel

CERTIFICATE OF SERVICE

On December 5, 2023, I caused to be electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Joshua L. Hedrick
Joshua L. Hedrick