

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KENNETH CHAPMAN, *et al.*,

Plaintiffs

v.

TRISTAR PRODUCTS, INC.,

Defendant

Case No. 1:16-cv-1114

Judge James S. Gwin

**PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES AND COSTS OF CLAIMS
ADMINISTRATION, AND APPROVAL OF SERVICE AWARDS**

I. RELIEF REQUESTED

On January 19, 2018, this Court issued an order¹ that:

(a) granted preliminary approval of a class action settlement between Plaintiffs Kenneth Chapman, Jessica Vennel, Jason Jackson, and Edwina Pinon (collectively, "Plaintiffs") and Defendant Tristar Products, Inc. ("Tristar" or "Defendant");

(b) conditionally certified a nationwide class of "all persons who, between March 1, 2013, and the date of the entry of the Preliminary Approval Order, purchased for personal use and not for resale the models of pressure cookers listed below that were manufactured, supplied, marketed, sold, and/or distributed by Defendant";

(c) appointed Plaintiffs as Settlement Class Representatives;

¹ Doc. 128, Preliminary Approval Order.

(d) appointed Plaintiffs' Counsel—Gregory F. Coleman, Adam Edwards, Mark E. Silvey, and Lisa A. White of Greg Coleman Law PC; Arthur M. Stock and Shanon J. Carson of Berger & Montague; Jack Landskroner and Drew Legando of Landskroner Grieco Merriman, LLC; Edward A. Wallace and Tyler J. Story of Wexler Wallace; and Todd M. Friedman and Meghan George of the Law Offices of Todd M. Friedman—as Settlement Class Counsel;

(e) approved the parties' forms and plans for the dissemination of notice to class members of the settlement and their rights under it, including to make claims, object, or opt-out;

(f) appointed Heffler Claims Group as Claims Administrator;

(g) set a Final Approval Hearing for April 26, 2018 (later reset to July 12, 2018 at 9:00 a.m.); and

(h) directed Class Counsel to submit their request for attorneys' fees, cost and expenses, and service awards prior to the closing of the objection period, with the Court to determine the appropriate fee of Class Counsel in the Ohio Action. Class Counsel for the California Action was permitted to apply to the Court for an award of reasonable attorneys' fees and expenses in an amount not to exceed \$225,000.00, to which Tristar agreed not to object.²

Plaintiffs now request the following relief:

1. Approval of attorneys' fees of \$2,043,079.45 for Class Counsel in the Ohio Action.
2. Reimbursement of litigation expenses of \$237,355.77 for Class Counsel in the Ohio Action.
3. Incentive awards of \$10,000.00 each to Class Representatives Kenneth Chapman, Jessica Vennel, Jason Jackson, and Edwina Pinon;

² The Court had earlier consolidated the California Action with the Ohio Action “for purposes of effectuating a single class settlement covering all claims in both matters.” Doc. 125, Order to Consolidate. For purposes of settlement, Tristar has agreed to pay up to \$225,000.00 in reasonable attorneys' fees related to the California Action. Per agreement with Tristar, Plaintiffs' Counsel in the Ohio Action is filing this Motion, Brief and Declarations in support of fees, costs, and incentive awards, to which Tristar does not object.

4. Approval of attorneys' fees and expenses of \$225,000 for Class Counsel in the California Action.

Tristar does not oppose this request.

II. SETTLEMENT BACKGROUND

A. Procedural History

1. The Litigation

Plaintiffs Kenneth Chapman, Jessica Vennel, and Jason Jackson filed their class action complaint (the "Ohio Action") in the United States District Court for the Northern District of Ohio in June 2016.³ Plaintiffs alleged that Tristar designed, manufactured, and marketed certain pressure cookers ("Pressure Cookers") that were defective because they could be opened while dangerous levels of pressure remained in the units, causing liquid to erupt and injure consumers. Each named Plaintiff's Pressure Cooker had, in fact, failed to lock when the contents were under pressure, and resulted in significant and painful personal injuries.

Plaintiffs brought claims on behalf of themselves and a proposed nationwide class of consumers, alleging that Tristar's failure to warn customers of the defect, the inherent safety risk posed by the Pressure Cookers, and its failure to remove the defective Pressure Cookers from the stream of commerce, among other things, breached its express warranty. Plaintiffs sought economic damages equivalent to a full refund of the purchase price of the product (as well as other relief).⁴ In the alternative, Plaintiffs brought claims on behalf of themselves and proposed state

³ Doc. 1, Complaint.

⁴ *Id.* ¶¶ 8, 9, 21-22, 30, 69-73, 82-101.

classes for Ohio, Pennsylvania, Colorado, and California, *i.e.*, the states of each respective named Plaintiff's residence.⁵

Tristar denied Plaintiffs' allegations that the Pressure Cookers were defective,⁶ and moved to dismiss nearly all of Plaintiffs' claims.⁷ After Tristar's partial motion to dismiss was fully briefed,⁸ this Court granted the motion in part and denied the motion in part: Plaintiffs' warranty claims survived.⁹

Discovery¹⁰ included production by all parties, and Plaintiffs' reviewed and coded thousands of pages of documents produced by Tristar and third parties, including:

1. Compiled sales data and information on returns and credits;
2. Customer complaints;
3. Internal testing performed by Tristar;
4. Reports by outside experts;
5. Testing reports by ProQC;
6. Communications to and from the CPSC; and
7. General specifications for the pressure cookers at issue.

In addition, the parties conducted depositions of Plaintiffs Kenneth Chapman (and two of Plaintiff Chapman's family members), Jessica Vennel, and Jason Jackson; two Tristar corporate representatives pursuant to Federal Rule of Civil Procedure 30(b)(6) (Alejandro Lozano and

⁵ *Id.* ¶¶ 70-73. In the California Action, Plaintiff Pinon brought claims on behalf of a proposed state class for California. Plaintiff Pinon's claims from the California Action were consolidated with the Ohio Action's claims. Doc. 125, Order to Consolidate.

⁶ *See generally* Doc. 8, Answer.

⁷ Doc. 18, Motion to Dismiss, pp. 1-2. Tristar moved to dismiss all claims except the Ohio Product Liability Act claim, the Pennsylvania breach of implied warranty of merchantability claim, and the Colorado Consumer Protection Act and Product Liability Act claims.

⁸ Doc. 23, Plaintiffs' Opposition Brief; Doc. 29, Tristar's Reply Brief.

⁹ Doc. 32, Opinion & Order.

¹⁰ *See* Doc. 27, Case Management Order.

Matthew Fisher); the parties' expert witnesses (John Pratt and Jason Mattice); and defense witness Eric Theiss. The parties jointly conducted day-long expert testing of the Plaintiffs' three Pressure Cookers at a third-party facility in Ohio.¹¹

Throughout the litigation, the named Plaintiffs in the Ohio Action (who are residents of Ohio, Pennsylvania, and Colorado) and their Counsel personally attended multiple motion hearings and status conferences prior to the trial in this case.¹² Plaintiffs' Counsel also met in person in Chicago on one occasion to discuss the status of the ongoing litigation and to discuss case strategy moving forward.

Plaintiffs' Counsel worked extensively with their expert John Pratt in advance of his attendance at the inspection and testing of the Pressure Cookers, and to discuss his findings and opinions. The parties' experts fundamentally disagreed whether there was any defect. Thus, Tristar moved to exclude Plaintiffs' expert John Pratt, which Plaintiffs opposed; the Court denied Tristar's motion.¹³

Plaintiffs moved for class certification, which Tristar opposed.¹⁴ Further, Tristar sought to file a sur-reply and a motion to strike Plaintiffs' reply in support of class certification, both of which Plaintiffs opposed, and for which the Court set a hearing.¹⁵ After the motion for class

¹¹ Docs. 43-1 and 51, Plaintiffs' Expert Reports; Docs. 52-2 and 59, Tristar's Expert Reports.

¹² *See* Docs. 16, 27, 39, 40, 80, and 95.

¹³ Doc. 56, Motion to Exclude Expert Testimony of John Pratt; Doc. 61, Opposition to Motion to Exclude Expert Testimony of John Pratt; Doc. 70, Order.

¹⁴ Doc. 43, Motion for Class Certification; Doc. 45, Opposition to Motion for Class Certification.

¹⁵ Doc. 48, Motion for Leave to File Sur-Reply Brief Instantly; Doc. 49, Motion to Strike; Doc. 50, Response in Opposition to File Sur-Reply, or Offered in the Alternative, Motion to Strike.

certification was fully briefed, the Court certified Ohio, Pennsylvania, and Colorado state classes to pursue warranty claims, as well as other state-law causes of action.¹⁶ The Court approved Plaintiffs' Class Notice and Notice Procedures,¹⁷ and notice issued to absent Settlement Class members. The notice program combined direct notice via email, mail, and targeted internet banner ads. Of over 80,000 email and mail direct notices and additional views of internet banner ads, only thirty-four class members opted to be excluded from the class proceeding.¹⁸

In preparation for trial, there was extensive motion practice. Plaintiffs filed a motion to strike Tristar's "Supplemental Initial Disclosures" and to preclude the testimony of nine previously undisclosed witnesses.¹⁹ Tristar concurrently filed an omnibus motion *in limine* and a motion to strike Plaintiffs' personal injury claims.²⁰ Each of these motions were fully briefed.²¹

Tristar also moved to decertify the classes and the motion was fully briefed.²² The Court denied Tristar's motion to decertify the classes, but *sua sponte* bifurcated the trial into liability and damages phases, and, in doing so, identified the two questions the jury would decide at trial: "(1)

¹⁶ Doc. 69, Order & Opinion, p. 25.

¹⁷ Doc. 77, Order.

¹⁸ Doc. 119-1, Declaration of Claims Administrator Steven Weisbrot, ¶¶ 9-14, 22.

¹⁹ Doc. 82, Motion to Strike Tristar's "Supplemental Initial Disclosures" and to Preclude Testimony By Nine Newly-Disclosed Individuals.

²⁰ Doc. 81, Omnibus Motion in Limine, ECF No. 81; Doc. 97, Motion to Strike Personal Injury Claims or, in the Alternative, to Dismiss Class Representatives.

²¹ Doc. 87, Brief in Opposition to Tristar's Omnibus Motion in Limine; Doc. 94, Reply in Support of Omnibus Motion in Limine; Doc. 100, Brief in Opposition to Tristar's Motion to Strike Personal Injury Claims.

²² Doc. 83, Opposition to Motion to Decertify; Doc. 84, Reply in Support of Motion to Decertify.

whether the Pressure Cookers have a defect, and, (2) if so, whether the defect makes the Pressure Cookers worthless.”²³

Upon referral to the Magistrate Judge, the parties participated in a settlement conference,²⁴ but were unable to come to a resolution. The parties subsequently prepared for and satisfied all pretrial requirements for a jury trial.²⁵ Five days prior to the beginning of the trial, Plaintiffs’ Trial Counsel traveled to Cleveland to prepare. Plaintiffs’ Trial Counsel met with their witnesses and readied them for examination at trial, created detailed outlines and potential exhibit packets for the examinations of both Plaintiffs’ and Tristar’s witnesses who were identified to testify at trial, gathered relevant documents and prepared trial exhibits, and prepared PowerPoint presentations and visual aids to present to the jury.

Voir dire was conducted and a jury of twelve was chosen and impaneled. On July 10, 2017, the jury trial began. Following the parties’ opening arguments, Dr. John Pratt was presented as an expert witness on behalf of the Plaintiffs to testify about his inspection, his testing, and his opinions about the defective Pressure Cookers. Thereafter, two of the three named Plaintiffs testified about their own experiences with the Tristar Pressure Cookers.²⁶

2. History of Settlement Negotiations

When the case was mature and trial was scheduled for only a month away, on June 9, 2017, the parties attended a day-long, in-person mediation with well-respected mediator Michael Ungar at Ulmer & Berne LLP in Cleveland. The mediation did not result in settlement. The parties

²³ Doc. 86, Opinion & Order, pp. 2-5.

²⁴ Doc. 96, Order.

²⁵ Docs. 81-82, 85, 87-88-95, 97, 99, 102-110, and 117.

²⁶ Docs. 121-123, *Voir dire* and trial minutes and transcripts.

attempted arms-length negotiations over the course of several weeks following the mediation and prior to the scheduled trial date, but each time, they failed to reach a settlement. Each side prepared for trial. At the conclusion of the June 22, 2017 Final Pretrial Conference, the Court referred the parties to the Magistrate Judge to further explore settlement. Although no settlement was reached that day, the Magistrate Judge conducted a second mediation the following week. However, the parties were still unable to reach a settlement.

The trial commenced on July 10, 2017. During a mid-afternoon break on the first day of trial, the parties re-engaged the Magistrate Judge and re-started settlement discussions. Those discussions resulted in a proposed nationwide class settlement, which the parties presented to the Court on the record during the mid-afternoon break of the first day of trial. The parties then jointly moved,²⁷ and the Court ordered, that the Ohio Action (involving Plaintiffs Chapman, Vennel, and Jackson) and the California Action (involving Plaintiff Pinon) be consolidated “for purposes of effectuating a single class settlement covering all claims in both matters.”²⁸

B. Settlement Benefits to Class Members

Plaintiffs and Tristar reached a nationwide class settlement that, pending the Court’s final approval, fully and finally resolves Plaintiffs’ claims. The preliminarily-approved Settlement Agreement offers certain benefits to Settlement Class members who submit timely and valid claims and who also comply with the requirements set forth in the Settlement Agreement. The Settlement Class consists of:

“All persons who, between March 1, 2013 and the date of the entry of the Preliminary Approval Order, purchased for personal use and not for resale, the following models of pressure cookers manufactured, supplied, marketed, sold and/or distributed by Defendant.”

²⁷ Doc. 124, Joint Motion to Consolidate.

²⁸ Doc. 125, Order to Consolidate.

MODEL NUMBER ON BACK OF UNIT	NAME ON FACE PLATE
PPC770	Power Pressure Cooker XL
PPC770-1	Power Pressure Cooker XL
PPC780	Power Pressure Cooker XL
PPC780P	Power Pressure Cooker XL
PPC790	Power Pressure Cooker XL
PCXL/PRO8	Power Pressure Cooker XL Pro
PC-PRO8	Power Pressure Cooker XL Pro
YBD60-100	Power Cooker Express
PC-WAL1	Power Cooker
PC-TRI6	Power Cooker
PCXL/PRO6	Power Pressure Cooker XL Pro
PCXL/PRO6 (Date Code 1442)	Power Pressure Cooker XL
PPC771	Power Pressure Cooker XL
PPC772	Power Pressure Cooker XL
PPC772P	Power Cooker Plus
PPC773	Power Pressure Cooker XL
PC-WAL2	Power Cooker
PC-WAL3	Power Cooker
PC-WAL4	Power Cooker

The Settlement Agreement provides immediate relief to all Settlement Class members without the burden of trying their economic claims on an individual basis. The benefits made available to Settlement Class members through the Settlement Agreement include a one-year extension to their Limited Warranty (“Limited Warranty Extension”) with no charge to Settlement Class members. This one-year extended warranty is far more than the original sixty-day warranty that came with the product upon purchase. In addition, Settlement Class members receive a \$72.50 credit redeemable towards one of the following products, subject to availability and possible substitution with an improved or equivalent product: (1) Power Cooker, a 10 qt. pressure cooker—Model NO. PC-WAL4; (2) Power Air Fryer XL, a 5.3 qt. air fryer—Model No. AF-530; or (3) Copper Chef XL Precision Induction Cooktop Set, consisting of induction cooktop, 11” deep dish casserole pan with glass lid, fry basket, steam rack, 10” round pan with glass lid, and recipe book.

The \$72.50 credit and the one-year Limited Warranty Extension will be available to Settlement Class members who verify that they watched a safety video or, alternatively, verify that they read a transcript of the safety video, and who file a valid claim under the Settlement Agreement. The relief offered to the Settlement Class members provides substantive value commensurate with the merits of Plaintiffs' claims. Not only are Settlement Class members educated about proper use and potential risks of the Pressure Cookers, but they also learn how to proactively identify potential problems *before* suffering injuries. Likewise, they have the opportunity to replace the dangerously defective Pressure Cookers with safer or redesigned products.

This Court granted preliminary approval of the settlement on January 19, 2018, ordering, among other things, that the scheduling of the Final Approval Hearing to consider the settlement and request for attorneys' fees, costs, and service awards.²⁹

C. Reactions to Settlement to Date

As of May 14, 2018, based on a Settlement Class of 3.2 million with an 84% reach (or 2.68 million), 130,900 unique users have visited the settlement website, with 157,500 sessions and 304,170 page views. This results in a response rate to outreach—calculated against the 2.68 million reach—of nearly 5 percent. As of the date of the filing of this Motion, claims are still coming in at a rate of 40 to 50 per day with 6 weeks left until the claims period closes on July 4, 2018. A total of 23,088 people have viewed the safety videos. There have been 10,382 claims, with only 28 exclusions, and *zero objections* to either the settlement or the request for fee and cost

²⁹ Doc. 128, Preliminary Approval Order.

reimbursement. The social media campaign received 32,000 engagements, with 3,149 shares and over 600 comments. A total of 230 news mentions occurred as a result of the press release.

D. Attorneys' Fees and Costs Requested

1. Attorneys' Fees and Costs for Ohio Action

The Ohio Class Counsel now seek \$2,043,079.45 as attorneys' fees, plus a reimbursement of their out-of-pocket expenses incurred in prosecuting this action of \$237,355.77. This amount includes a top end hourly rate of \$600.00.³⁰ The attorneys' fees requested will compensate Class Counsel for work already performed (including the briefing of this Motion), in addition to all of the remaining work to be completed in connection with the Settlement, which includes, but is not limited to: (1) insuring that such Settlement is fairly administered and implemented, (2) preparing for and subsequently attending the final fairness hearing, and (3) obtaining dismissal of the actions after the parties' obligations under the Settlement are fulfilled. Class Counsel reasonably estimates that there will be an additional \$100,000.00-plus in work to be done from this point forward. In total, Class Counsel seek, for the Ohio Action, \$2,043,079.45. The Declaration of Gregory F. Coleman in support of the claims for attorneys' fees and expenses in the Ohio Action is attached as Exhibit A. The requested attorneys' fees and costs are in accordance with the law in this Circuit awarding and approving attorneys' fees and costs in similar cases. Accordingly, Class Counsel's application should be granted.

³⁰ As discussed more fully herein, this figure is based on prevailing hourly rates in the Northern Ohio market and is considerably less than has been received by Class Counsel for work performed in other jurisdictions. *See, e.g., Dickerson v. York Int'l Corp.*, No. 1:15-CV-1105, 2017 U.S. Dist. LEXIS 133587, at *29-32 (M.D. Pa. 2017).

2. Attorneys' Fees and Costs for California Action

Pursuant to the Settlement Agreement, Class Counsel for the California Action are applying to the Court for a total award of reasonable attorneys' fees and expenses in an amount not to exceed \$225,000.00, to which Tristar agreed not to object as part of the nationwide settlement of this case. The Declaration of Todd Friedman in support of the claims for fees and expenses in the California Action is attached as Exhibit B.

III. ARGUMENT

A. THE REQUESTED FEES ARE REASONABLE AND SHOULD BE AWARDED.

1. The Lodestar Approach

“The primary concern in an attorney fee case is that the fee awarded be reasonable, that is, one that is adequately compensatory to attract competent counsel yet which avoids producing a windfall for lawyers.”³¹ Fee awards in cases determined by the “lodestar approach” involve “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.”³² There is a “strong presumption that the lodestar figure—the product of reasonable hours times a reasonable rate—represents a ‘reasonable’ fee.”³³ Moreover, “the determination of fees should not result in a second major litigation. The fee applicant (whether a plaintiff or a defendant) must, of course, submit appropriate documentation to meet the burden of establishing entitlement to an award. But trial courts need not, and indeed should not, become green-eyeshade accountants. The

³¹ *Adcock-Ladd v. Secretary of Treasury*, 227 F.3d 343, 349 (6th Cir. 2000).

³² *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO-CLC v. Kelsey-Hayes Co.*, 750 F.3d 546, 560 (6th Cir. 2014).

³³ *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1987); *see also Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010).

essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time."³⁴

2. The Parties' Lead Counsel and Number of Hours Reasonably Expended

The following summary of Class Counsel's work is supported by the Declarations of Gregory F. Coleman in the Ohio Action and of Todd Friedman in the California Action, which are being filed along with this Motion as Exhibits A and B, respectively.

Plaintiffs' Counsel in the Ohio Action handled court appearances; drafted pleadings, motions, and legal memoranda; met with clients; and initiated, responded to, and participated in discovery. When Defendant produced several thousands of pages of documents and time for discovery and dispositive motions was limited, it was necessary that substantial resources were devoted to the case to adequately review and assess the discovery responses. Moreover, in the exercise of billing discretion, Plaintiffs do not seek compensation for services rendered by administrative personnel, such as legal assistants, who assisted the attorneys for whom compensation is already included in the figures provided to the Court.

As the docket indicates, Tristar was represented throughout this litigation by four different nationally-recognized law firms: TUCKER ELLIS LLP (a "full-service law firm with more than 200 lawyers practicing nationwide out of offices in Chicago, Cleveland, Columbus, Houston, Los Angeles, San Francisco, and St. Louis. [It has] a national reputation for [its] trial work – particularly in the areas of Pharmaceutical, Mass Tort, Product Liability, Class Action, and other

³⁴ *Fox v. Vice*, 563 U.S. 826, 838 (2011) (internal punctuation marks and citations omitted).

Commercial Litigation.”),³⁵ SUTTER O’CONNELL (“Sutter O’Connell has earned a national reputation for winning cases that other firms were reluctant to take to trial.”),³⁶ REMINGER CO., L.P.A. (“services clients ranging from Fortune 500 companies to small businesses and individuals. . . . Since [it] first opened [its] doors at 75 Public Square in Cleveland in 1958, Reminger has grown from two individuals to a full-service firm employing several hundred attorneys, paralegals and staff. [It has] expanded into fourteen offices across Ohio, Kentucky and Indiana.”),³⁷ and VENABLE LLP (“an American Lawyer 100 law firm. With more than 675 attorneys across the country, [it is] strategically positioned to advance [its] clients’ business objectives in the U.S. and abroad. . . . [Its] attorneys, many of whom are former Members of Congress, regulators and senior government staffers, have the experience to provide solutions when government creates regulatory roadblocks.”).³⁸ With this contingent of four highly-respected defense firms, Class Counsel were required to expend commensurate time and resources necessary to prosecute this matter on behalf of Plaintiffs and the Class.

Class Counsel’s work included investigation and analysis of potential clients; research on the pressure cookers, their design, and manufacture; Tristar’s corporate structure and interactions with its suppliers (a point complicated by the fact that virtually all of the key witnesses and documents were located outside the United States in Asia); and consumer complaints from a variety of sources including the United States Consumer Product Safety Commission. Class

³⁵ https://www.tuckerellis.com/about_us/overview.

³⁶ <http://www.sutter-law.com/national-impact>.

³⁷ <http://www.reminger.com/about.html>.

³⁸ <https://www.venable.com/overview>.

Counsel took depositions of two current Defendant employees, and one external contractor, and defended depositions of the named Plaintiffs, two family members of a named Plaintiff, and two expert witnesses—one for each party. Other work included communications with the named Plaintiffs, and potential witnesses; and legal research and analysis involving products liability, warranty, personal injury, damages, evidence, class certification, remedies, and procedural issues. In addition to depositions, Class Counsel’s work involved extensive paper discovery and document review, and resolving (and avoiding) discovery disputes. The work also involved briefing on issues of class certification, summary judgment, decertification, motions *in limine*, *Daubert* motions, and other issues contested by Tristar. Further, Class Counsel extensively prepared for trial, participated in *voir dire* and impaneled a jury, delivered their opening statement, and examined three witnesses at trial, before ultimately resuming settlement negotiations at Tristar’s request.

“In determining the reasonableness of hours spent, the Court should not engage in a *post hoc* critique of strategic decisions that Class Counsel may have made in good faith during the course of the case.”³⁹ “[L]itigation is not an exact science,’ and the determinative issue is whether the task was reasonable in view of the ultimate goal of the case.”⁴⁰ Plaintiffs ask the Court to award attorneys’ fees for all recorded work hours at reasonable rates.

3. Reasonable Hourly Rates

The “reasonable hourly rate” is determined by reference to the “prevailing market rates in the relevant community.”⁴¹ In ascertaining the proper “community,” district courts may “look to

³⁹ *Schumacher v. AK Steel Corp. Ret. Accumulation Pension Plan*, 995 F. Supp. 2d 835, 841 (S.D. Ohio 2014).

⁴⁰ *Id.*

⁴¹ *Blum v. Stenson*, 465 U.S. 886, 895 (1984).

national markets, an area of specialization, or any other market they believe is appropriate to fairly compensate attorneys in individual cases.”⁴² However, “a reasonable fee rate was and still is, as the Sixth Circuit has explained, ‘the market rate in the venue sufficient to encourage competent representation.’”⁴³ “In determining a reasonable hourly rate, the court may consider a party’s submissions, awards in analogous cases, state bar association guidelines, and its own knowledge and experience in handling similar requests for fees.”⁴⁴

Class Counsel requests attorneys’ fees with a maximum hourly rate of \$600.00 per hour for the work of Senior Counsel. These rates are substantially reduced from what Class Counsel has received for cases in other jurisdictions.⁴⁵ The full listing of the hourly rates sought by each of the firms is contained in the Declaration of Gregory F. Coleman (Exhibit A). The rates sought by Class Counsel are consistent with rates received by similarly qualified attorneys in other class action cases in Ohio, and are in line with “awards in analogous cases.”⁴⁶

The Court may also consider the Laffey Matrix, which reflects hourly rates for federal litigators, to determine reasonable attorneys’ fees. There are two versions available. The first contained in a document published by the Department of Justice (“DOJ”) and provides an hourly

⁴² *McHugh v. Olympia Entertainment, Inc.*, 37 Fed. App’x 730, 740 (6th Cir. 2002).

⁴³ *Livingston v. Cavalry Portfolio Servs., LLC*, No. 1:09-CV-384, 2009 U.S. Dist. LEXIS 113274, at *4 (N.D. Ohio Dec. 2, 2009).

⁴⁴ *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 1:08-CV-605, 2010 WL 1751995, at *3 (N.D. Ohio Apr. 30, 2010), *aff’d*, 436 F. App’x 496 (6th Cir. 2011).

⁴⁵ *See Dickerson*, 2017 U.S. Dist. LEXIS 133587 at *29-32 (granting class counsel’s requested attorneys’ fees and expenses). Class Counsel there sought attorneys’ fees based upon a \$775.00 rate for partners, a \$650.00 rate for senior associates, a \$450.00 rate for junior associates, and a \$250.00 rate for certified paralegals.

⁴⁶ *Van Horn*, 2010 WL 1751995 at *3.

rate of \$563 for work done by attorneys with 30 years of experience in 2018 (attached as Exhibit C). The second version is found at www.laffeymatrix.com and uses the DOJ figures but also adjusts that number to reflect the Consumer Price Index for U.S. City Average, Legal Service Fees (“Legal Services Index”) maintained by the U.S. Department of Labor, Bureau of Labor Statistics.⁴⁷ This version of the Laffey Matrix provides an hourly rate of \$864 for work done by attorneys with more than 20 years of experience in 2018 (attached as Exhibit D). Courts have found the Laffey Matrix to be helpful in determining reasonable hourly rates.⁴⁸ While the rate sought here is slightly in excess of the Laffey Matrix, this Court had found a deviation upward appropriate if the circumstances warrant it. “[A]lthough the DOJ version of Laffey Matrix might suggest a slightly lower rate, the Court concludes that the specialized nature of the litigation justifies the higher hourly rate.”⁴⁹ This Court approved an increase in an attorney’s prior hourly rate where “additional experience as class counsel” provided a basis for an increase in the attorney’s hourly rate.⁵⁰

⁴⁷ <http://www.laffeymatrix.com/expert.html>.

⁴⁸ See, e.g., *Dobina v. Carruthers*, No. 5:09cv2426, 2010 U.S. Dist. LEXIS 43958, at *8 (N.D. Ohio May 3, 2010) (recognizing that the Laffey Matrix is based upon the Washington, D.C. area, and not northeast Ohio, but still finding that courts in this circuit have relied upon it to determine reasonableness of rates); see also *Livingston*, 2009 U.S. Dist. LEXIS 113274, at *4-5 (N.D. Ohio Dec. 2, 2009) (citing Laffey Matrix).

⁴⁹ *Gallo v. Moen, Inc.*, No. 1:13-CV-02440, 2014 U.S. Dist. LEXIS 128032, at *10-11 (N.D. Ohio Sep. 11, 2014), *rev’d on other grounds*, 813 F.3d 265 (6th Cir. 2016) (approving an hourly rate above that indicated in the Laffey Matrix).

⁵⁰ In *Kelly v. Montgomery Lynch & Assocs.*, No. 1:07-CV-919, 2008 U.S. Dist. LEXIS 79129 (N.D. Ohio Oct. 8, 2008).

This Court has also considered the Consumer Law Attorney Fee Survey a source of information for determining a reasonable hourly rate.⁵¹ The most current version of this survey extends the upper limit of reasonable hourly rates for attorneys handling class action cases in Ohio to \$650 an hour. Where circumstances warrant it, this rate is appropriate in Ohio.⁵²

Class Counsel do not seek a multiplier, despite the fact that the strident defense relative to both the facts and law interposed by the Defendant, the volume of discovery and trial preparation, and the commencement of a jury trial prior to settlement would easily justify a multiplier.⁵³ Accordingly, based upon all of the foregoing, the time expended and fees requested are reasonable and appropriate.

B. THE PROPOSED AMOUNT OF ATTORNEYS' FEES IS REASONABLE

To assist in determining whether a fee is reasonable, the Sixth Circuit has identified the following factors: (1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent-fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing

⁵¹ *Livingston*, 2009 U.S. Dist. LEXIS 113274 at *5.

⁵² See *City of Plantation Police Officers' Emps. Ret. Sys. v. Jeffries*, No. 2:14-cv-1380, 2014 U.S. Dist. LEXIS 178280, at *38-39 (S.D. Ohio Dec. 29, 2014) (“[C]onsidering plaintiff’s counsel’s skill, expertise, and reputation, the complexity of the case, and the number of attorneys in the venue who pursue derivative actions, the Court is of the opinion that plaintiff’s counsel can expect to command a premium within this venue. Accordingly, the Court will cap plaintiff’s counsel’s hourly rates at \$625 per hour.”).

⁵³ See *In re Oral Sodium Phosphate Sol.-Based Prods. Liab. Action*, No. 1:09-SP-80000, 2010 U.S. Dist. LEXIS 128371, at *25-26 (N.D. Ohio Dec. 6, 2010).

of counsel involved on both sides.⁵⁴ Each of these factors weighs strongly in favor of the reasonableness of the attorneys' fees sought by Class Counsel in this instance.

1. Value of the Benefit Provided

The price range of the Pressure Cookers purchased by Settlement Class members was approximately \$100.00 to \$160.00, with the six-quart model that cost \$100.00 being by far the highest seller.⁵⁵ Each claimant will receive a \$72.50 credit towards the purchase of one of certain Tristar products, plus a One-Year Limited Warranty Extension. Plaintiffs' damages model sought to recover the equivalent of a 100% refund. Thus, on average, claimants can obtain through this settlement between 45.3% to 72.5% of the maximum damages Plaintiffs sought at trial, plus a warranty extension—and all without the delay associated with additional litigation and likely appeals, and without the risks associated with such continued developments.

Courts have held that a settlement figure of 18% of claimed damages is “impressive” whereas the result achieved here—which is up to approximately four times as beneficial—far exceeds the benchmarks set by other courts.⁵⁶

In addition to the financial benefit to the Settlement Class members, the primary benefits conferred by this settlement agreement are that the Settlement Class will be educated about proper

⁵⁴ *Bowling v. Pfizer*, 102 F.3d 777, 780 (6th Cir. 1996); *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974).

⁵⁵ The proof at trial would have shown numbers of units sold through December 29, 2016 of: PPC770/770-1 (six-quart) 1,125,839; PPC780 (eight-quart) 318,692; PPC790 (ten-quart) 212,013.

⁵⁶ *See In re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2015 U.S. Dist. LEXIS 23482, at *17 (N.D. Ohio Feb. 26, 2015) (“A settlement figure that equates to roughly 18% of the best-case-scenario classwide overcharges is an impressive result in view of these possible trial outcomes.”); *see also In re Linerboard Antitrust Litig.*, No. 1261, 2004 U.S. Dist. LEXIS 10532, at *15-17 (E.D. Pa. June 2, 2004) (collecting cases with recoveries of 5.35% to 28% of damages).

use and risks of the Pressure Cookers. They will learn how to proactively identify potential problems *before* suffering injuries, and will have the opportunity to replace the dangerously defective Pressure Cookers with safer or redesigned products.

Finally, claims for personal injuries as a result of incidents with the defective Pressure Cookers are not a part of the settlement and Settlement Class members may pursue their personal injury claims individually by opting out of the settlement.

2. Value of the Services Rendered

Class Counsel committed approximately two and one-half years to the investigation and litigation of this matter, consisting of over 3,931 hours of attorney and staff time. As set forth in Exhibit A to this Motion, Class Counsel's lodestar is approximately \$1,943,079.45, as of May 18, 2018, and will increase during the conclusion of the claims administration and final approval and distribution process.

3. Fee Arrangement

Class Counsel represented Plaintiffs on a purely contingent basis. Thus, for over two years, Class Counsel has borne all of the risk that accompanies contingent-fee representation in a contested class action case, including the prospect—very real in this case considering the extensive motion practice in this case and the continuing uncertainty that a class would be and would remain certified—that their investment of substantial attorney and staff time and resources would be lost. To obtain relief for the Plaintiffs and the Settlement Class, Class Counsel forewent payment for their time and effort and fully bore the risk by themselves that they might ultimately end up with no recovery whatsoever.

4. Societal Interest

“Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling . . . small claimants to pool their claims and resources.”⁵⁷ Moreover, this consumer product case sought to protect the interests of consumers at large by preventing the advertising and warranting of a product as safe when it actually was not, and placing unsafe Pressure Cookers in the stream of commerce. The societal interest of the case—and its settlement—is magnified by the injuries that some Settlement Class members have suffered as a result of the defective Pressure Cookers and the relief the Settlement Class will receive to prevent future injuries. Furthermore, the more recent designs of the product have incorporated additional safety mechanisms, which will make the products safer even for those future consumers who are not a part of the Settlement Class.

5. Case Complexity and Risk

As Section II above demonstrates, this complex case involved an active and aggressive Defendant that had retained several different firms to defend its interests. Indeed, from the outset and continuing to the present, the case faced substantial risk of a negative result given that the Defendant denied the existence of any defect and blamed any failures on user error. It was not until late in the litigation that testing of the named Plaintiffs’ Pressure Cookers could be conducted and only then was the presence of a repeatable failure could be confirmed. Even then, the Defendant refused to settle prior to the commencement of trial and the testimony of three of Plaintiffs’ witnesses.

⁵⁷ *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001).

This settlement provides benefits to purchasers of the Pressure Cookers in all fifty states. This Court had certified a class consisting of residents of only three states containing about 9% of the population of the United States. The California Action was in an earlier stage at the time of settlement, and a Class had not been certified. Absent settlement, there was a great risk that this Court's rejection of a nationwide class would not be overturned on appeal, and that the California Action would not be certified or would be certified only for residents of that state.

In addition, as part of their model for classwide damages Plaintiffs sought, and the Court accepted for class certification purposes, a full-refund damages model. This damages model, while wholly appropriate in this case under the facts presented herein, is rarely held to be appropriate. However, because of the nature of the specific product at issue and the defect it suffered from, Plaintiffs chose to pursue a full-refund damages model despite the inherent risks of such a choice. Defendant vigorously attempted to defeat this claim in both its opposition to Plaintiffs' Motion to Certify the Classes and its Motion to Decertify the Classes.⁵⁸ As noted above, the settlement results in a value up to 72.5% of what Plaintiffs and members of the classes would have received under a full-refund damages calculation.⁵⁹

6. Skill and Reputation of Class and Defense Counsel

In its Preliminary Approval Order, this Court previously found that Class Counsel are experienced and skilled in consumer class actions.⁶⁰ The Firm Resumes of Class Counsel are attached collectively as Exhibit E. As described more fully above, defense counsel in this case,

⁵⁸ Docs. 45, 48, 78, 84.

⁵⁹ *See supra* Section III.A.1.

⁶⁰ Doc. 128, Preliminary Approval Order, pp. 3-4.

partners and litigators at the well-respected law firms of TUCKER ELLIS LLP, SUTTER O'CONNELL, REMINGER CO., L.P.A., and VENABLE LLP, are of high caliber and good reputation. Furthermore, defense counsel from each of these firms have no Ohio-related constraints on the hourly rates they charge corporate clients, including Tristar, nor are they required to report their billing rates or totals in a case of this sort.⁶¹ The numerous pleadings, motions, and briefs in this litigation amply demonstrate the high level of legal acumen employed by counsel on both sides of this matter.

C. REIMBURSEMENT OF EXPENSES

Class Counsel necessarily incurred \$237,355.77 in costs and expenses in the ordinary course of litigation. They respectfully request reimbursement of these expenses, which are of the type routinely charged to hourly fee-paying clients. The expenses are set forth by category in the Declaration of Gregory F. Coleman, which is attached as Exhibit A. The largest categories of expenses are those associated with the Claims and Administration of the notice of the certified class and expert witness fees.

D. REIMBURSEMENT OF ADMINISTRATION COSTS

The Claims Administrator for notice involving the class certification ruling, Angeion, incurred \$85,000 in costs, which consisted of, among other things, preparing and sending notice and claims forms, establishing and maintaining the settlement website related to the notice that went out for the class certification phase was www.pressurecookerxllawsuit.com. This amount was paid by Plaintiffs' Counsel and is part of the costs they are seeking reimbursement for.

⁶¹ For example, the self-reported billing rates of Venable LLP appear in the National Law Journal's Annual Billing Survey for 2014 (NLJ Survey), showing a high hourly billing rate for partners of \$1075.00 and an average hourly rate for partners of \$660.00. *Billing Rates Across the Country*, The National Law Journal, <https://www.law.com/nationallawjournal/almID/1202636785489/Billing-Rates-Across-the-Country/?slreturn=20180417233503> (last visited May 18, 2018).

The Claims Administrator for notice following the settlement agreement, Heffler Claims Group, incurred \$218,662.42 in costs as of May 14, 2018, which has consisted of, among other things, preparing and sending notice and claims forms, and establishing and maintaining the settlement website (www.powerpressurecookersettlement.com) related to the notice that went out for the Settlement Class. The Claims Administrator estimates that the total costs will not exceed \$890,000.00 to complete all of the tasks of administration mandated by the parties' Settlement Agreement and the order of this Court adopting the same, including the preparation, sending, and tracking of the distribution of checks to Settlement Class members who submit claims.

E. CLASS REPRESENTATIVE SERVICE AWARDS

Plaintiffs seek \$10,000.00 incentive awards be paid to each of the four Settlement Class Representatives, Chapman, Vennel, Jackson, and Pinon. "Numerous courts have authorized incentive awards [as] efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class."⁶² And the requested incentive awards are but a fraction of those awarded in other cases, and are proportional to the Plaintiffs' participation in the litigation.⁶³

IV. CONCLUSION

Class Counsel respectfully requests that the Court award reasonable attorneys' fees of \$2,043,079.45 and reimbursement of their litigation expenses of \$237,355.77. Class Counsel also respectfully requests that Plaintiffs Chapman, Vennel, Jackson, and Pinon each be awarded an incentive payment of \$10,000.00.

⁶² *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003).

⁶³ *Cf. In re Polyurethane Foam Antritrust Litig.*, 135 F. Supp. 3d 679, 694 (N.D. Ohio 2015) (awarding \$35,000 incentive awards).

Dated: May 18, 2018

Respectfully submitted,

/s/Gregory F. Coleman

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2018, a copy of the foregoing, PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES AND COSTS OF CLAIMS ADMINISTRATION, AND APPROVAL OF SERVICE AWARDS, was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Gregory F. Coleman

Gregory F. Coleman (*pro hac vice*)