IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

ROBIN ALLEN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

HUSQVARNA PROFESSIONAL PRODUCTS INC.,

Defendant.

Case No. 3:24-CV-896-FDW-SCR

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

I. INTRODUCTION

On September 3, 2025, the Court granted preliminary approval to the class action settlement of this case. ECF No. 43. As discussed in the preliminary approval briefing, the settlement resolves the claims of class members who purchased grass trimmers recalled by the U.S. Consumer Product Safety Commission ("CPSC"). The settlement enhances the existing recall by providing additional benefits for class members and creating additional incentive to participate in the recall. First, in addition to the existing repair remedy provided under the recall (which will remain unchanged), class members who participate in the recall within one year of class notice will, pending final approval, automatically receive a one-year extended warranty on the product and a three-year extended warranty on the ignition module. Critically, this benefit is automatic and will not require claim submissions from class members, providing class members with nearly $5 million in value based on real world retail pricing that Husqvarna charges for such warranties. Second, class members who participate in the recall within 90 days of class notice may submit a claim for a $45 voucher for Husqvarna products, which further incentivizes prompt response to obtain the already available recall repair. This voucher will be freely transferable, can be stacked with other promotions, and can be used at more than a thousand retailers nationwide, including Defendant's online website.

In addition, the settlement requires Defendant to pay for the costs of class notice and administration, any court-awarded attorneys' fees and expenses up to $550,000, and a service award up to $2,000 for the Plaintiff.

Court-approved notice of the proposed settlement has been sent to class members. A final approval hearing is scheduled for February 2, 2026. In conjunction with final approval, Plaintiff respectfully requests that the Court approve the attorneys' fees, costs, and expenses, and service

award contemplated by the settlement: $550,000 in attorneys' fees, costs, and expenses, and a $2,000 service award to the Plaintiff. The requested fees, expenses, costs, and service award are all reasonable, are similar to those awarded in similar litigation, are to be paid by Defendant, and recognize the efforts of Class Counsel and the Plaintiff in achieving a tremendous benefit for thousands of other people, all at their own risk.

II. BACKGROUND FACTS & PROCEDURAL HISTORY

A. The Litigation

On February 8, 2024, Defendant and the CPSC announced the recall of over 400,000 grass trimmers spanning three different models due to incorrect wiring in the ignition module that can cause an electrical spark or arcing, posing a fire hazard if gas is on or near the unit. Consumers were told to immediately stop using the recalled products. *See* Compl., ¶¶ 12-17.

Plaintiff Robin Allen filed this action on October 9, 2024, alleging claims under New York's consumer protection law and common law claims of breach of implied warranty and unjust enrichment. Defendant raised numerous arguments in its motion to dismiss, including, among other things, that the Plaintiff was not injured because the existing recall provided a sufficient remedy. *See* ECF No. 14-15 (MTD and supporting brief). That motion was been fully briefed but was denied as moot in light of the settlement on August 13, 2025. ECF No. 40.

On January 21, 2025, the parties advised the Court in their Proposed Discovery Plan that they intended to conduct an initial round of preliminary discovery to be completed by March 27, 2025, and then, based on the evidence disclosed, decide whether to engage in private mediation. *See* ECF No. 25, § 6. Both sides served document requests and interrogatories, and worked cooperatively to focus on the requests that were most relevant to early case evaluation and class certification. Smith Decl. at ¶¶ 7-8. In addition, Plaintiff personally met with one of

Defendant's local agents to produce her product for inspection, which was then subjected to a battery of tests. *Id*. at ¶ 9.

The parties were on the precipice of class certification briefing when serious discussions concerning settlement arose. *See, e.g*., April 2, 2025 Minute Order (denying motion to extend class certification deadline without prejudice until after second mediation scheduled for April 16, 2025). Plaintiff's motion for class certification was originally due on May 22, 2025 (though was extended shortly before the deadline), *see* ECF 26, and the initial settlement in this case was not signed until July 23, 2025.

B. The Mediations

After obtaining evidence in the case concerning liability, damages, and defenses to class certification, the parties conducted an in-person mediation with Judge Gerald E. Rosen (Ret.) of JAMS in Chicago on March 27, 2025. Smith Decl. at ¶ 10. A second in-person mediation session occurred in New York City on April 16, 2025. *Id*. at ¶ 11. Although the parties made substantial progress during the second mediation, much more work remained to be done. The parties continued to engage in an extensive back-and-forth on the details of a term sheet through emails and telephone calls, again with the assistance of Judge Rosen. *Id*. at ¶ 12. The parties did not negotiate attorney's fees and service awards until after the material terms of the class settlement were resolved. *Id*. at ¶ 13. Those latter negotiations were likewise challenging and required further assistance from Judge Rosen. *Id*. On June 6, 2025, the parties signed a term sheet outlining the principal essential and material terms of a future agreement, and then began working on a long-form settlement, notice materials, and consulting with potential class settlement administrators. *Id*. at ¶ 14; *see also* ECF No. 34. A full settlement was executed on July 23, 2025. *Id*. ¶ 15.

C. The Revised Settlement

Plaintiff filed a Motion for Preliminary Approval on July 28, 2025. ECF No. 36. The Court granted the motion on August 13, 2025. ECF No. 39. In the week following the filing of the motion, the Parties discovered that they inadvertently included in the final settlement agreement language from outdated drafts of the settlement. Smith Decl. at ¶ 15. Further, Defendant learned from some of its retailers that they would not be able to implement the $40 voucher portion of the settlement in its stores. *Id*. Accordingly, the Parties immediately started conferring and negotiating about fixing the language in the settlement and improving the settlement. An updated version of the Settlement was signed on August 13, 2025 ("Revised Settlement"), superseding the version of the Settlement submitted to the Court in the July 28, 2025 motion ("Original Settlement"). *Id*. The Parties intended to immediately alert the Court that a revised Settlement had been reached and request that it hold off ruling on or vacate the then pending motion for preliminary approval for a few days until the Parties were able to file a new motion seeking approval of the Revised Settlement. *Id*. However, just hours after the Revised Settlement had been executed, the Court issued its Order granting preliminary approval of the Original Settlement. ECF No. 39; Smith Decl. ¶ 15.

On August 15, 2025, Plaintiff filed a motion for the Court to update the settlement and grant preliminary approval to the Revised Settlement. ECF No. 41. The Court granted the motion on September 3, 2025, granting preliminary approval to the Revised Settlement. ECF No. 43. As discussed in the motion, the primary changes were 1) to change the date of when the Warranty Extension would run (such that it would run from the date of the preliminary approval of the settlement, instead of a year thereafter), and 2) to increase the value of the vouchers from $40 to $45. *See gen*. ECF No. 41 (outlining changes).

III. ARGUMENT

A. Legal Standard Governing The Award Of Attorneys' Fees

Rule 23(h) of the Federal Rules of Civil Procedure provides that in a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The award of attorneys' fees is within the sound discretion of the trial judge. *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978) (further citation omitted). While the Fourth Circuit has not made obligatory a particular method of determining fees in common fund cases, it has recognized the financial significance of the contingency fee and associated risks. *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 245 (4th Cir. 2010); *Brundle on behalf of Constellis Employee Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 786 (4th Cir. 2019), *as amended* (Mar. 22, 2019) ("courts routinely impose enhanced common fund awards to compensate counsel for litigation risk at the expense of beneficiaries who do not shoulder this risk.").

In a class action settlement, awards are made either under the "lodestar method, the percentage of the fund method, or a combination of both." *Hall v. Higher One Machines, Inc.*, 2016 WL 5416582, at *7 (E.D.N.C. Sept. 26, 2016); *Phillips v. Triad Guaranty Inc.*, 2016 WL 2636289, at *2 (M.D.N.C. May 9, 2016) ("Courts either use the lodestar method, the percentage of the fund method, or a combination of both."). The Fourth Circuit has not "announced a preferred method." *Lamie v. Lending Tree, LLC*, 2024 WL 811519, at *2 (W.D.N.C Feb. 27, 2024) (quoting *McAdams v. Robinson*, 26 F.4th 149, 162 (4th Cir. 2022)). Nonetheless, "[t]he percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases." *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 758 (S.D.W. Va. 2009) (collecting cases); *Ferris v. Spring Commc'ns Co. L.P.*, 2012 WL 12914716,

at *2 (E.D.N.C. Dec, 13, 2012) ("This consensus derives from the recognition that the percentage of fund approach is the better-reasoned and more equitable method of determining attorneys' fees in such cases."). As its name implies, the percentage of fund method provides that the court award attorneys' fees as a percentage of the common fund" while the "lodestar method requires the court to determine the hours reasonably expended by counsel that created, protected, or preserved the fund[] then to multiply that figure by a reasonable hourly rate." *Phillips*, 2016 WL 2636289 at *2 (citations and quotations omitted).

The percentage-of-the-fund method provides a strong incentive to plaintiff's counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances by removing the incentive, which occurs under the lodestar method, for class counsel to "over-litigate" or "draw out" cases in an effort to increase the number of hours used to calculate their fees. *See Jones*, 601 F. Supp. 2d at 759; *see also In re Wachovia*, 2011 WL 7787962, at *2 (noting that the percentage method "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys").

Under the percentage method, the attorney fee award is calculated using the gross amount of benefits provided to class members, including administrative costs, attorneys' fees and expenses. *See Ferris*, 2012 WL 12914716, at *9. It is common to award the percentage-of-recovery method in federal courts in North Carolina. *See In re Wachovia Corp. ERISA Litig.*, 2011 WL 5037183, at *2 (W.D.N.C. Oct. 24, 2011) ("The majority of courts have endorsed the percentage method for calculating attorneys' fee awards in common fund cases"). In the Fourth Circuit, fees constituting one-third of the settlement are reasonable. *Chrismon v. Pizza*, 2020 WL

3790866, at *5 (E.D.N.C. July 7, 2020) (collecting cases). To be sure, attorneys' fees in common fund cases typically reflect "around one- third of the recovery."

As this Court has noted, "[u]nder the common fund method, the Supreme Court and Circuit Courts across the country have held that it is appropriate to award attorneys' fees as a percentage of the entire maximum gross settlement fund, even where amounts to be paid to settlement class members who do not file claims will revert to the Defendant." *Boardman v. Green Dot Corp*., 2022 WL 15524654, at *3 (W.D.N.C. Oct. 27, 2022) (internal quotations omitted) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 481–82 (1980) and *Myers v. Loomis Armored US, LLC*, 2020 WL 1815902, at *6 (W.D.N.C. Apr. 9, 2020)).

"Even where the percentage method is used, however, the lodestar calculation may still be applied as a cross-check in the determination of a reasonable percentage." *In re Wachovia*, 2011 WL 5037183, at *3 (quotations omitted). "By using the percentage of the fund method and supplementing it with the lodestar cross-check, a court can take advantage of the benefits of both methods." *Id*.

B. Attorneys Fees Appropriate Under Percentage Of The Fund Method

The Fourth Circuit has not required specific factors for consideration in a common fund case. There are two sets currently deployed in this Circuit, *Johnson v. Georgia Highway Express*, *Inc*., 488 F.2d 714, 717–19 (5th Cir.1974) (adopted in *Barber v. Kimbrell's, Inc*., 577 F.2d 216, 226 (4th Cir. 1978))[1] and *In re Mills Corp. Sec. Litig*., 265 F.R.D. 246, 261 (E.D. Va. 2009).

[1] The *Barber* factors are: (1) the time and labor required in the case, (2) the novelty and difficulty of the questions presented, (3) the skill required to perform the necessary legal services, (4) the preclusion of other employment by the lawyer due to acceptance of the case, (5) the customary fee for similar work, (6) the contingency of a fee, (7) the time pressures imposed in the case, (8) the award involved and the results obtained, (9) the experience, reputation, and ability of the lawyer, (10) the "undesirability" of the case, (11) the nature and length of the professional

Both focus on the reasonableness of the fees and many of the factors overlap. Courts in this district have often used the *In re Mills* factors in the past, given that the *Barber* factors overemphasize the "time and labor expended" favor, the "primary factor which should be considered when conducting a lodestar analysis, but of lesser importance in the percentage of the fund method." *In re Wachovia*, 2011 WL 5036183, at *3. *See also Lamie*, 2024 WL 811519, at *2 (this Court using *In re Mills* factors). The *Mills* factors are: "(1) the results obtained for the [c]lass; (2) objections by members of the [c]lass to the settlement terms and/or fees requested by counsel; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) public policy; and (7) awards in similar cases." *In re Mills Corp. Sec. Litig*., 265 F.R.D. at 261.

1. Class Counsel Achieved Excellent Results

The most critical factor in determining the reasonableness of an attorney fee award is "the degree of success obtained." *McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). This factor strongly supports the requested fee, as Plaintiff's requested $550,000 combined fee, expenses, and costs requests amounts to a tiny fraction of the value created by the settlement.

First, the value to class members created by the settlement – the most important factor – has frequently been addressed by courts in evaluating settlements that provide extended warranties and vouchers. For instance, in *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 304-311 (E.D. Pa. Apr. 2, 2003), the court approved a $4,896,783 fee award using the percentage of the fund method with a lodestar crosscheck where the settlement provided roughly $12.3 million in benefits in the form of vouchers and $20.3 million in value in the form of extended

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relationship between the lawyer and the client, and (12) the fee awards made in similar cases. *Barber*, 577 F.2d at 226.

warranties for class members that purchased purportedly defective automobiles. When estimating the value of the "settlement fund," the court held that the valuation "should be based on the benefit to the class and not the cost to the defendant." *O'Keefe*, 214 F.R.D. at 304. *See also In re Volkswagen & Audi Warranty Extension Lit.*, 89 F. Supp. 3d 155, 169 (D. Mass. Feb. 10, 2015) (rejecting defendants' argument that the costs to defendant should determine the valuation of extended warranties and holding that "the retail value of the extensions—assigned by Defendants themselves in the course of setting the retail price of an extended warranty—is a more sensible measure of what the class members gained from free extended coverage"); *In re Prudential Ins. Co. of Am. Sales Practices Lit.*, 962 F. Supp. 450, 557 (D.N.J. Mar. 17, 1997) ("The Court rejects also the argument that if the cost of Basic Claim Relief to Prudential is low, then Basic Claim Relief is worthless to policyholders. The cost of the relief to Prudential is not the measure of class member benefit. The value of the relief to the Class, which may be substantial, is what matters.").

Here, given that there are roughly 376,000 class members, and the one-year extended warranty for the class products retails for about anywhere between $13-$59.99, the valuation of the extended warranty alone is between $4.9 to $22.5 million. Smith Decl. ¶ 18. These benefits are provided automatically without the need to submit a claim form. Further, class members are also entitled to $45 vouchers, which, given the roughly 376,000 class members, are collectively valued at $16.9 million. Collectively, including the anticipated notice and administration costs, as well as the attorneys' fees, costs, and expenses, and service award, the settlement provides more than $22 million in value, and potentially up to $40 million if using third-party retail pricing for the extended warranties. *Id.* An award of $550,000, inclusive of costs and expenses, amounts to between *1.25 to 2.3 percent* of the value of the settlement. *Id.*

Second, the high value of the settlement is all the more impressive given the stark difficulties Plaintiff and class members would have had in pursuing these claims. *See* Smith Decl. ¶ 19. The Court has yet to rule on Defendant's pending motion to dismiss. Further, even had Plaintiff prevailed, class members would have faced an arduous path through class certification, summary judgment, trial, and likely appeals, all without any assurance that they would recover anything. Any damages that class members may have obtained at trial would potentially be offset by the benefits provided in the CPSC recall – namely, a proffered full and free repair by Husqvarna. Counsel's assessment of the risks here was informed by targeted discovery focused on key issues likely to drive the outcome of the case, such as the cause of the alleged defect, Defendant's alleged knowledge of the defect, and extensive testing of the named Plaintiff's product. Against the backdrop of the grave risk of no recovery at all, the achieved results here strongly support the requested award. *See gen. id*.

2. No Objections To The Settlement Or The Requested Attorneys' Fees or Service Award

Roughly half of the notice period has now elapsed. Objections are due in a little over two weeks, on December 2, 2025. To date, no class member has objected to the settlement or to the requested fees, costs, expenses, or service award. This also supports the reasonableness of the fee.

3. Quality, Skill and Experience Of The Attorneys

Proper case management and effective representation in any complex class action, particularly one with novel and unique legal issues, require the highest level of experience and skill. *Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987) ("prosecution and management of a complex [] class action requires unique legal skills and abilities."). This case was certainly no different. Plaintiff is represented by highly qualified consumer class action litigation

experts. *See* Smith Decl., Ex. 2 (firm resume). Indeed, Smith Krivoshey attorneys are amongst the most knowledgeable and experienced attorneys when it comes to CPSC recalls. For instance, in *Kaupelis v. Harbor Freight Tools USA, Inc.*, 2020 WL 5901116 (C.D. Cal. Sept. 23, 2020), Joel Smith of Smith Krivoshey[2] won a contested motion for class certification in a case concerning chainsaws that CPSC recalled; an incredibly rare feat in a CPSC recall case. Class Counsel used that knowledge to serve early, targeted discovery, oversee the testing and inspection of Plaintiff's recalled chainsaw, and steer the case through multiple mediations before Judge Rosen.

4. Complexity And Duration Of The Litigation

Class actions seeking recovery for consumers that purchased products subject to a CPSC recall are complex and risky. As discussed above, Plaintiff's counsel is one of the only counsel in the country that has ever obtained class certification in such a case in *Kaupelis*, 2020 WL 5901116 at *1. Even there, the court denied nationwide class certification and denied certification of a multi-state consumer protection class. *Kaupelis*, 2020 WL 5901116, at *13-14. The vast majority of courts have denied class certification in CPSC recall cases. *See, e.g., In re Aqua Dots Prods. Liability Lit.*, 270 F.R.D. 377, 381-387 (N.D. Ill. Oct. 4, 2010) (denying class certification in CPSC recall class action based on superiority prong, as well as procedural and choice of law issues); *Dukich v. IKEA US Retail LLC*, 343 F.R.D. 296, 308-310 (E.D. Pa. Dec. 20, 2022) (denying class certification in CPSC recall class action based on failure to satisfy predominance and superiority prongs). In one of the only decisions granting class certification other than *Kaupelis* that Class Counsel is aware of, the court granted certification of an issues class as to liability only pursuant to Rule 23(c)(4), but not a damages class pursuant to Rule

[2] Mr. Smith was at the time a partner at the law firm of Bursor & Fisher, P.A.

23(b)(3), thereby requiring class members to individually prove up damages after trial. *See In re Rock n' Play Sleeper Mktg., Sales Practices, & Prods Liability Lit*., 2022 WL 22922234, at *13, 17 (W.D.N.Y. June 2, 2022). Given the extreme complexity of CPSC recall cases generally, and this case specifically, involving a recall with a proffered remedy of a full repair by Defendant, this factor supports the requested fees.

The case has been pending since October 4, 2024. Though it does not have a very lengthy procedural history, that factor alone should not weigh against the requested fee. Class Counsel was able to obtain this settlement after sufficient targeted discovery given their expertise, after fully briefing Defendant's motion to dismiss, and on the precipice of filing their motion for class certification. The percentage of the benefit method is superior in that it rewards counsel for obtaining maximal results efficiently, without billing for the sake of racking up a large lodestar.

5. Genuine Risk Of Non-Recovery

Class Counsel, who took this matter on contingency, faced numerous challenges. Courts have recognized that such risk deserves extra compensation and is a critical factor indetermining the reasonableness of a fee. *See, e.g. Stocks v. Bowen*, 717 F. Supp. 397, 402 (E.D.N.C. 1989); *Gilbert LLP v. Tire Eng'g & Distribution, Ltd. Liab. Co.*, 689 F. App'x 197, 201 (4th Cir. 2017); *In re Dun & Bradstreet Credit Svcs. Cons. Lit.*, 130 F.R.D. 366, 373 (S.D. Ohio 1990); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd,* 889 F.2d 21 (11th Cir. 1990); *In re Cont. Ill, Sec. Lit.,* 962 F.2d 566, 569 (7th Cir. 1992). As discussed above, there were serious issues on the merits here concerning Defendant's pre-suit knowledge of the defect, and massive hurdles at class certification. And, even if Plaintiff won, obtained class certification, survived summary judgment, and then prevailed at trial, expert discovery could potentially reveal that the damages are partly offset by the value of the free repair offered as part of the CPSC recall. *See* Smith Decl. ¶ 19. Thus, the existence of these issues justifies the requested fee.

6. Public Policy

"The public policy analysis involves weighing the public's perception that class action plaintiffs' counsel are overly compensated with the importance of compensating counsel sufficiently to encourage competent, experienced counsel to undertake the often risky and arduous task of representing a class." *Phillips*, 2016 WL 2636289, at *8 (cleaned up). As discussed above, there are extremely few attorneys in the country that have ever successfully litigated a CPSC recall class action through class certification. Further, after a major CPSC announcement is made, attorneys often "rush to the courthouse" to be first in line to be appointed as class counsel. Here, the CPSC recall occurred in February 8, 2024. And yet, Class Counsel were the only attorneys in the country that filed a class action, and have litigated the case purely on contingency for over a year. This reflects a high degree of "undesirability" of the case, leaving it extremely likely that the class would have recovered nothing but for Class Counsel's efforts. Public policy supports awarding the reasonable fee requested here, amounting to a tiny fraction of the valuation of the settlement, and with only a small lodestar multiplier, as discussed below. There is no "over compensation" happening here.

The settlement overall also supports the public policy of getting dangerous products out of the marketplace. The settlement has been designed to incentivize as many class members as possible to participate in the CPSC recall by providing them additional benefits through the settlement for doing so.

Notably this factor is seldom considered in fee cases, including by this Court. *See, e.g., Lamie*, 2024 WL 811519, at *2 (this Court citing the existence of the factor, but not evaluating it separately as basis for the fee award).

7. Fees In Similar Cases

The attorneys' fee requested in this case falls well *below* the range of attorney fee requests in this Court, this circuit, and nationwide. *See Lamie*. 2024 WL 811519, at *2 (this Court awarding one-third of the fund as attorneys' fees); *Jones v. Coca-Cola Consolidated, Inc*., 2022 WL 3051236, at *4 (W.D.N.C. Aug. 2, 2022) (this Court awarding one-third of the fund ($1,166,666.67) as attorneys fees, plus expenses in the amount of $216,133.68)*; Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (noting that a "one-third fee is consistent with the market rate" in ERISA class action); *Scott v. Family Dollar Stores, Inc.*, 2018 WL 1321048, at *4-5 (W.D.N.C. Mar. 14, 2018) (awarding one-third of the settlement fund plus reimbursement of costs); *Brown v. Lowe's Companies, Inc.*, 2016 WL 6496447, at *3 (W.D.N.C. Nov. 1, 2016) (finding a one-third attorneys' fee reasonable in light of the results obtained, is consistent with Fourth Circuit precedent); *City Nat. Bank v. Am. Commonwealth Fin. Corp.*, 657 F. Supp. 817, 822 (W.D.N.C. 1987) (approving attorney's fee award of one-third). As discussed above, the requested fee award accounts for only 1.25 to 2.3 percent of the value of the settlement. Given that this Court, as well as courts in this District and in the Fourth Circuit, routinely approve awards of 1/3 of the value created, the requested fee here is reasonable.

C. Attorneys Fees Appropriate Under Lodestar Crosscheck

To the extent the Court wishes to perform a lodestar calculation as a "crosscheck" on the percentage of the benefit calculation, the requested fee is still very reasonable and in line with those awarded by this Court. Plaintiff's counsel have worked a total of 342.5 hours on this case, incurring fees of $318,236.50. Plaintiff's counsel has provided the number of hours spent by each timekeeper from their respective firms, each timekeeper's hourly rate, and the fees attributable to the work of each timekeeper. *See* Smith Decl. ¶ 25; Bryson Decl. ¶¶ 8-9. The

hourly rates range from $350 to $1,100 depending on each timekeeper's role and experience. Plaintiff's counsel requests an attorneys' fee of $550,000. Given that Class Counsel has incurred $24,544.87 in expenses and the $550,000 award is for fees and expenses *combined*, the fee portion only represents $525,455.13, meaning that the multiplier is only **1.65**.

Class Counsel anticipates incurring an additional 100 hours of future work briefing the motion for final approval of the settlement and attended the final approval hearing, as well as overseeing the administration of the settlement. Smith Decl ¶ 29. The additional future work will likely exceed $90,000, based on Class Counsel's hourly rates. *Id*. Adding $90,000 to the $318,236.50 incurred so far amounts to $408,236.50, which after a deduction of expenses, amounts to a lodestar multiplier of **1.28** based on the $525,455.13 attorneys' fees figure discussed above. The Court should consider these future hours in its lodestar crosscheck. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, 746 F. App'x. 655, 659 (9th Cir. 2018) (holding that "[t]he district court did not err in including projected time in its lodestar cross-check; the court reasonably concluded that class counsel would, among other things, defend against appeals and assist in implementing the settlement"); *Reyes v. Bakery & Confectionery Union & Indus. Int'l Pension Fund*, 281 F. Supp. 3d 833, 856 (N.D. Cal. 2017) (including, over the defendants' objection, "125 anticipated future hours" to be spent on "communicating with the settlement administrator and responding to inquiries from class members" in the lodestar calculation); *Corzine v. Whirlpool Corp.*, 2019 WL 7372275, at *11 (N.D. Cal. Dec. 31, 2019) (including "an estimate of 250 hours for future work to complete Settlement's claims process through 2026" in the lodestar calculation); *In re Equifax Inc. Customer Data Security Breach Litig.*, 2020 WL 256132, at *39-40 (N.D. Ga. Jan. 13, 2020) (including in the lodestar calculation, over a class member's objection, class counsel's estimate

of an anticipated 10,000 hours to be spent in the future to implement and administer a class action settlement); *id.* at *40 ("Excluding such time ... would misapply the lodestar methodology and needlessly penalize class counsel."); *Hausfeld v. Cohen Milstein Sellers & Toll, PLLC*, Civil Action No. 06-cv-826, 2009 WL 4798155, at *17 (E.D. Penn. Nov. 30, 2009) (holding that "[w]here attorneys provide additional services post-settlement ... courts should award fees for those services").

Plaintiffs' request for attorneys' fees is reasonable. Courts have consistently approved hourly rates similar to those here, with the court in *Kruger*, 2016 WL 6769066, at *4, noting that a "reasonable hourly rate" means the fee is "based on the current market or by using the historical fee rate with reasonable interest added." *Id.* (citation omitted). In *Kruger*, the court found that reasonable national rates applied, which in 2016 ranged from $998/hour for attorneys with 25 years of experience or more down to $190/hour for legal assistants. *Id.* (citation omitted). Additionally, in 2020, the National Association of Legal Fee Analysis issued the results of its 2020 Class Action Hourly Rate Survey, finding that hourly rates for Associates ranged from $201-500/hour for associate attorneys, depending on years of experience, and $501-$900/hour for partner level attorneys, depending on years of experience. Hourly rates have increased drastically over the past decade, with courts routinely approving hourly rates above $1,000. *See, e.g., See In re: Railway Industry Employee No-Poach Antitrust Litig.,* No. 2:18-MC-00798, ECF No. 313 & 272–300 (W.D. Pa. May 4, 2020) (approving hourly rates for attorneys up to $1,100); *Howard v. Arconic Inc. et al,* Case No. 2:17-cv-1057-MRH (W.D. Pa.) (approving attorney rates from up to $1,375); *In re Animation Workers Antitrust Litig.*, 2016 WL 6663005, at *6 (N.D. Cal. Nov. 11, 2016) (finding rates of senior attorneys up to $1,200 per hour to be reasonable); *Nitsch v. DreamWorks Animation SKG Inc.*, Case No. 14-CV-04062-LHK, 2017 WL 2423161,

at *9 (N.D. Cal. June 5, 2017) (finding rates for senior attorneys up to $1200 per hour to be reasonable).

Just last year, this Court found that the Plaintiff's counsel's Hunter Bryson's former law firm's hourly rates of $208 to $1,057 were reasonable when it approved Milberg Coleman Bryson Phillips Grossman, PLLC's[3] rates in *Lamie* after requesting supplemental briefing concerning their lodestar and hourly rates. *See Lamie*, 2024 WL 811519, at *2 ("Counsel's representation of hourly rates and hours incurred in this litigation appear reasonable"). Smith Krivoshey, PC's 2025 hourly rates were most recently approved by Magistrate Judge Michael A. Hammer at the final approval hearing of a settlement in *Niemczyk v. Pro Custom Solar, LLC*., Case No., 19-cv-07846, after a fulsome examination of the hours spent and the rates charged. Smith Decl., ¶ 28 ("I find the rates here are certainly reasonable and appropriate as are the number of hours expended by the attorneys and staff."). More generally, counsel for Plaintiff have routinely had their rates approved over the past few years. *See, e.g., George v. Jaguar Land Rover N. Am., LLC*, 2:20-cv-17561-SDA, Doc. No. 93 (D.N.J. Oct. 11, 2024) (approving Smith Krivoshey's requested class action fees); *In re: Beyond Meat, Inc., Protein Content Mktg. & Sales Practices Lit*., 1:23-cv-00669, ECF No. 66 (N.D. Ill. Mar. 21, 2025) (approving Smith Krivoshey's requested class action fees); *Perez v. Rash Curtis & Associates*, 2020 WL 1904533, at *20 (N.D. Cal. Apr. 17, 2020) (approving Yeremey Krivoshey's (then with Bursor & Fisher, P.A.) hourly rates).

Further, the small multiplier of between 1.28-1.65 supports the reasonableness of the fee request. As *Kruger* held, "[c]ourts have generally held that lodestar multipliers falling between 2

[3] Mr. Bryson was a partner at Milberg Coleman Bryson Phillips Grossman, PLLC in 2024, but is now a partner at Bryson, Harris, Suciu, Demay PLLC.

and 4.5 demonstrate a reasonable attorney's fee." 2016 WL 6769066, at *5 (citing many cases approving lodestar multipliers in this range); *see also Reynolds v. Fid. Invs. Institutional Operations Co.*, 2020 WL 92092, at *4 (M.D.N.C. Jan. 7, 2020) ("Fourth Circuit district courts have approved awards that are multiple times greater than lodestar amounts"); *Phillips v. Triad Guar., Inc.*, 2016 WL 2636289 at *8 (M.D.N.C. May 9, 2016) ("Courts have found that lodestar multipliers ranging from 2 to 4.5 demonstrate the reasonableness of a requested percentage fee.").

Accordingly, regardless of whether the Court uses the percentage of the fund method, the lodestar method, or both methods as cross-checks on each other, the requested fee here is reasonable and should be awarded.

D. Class Counsel's Expenses Are Reasonable

Federal Rule of Civil Procedure 23(h) allows a court approving a class settlement to "award reasonable...nontaxable costs that are authorized by law or by the parties' agreement." Accordingly, courts in the Fourth Circuit allow plaintiffs to recover reasonable litigation-related expenses as part of their overall award. *See, e.g., Jones*, 2022 WL 3051236, at *4 (W.D.N.C. Aug. 2, 2022) (this Court awarding $1,166,666.67 as attorneys fees, plus expenses in the amount of $216,133.68). Recoverable costs may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988). "Litigation expenses such as supplemental secretarial costs, copying, telephone costs and necessary travel are integrally related to the work of the attorney and the services for which outlays are made may play a significant role in the ultimate success of litigation…." *Daly v. Hill*, 790 F.2d 1071, 1083 (4th Cir. 1986).

Class Counsel requests that the Court approve the reimbursement of $24,544.87 in reasonable expenses and costs incurred in the prosecution of this litigation. Smith Decl. ¶ 30; Bryson Decl. ¶ 8. These expenses and costs were incurred in the prosecution of Plaintiff's case and in protecting the interests of the putative class, and include filing fees, mediation costs, and travel costs. *See* Smith Decl., ¶ 30. Class Counsel's request for costs and expenses should be approved as fair and reasonable given that counsel has a strong incentive to keep costs and expenses at a reasonable level due to the high risk of no recovery when the fee is contingent.

Given that Class Counsel seeks $550,000 combined in attorneys' fees, costs, and expenses, the precise dollar figure for costs and expenses awarded is immaterial so long as the Court awards the full $550,000 in fees, costs, and expenses.

E. The Requested Service Award Is Reasonable

Service awards are "routinely approved" in class actions to "encourage socially beneficial litigation by compensating named plaintiff for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook." *Kay Co. v. Equitable Production Co*., 749 F. Supp. 2d 455, 472 (S.D.W.V. Nov. 5, 2010); *Berry v. Schulman*, 807 F.3d 600, 613 (4th Cir. 2015) (Service awards compensate the class representative for work done on behalf of the class and make up for financial risk undertaken in bringing the action). Serving as a class representative "is a burdensome task and it is true that without class representatives, the entire class would receive nothing." *Id*. at 473; *See also Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

Plaintiff seeks $2,000 in recognition of the time and effort personally invested in the case and the benefits provided to the settlement class members. Plaintiff has consistently maintained contact with Class Counsel throughout the litigation, reviewed and worked with Class Counsel to

draft the Complaint, worked with Class Counsel to respond to Defendant's discovery requests and interrogatories, personally met with Defendant's representative to provide her grass trimmer for inspection and testing, kept abreast of case developments and settlement negotiations, and reviewed and approved the original and revised settlements in this litigation. Smith Decl ¶ 24. The requested service award is reasonable, commensurate with her efforts in the litigation, and is within the scope of awards granted in this circuit. *See In re: Lumber Liquidators Chinese-Manufactured Flooring Durability Mktg*., 2020 WL 5757504, at *12 (E.D. Va. Sept. 4, 2020) (granting service award of $5,000); *Jones*, 2022 WL 3051236, at *4 (this Court awarding service award of $15,000 for each class representative); *Lamie*, 2024 WL 811519, at *2 (this Court awarding service award of $3,000 for each class representative). The requested service awards should be granted.

IV. CONCLUSION

For the reasons above, Plaintiff requests that, as part of final approval of the Settlement, the Court grant Plaintiffs' motion for attorneys fees, costs, and expenses of $550,000, and a service award for the Plaintiff of $2,000.

Dated: November 17, 2025

Respectfully submitted,

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CERTIFICATE REGARDING USE OF ARTIFICIAL INTELLIGENCE

1. No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard online legal research resources, such as Westlaw, Lexis, FastCase, and Bloomberg;

2. Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or a paralegal working at his/her direction as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, a copy of the foregoing was filed electronically through the Court's CM/ECF system and served on all counsel of record.

/s/ *Yeremey O. Krivoshey*
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