IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PRO SLAB, INC., BREMER CONSTRUCTION MANAGEMENT, INC., and MICHELLE L. VIEIRA, Chapter 7 Trustee of FORREST CONCRETE, LLC, on behalf of themselves and all others similarly situated, Plaintiffs, vs. ARGOS USA LLC, ARGOS READY MIX LLC, LAFARGE NORTH AMERICA INC., COASTAL CONCRETE SOUTHEAST II, LLC, THOMAS CONCRETE, INC., THOMAS CONCRETE OF SOUTH CAROLINA, INC., EVANS CONCRETE, LLC, ELITE CONCRETE, LLC, Defendants.	Case No. 2:17-cv-03185-BHH

PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS RELATED TO SETTLEMENTS WITH LAFARGE NORTH AMERICA, INC., EVANS CONCRETE, LLC AND THOMAS CONCRETE, INC. AND THOMAS CONCRETE OF SOUTH CAROLINA, INC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. INTRODUCTION

Plaintiffs Pro Slab, Inc., Bremer Construction Management, Inc., and Michelle L. Vieira, Chapter 7 Trustee of Forrest Concrete, LLC, on behalf of themselves and all others similarly situated, through Class Counsel, respectfully submit this Application for Attorneys' Fees, Reimbursement of Expenses, and Service Awards related to their Settlements with Lafarge North America, Inc. ("Lafarge"),[1] Evans Concrete, LLC ("Evans") and Thomas Concrete, Inc. and Thomas Concrete of South Carolina, Inc. (together, "Thomas") (collectively, "Settling Defendants.")[2]

The Settlements provides substantial relief for the Settlement Classes, collectively totaling at least $18.65 million.[3] Class Counsel have expended more than 33,500 hours of uncompensated professional time on these matters, as well as millions of dollars in unreimbursed out-of-pocket expenses. Consistent with what other courts have determined to be the reasonable approach to awarding fees in class actions, standard class action practice and procedure, and as disclosed in the

---

[1] On September 16, 2025, the Court heard argument on Plaintiffs' Motion for Final Approval of Settlement with Lafarge North America, Inc. and Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, And Service Awards Related to Lafarge North America, Inc. Settlement. *See* ECF Nos. 516 and 518. The Court took those motions under advisement. ECF No. 530. In this Motion, Class Counsel renew their motion for fees, expenses, and Service Awards related to the Lafarge Settlement, and combine it with the request for fees, expenses and Service Awards sought from the Thomas and Evans Settlements.

[2] All capitalized terms in this memorandum have the same meanings as those defined in the Settlement Agreements.

[3] The Evans Settlement is $5,800,000, subject to an early pay deduction of $150,000. For purposes of this Motion, Plaintiffs are valuing the Settlement at the reduced $5,650,000 valuation. The Evans Settlement requires Evans to pay $4,000,000 within 10 days after Preliminary Approval, which Evans has done. Evans has the option to pay $1,650,000 10 days after the Effective Date (which it tied to the expiration of any appeal rights) or to pay $1,800,000 within seven months of the Effective Date. If Evans decides to pay the higher amount—an additional $150,000—to extend its payment obligation by an additional 6 months and twenty days, Plaintiffs ask that one-third of the actual payment amount be the basis for the attorneys' fee award for that Settlement. That would increase Class Counsel's fee request by $50,000.

Notices, Plaintiffs respectfully request a fee award to Class Counsel of one-third (1/3) of the $18,650,000 Settlement Amounts ($6,216,666.67), plus one-third (1/3) of the interest accrued in the Settlement Funds, reimbursement of litigation expenses of $3,600,000, and Plaintiff service awards of $35,000 for each Class Representative.

Class Counsel assumed great risk in taking on this challenging antitrust case on a purely contingency basis. Over the course of the litigation, Class Counsel dedicated more than 33,500 hours to pursuing relief on behalf of the class, resulting in $19,881,820.50 in lodestar through June 30, 2025. *See* Joint Declaration of Renae D. Steiner, Scott D. Gilchrist, and Gregory P. Hansel ("Joint Decl."), ¶ 43, Exhibit 13, filed concurrently. The requested fee of one-third of the Settlement Fund will partially compensate Class Counsel for (1) their work, which they undertook on a contingency basis; their work that continues after the June 30, 2025 lodestar calculation submitted to the Court, including party and expert depositions, mediating and agreeing to a settlement with Defendant Elite, mediating (unsuccessfully) with Defendant Argos, and briefing and arguing class certification; and (3) for work that remains to be done, including preparing for upcoming *Daubert* and summary judgment briefing and preparing for trial. *Id*. at ¶45. The Settlements provides substantial consideration for the benefit of the Settlement Classes. The non-reversionary Settlement Funds of $18,650,000, together with any accrued interest after deposit, are or will be held in escrow.[4] The Settlements allow Plaintiffs to continue to pursue the full measure of damages incurred by them against the non-settling Defendants.

The Court's overall analysis of the reasonableness of the requested fee award should

[4] The $17,000,000 in Settlement Funds principal is currently in escrow; the additional funds from Evans are described in footnote 3. As the Proposed Order details, Class Counsel propose distribution of fees from the $17,000,000 escrowed Settlement Funds, plus the *pro rata* interest, upon the Effective Date of those Settlements, and distribution of fees from Evans' second payment when it is deposited.

consider the fact that Plaintiffs' percentage-of-the-fund request is squarely aligned with the percentages awarded in this Circuit and others and satisfies the *Barber* factors. *See Barber v. Kimbrell's, Inc.,* 577 F.2d 216 (4th Cir. 1978). A lodestar cross-check analysis would show a negative multiplier of less than .32 of the reported lodestar, substantially below the Fourth Circuit's approved range. As such, the requested fee award represents only 32% of the total lodestar Class Counsel have expended in this litigation.

Class Counsel also seeks reimbursement of $3,600,000 for costs and expenses reasonably expended during the litigation, as reflected in the attached Declarations. Class Counsel has expended more than $4,214,000 in expenses. But, because the Notice explained that Class Counsel would not seek more than $3,600,000 from these Settlements, the request for reimbursement is limited to that amount. The expenditures, as described in the Declarations, are of the type customarily reimbursed, and the reasonableness of the amount is confirmed by a review of similar expenditures reimbursed in other antitrust class actions.

Finally, Class Counsel seek $35,000 in Service Awards for each Class Representative for their efforts in bringing and prosecuting this litigation. Class Representatives sued the direct suppliers of their most important product, ready-mixed concrete, thus risking retaliation and business disruption. In addition, the Class Representatives expended significant time and effort complying with written and testimonial discovery demands. The requested Service Awards total less than 1/2 of 1% of the Settlement Funds and were duly disclosed in the Notice. The Class Representatives deserve the requested awards for the risk they undertook and the work they expended to deliver this positive result for the Settlement Classes.

II. HISTORY OF CLASS COUNSEL'S WORK IN THIS LITIGATION

A. The Procedural History of This Case

After months of investigating and developing claims, including in consultation with experts, Plaintiffs filed the first complaint on November 22, 2017. Joint Decl., at ¶ 9. There were no prior or contemporaneous criminal investigations or indictments. Indeed, the opposite was true—the federal government had declined to take on the related *Qui Tam* complaint and its investigation was not public until after it moved to intervene in this case. *Id*. at ¶ 13. Thereafter, the Court appointed interim Class Counsel. ECF No. 94. Class Counsel subsequently filed two amended class action complaints, with the currently operative Third Amended Complaint filed on April 2, 2020. ECF No. 246 (as supplemented by ECF No. 465 to add information on Plaintiff Bremer's assigned claims). Class Counsel successfully defended against Defendants' motions to dismiss. Across these motions, Defendants' arguments included, among others, failure to state a federal claim, lack of personal jurisdiction, failure to adequately allege claims of pre-2010 or post-2014 conduct and statute of limitations defenses. *Id*. at ¶¶ 10, 11, 12, 16.

The parties proceeded apace to discovery. The parties vigorously contested discovery throughout the litigation, including through extensive motion practice, including motions regarding entry of protective, discovery, and scheduling orders, and with numerous discovery dispute joint letters or briefs. Typically, motion practice on these issues followed weeks of meeting and conferring and resulted in numerous hearings and decisions by the Court. *Id*. at ¶ 11.

Class Counsel reviewed and analyzed more than 650,000 pages of documents Defendants produced, as well as voluminous electronic transactional and cost data from Defendants and nonparties that would prove crucial for class certification and damages modeling. *Id.* at ¶¶ 15, 18, 50 (describing the over 800,000 transactions database). Class Counsel conducted extensive fact and expert testimonial discovery, including preparing for, and conducting or defending at least 24

Rule 30(b)(1), 30(b)(6), and expert depositions, including two multi-witness Rule 30(b)(6) depositions and two multi-day depositions. Because this case alleges conduct occurring between 2010-2016, many key witnesses are no longer employed by Defendants and/or Defendants chose not to represent those witnesses. Extensive effort was expended to locate witnesses and negotiate their participation in depositions. Two key witnesses, David Melton and Greg Melton, are incarcerated, which necessitated Court orders to allow their prison depositions and cumbersome scheduling, logistical preparation, and negotiations with their counsel. *Id*. at ¶ 16.

Class Counsel's efforts have been particularly important because the United States Department of Justice ("DOJ"), in its subsequently filed criminal prosecutions against Evans, did not seek or obtain restitution for the victims of Evans' unlawful conduct and did not bring any charges at all against Lafarge and Thomas.[5] Yet, at the same time, the DOJ made clear that Evans, Argos, and their co-conspirators "cheat[ed] American consumers out of competitively priced critical commercial products."[6] No Class Member has claims of the size that could have rationally been litigated on an individual basis. Joint Decl., ¶ 40. Thus, the ability of RMC consumers to recover their damages rested squarely on Class Counsel's shoulders.

B. Settlements

The Lafarge, Thomas, and Evans Settlements were each achieved after several years of litigation and numerous arm's length negotiating sessions between Class Counsel and the lawyers for Lafarge, Thomas, and Evans. *Id*. at ¶ 26-27. The Lafarge Settlement provides $5,400,000 and

---

[5] The plea agreement for Evans recites that "[i]n light of the availability of and currently pending civil causes of action, the Recommended Sentence does not include a restitution order." *See* Class Cert Brief, ECF No. 450, Steiner Ex. 004 at 6.

[6] https://www.justice.gov/archives/opa/pr/ready-mix-concrete-company-admits-fixing-prices-and-rigging-bids-violation-antitrust-laws. *See also id*. (U.S. Attorney for S.D. Georgia also stating that Argos and its co-conspirators inflated their profits "at the expense of consumers").

cooperation related to establishing the business records status and authenticity of certain documents. *Id*. at ¶ 27. The Thomas Settlement provides $7,600,000 and cooperation, including providing deposition testimony and establishing the business records status and authenticity of certain documents produced by Thomas, including its predecessor Coastal Concrete's documents. *Id*. The Evans Settlement provides $5,800,000 (which may be reduced to $5,650,000 if the additional terms are satisfied) and cooperation, deposition testimony and establishing the business records status and authenticity of certain documents. *Id*.

Class Counsel notified the Settlement Class that they will seek Court permission to distribute part of the Lafarge, Thomas, and Evans Settlement Funds to pay for the costs of administering the Settlement (such as the cost of giving Notice and administering claims), Class Counsel's attorneys' fees and reasonable expenses, and Service Awards to the Class Representatives. *Id*. at ¶ 37 (detailing Notice Plan and execution of Notice Plan, including posting documents on the case website). No objections were received.

III. LEGAL ARGUMENT

For over seven years, Class Counsel litigated on behalf of RMC purchasers on a purely contingent basis without any guarantee of payment. In the face of that risk, Class Counsel recovered $18,650,000 from Defendants Lafarge, Thomas, and Evans to create common Settlement Funds.[7] The requested one-third fee ($6,216,666.67) of the Settlement Amounts, plus

[7] Each Settlement Amount is deposited in a Qualified Settlement Fund ("QSF") account at Huntington Bank. Each Settlement Amount is segregated into its own fully secured money market sub-fund and accruing interest at a current rate of 3.92% (the rate is subject to market fluctuation). As of September 30, 2025, accrued interest in the three Settlement Funds is $105,876.77 ($52,780.32 in the Lafarge sub-fund; $28,149.33 in the Thomas sub-fund; and $24,947.12 in the Evans sub-fund). Interest is accruing at a rate of approximately $55,533 a month across all three sub-funds (before compounding). All funds are held under one TIN (Tax Identification Number), to reduce the annual cost to prepare and file the federal and state annual tax returns. Joint Decl., ¶ 29.

one-third of accrued interest[8] for attorneys' fees would compensate Class Counsel at a hourly rate equal to approximately $185 an hour, based on time expended through June 30, 2025. The request is fair and reasonable and Class Counsel respectfully request that it be granted. Likewise, Class Counsel reasonably expended more than $4.2 million to prosecute this case; $3.6 million of those expenses should be reimbursed. Further, Service Awards of $35,000 for each Class Representative should be granted for their service to the litigation.

A. Interim Fee, Expense, and Service Awards Are Commonly Granted Because They Serve the Public Interest.

The Supreme Court has consistently recognized that private antitrust litigation is a necessary and desirable tool to ensure the effective enforcement of the antitrust laws. *See, e.g., Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 266 (1972)*; see also Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) ("[I]t is especially important to provide appropriate incentives to attorneys pursuing antitrust actions because public policy relies on private sector enforcement of the antitrust laws.") Indeed, "Congress created the treble-damages remedy of § 4 precisely for the purpose of encouraging private challenges to antitrust violations. These private suits provide a significant supplement to the limited resources available to the Department of Justice for enforcing the antitrust laws and deterring violations." *Reiter*, 442 U.S. at 344. Fee awards in successful cases encourage meritorious class actions and thereby promote private enforcement of, and compliance with, antitrust laws. *Perma Life Mufflers, Inc. v. Int'l Parts Corp.*, 392 U.S. 134, 139 (1968) ("[T]he purposes of the antitrust laws are best served by insuring

[8] The $17,000,000 escrowed amounts include the entire settlements amount for the Lafarge and Thomas settlements, and $4,000,000 initial payment for the Evans settlement. Interest accrued at 4%, compounded monthly, through September 21, 2025; the current rate is 3.92%. Interest is accruing at a rate of approximately $55,533 a month (before compounding). Joint Decl., ¶ 30.

that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the antitrust laws."). Further, when individual class members seek a relatively small damages amount, "[e]conomic reality dictates that [their] suit proceed as a class action or not at all." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 161 (1974).

Interim fee and expense awards are appropriate in private sector enforcement of the antitrust laws, such as this one, where the litigation was initiated and prosecuted for years prior to government criminal actions, where the litigation has lasted several years, and where settlements have been reached before the resolution of the litigation against all Defendants. *In re Diet Drugs Prod. Liab. Litig.*, No. 99-20593, 2002 WL 32154197, at *12 (E.D. Pa., Oct. 3, 2002) (awarding an interim fee after four years of litigation, noting that "[t]o make them wait any longer for at least some award would be grossly unfair").

Interim fee awards are in the interest of the Class, not just Class Counsel. First, the reimbursement of expenses and the award of fees provide funds needed for continued litigation against the remaining Defendants. *See Manual for Complex Litigation, Fourth*, § 13.21 ("[p]artial settlements may provide funds needed to pursue the litigation . . ."); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) (concluding that a partial "settlement provides class plaintiffs with an immediate financial recovery that ensures funding to pursue the litigation against the non-settling defendants"). Awarding interim payment of fees and expenses removes the pressure of years of carried fees and expenses from Class Counsel's shoulders and allows them to focus on obtaining additional recoveries from the remaining Defendants.

Second, resolving the fee, expense, and Service Awards recovery amounts allows the calculation of the Net Settlement Funds, so that the pro rata shares of the Net Settlement Funds may be distributed to Settlement Class Members. *See* Joint Decl., ¶ 33. Without knowing what the deductions to the gross Settlement Funds will be, the Net Settlement Fund cannot be determined, and the pro rata distribution cannot be determined. *Id*.

Courts routinely grant attorneys' fees and reimburse expenses from partial settlements based on all work done to-date. *See, e.g., In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775, 2015 WL 5918273, at *6-7 (E.D.N.Y. Oct. 9, 2015) (granting motion for attorneys' fees from settlements with multiple defendants based upon all work on the case from the last fee award to date); *In re Processed Egg Prods. Antitrust Litig.*, No. 08-md-2002, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012) (granting motion for attorneys' fees from settlement with single defendant based upon all work on case to-date); *In re Automotive Refinishing Paint Antitrust Litig.*, No. 08-md-1426, 2008 WL 63269, at *6 (E.D. Pa. Jan. 3, 2008) (Joint Decl., Ex. 14, page 39) (granting interim award of attorneys' fees in connection with initial settlements based on analysis of all the work done to-date, and later granting subsequent fee motion based on settlements with remaining defendants and work done after previous fee award). Accordingly, Class Counsel request an award of attorneys' fees, reimbursement of expenses, and Service Awards to the three Class Representatives in the following amounts from the three Settlements. The fees and expenses are applied *pro rata* to the Settlements; the Service Awards are applied in the amounts disclosed in the Notices:

SETTLEMENT	LAFARGE	THOMAS	EVANS	TOTALS
Gross Fund	$5,400,000	$7,600,000	$5,650,000[9]	$18,650,000
Fees	$1,800,000	$2,533,333	$1,883,333	$6,216,666
Expenses	$1,044,000	$1,467,000	$1,089,000	$3,600,000
Service Awards	$45,000	$30,000	$30,000	$105,000
NET FUND	**$2,526,000**	**$3,554,667**	**$2,632,667**	**$8,713,334**

B. The Percentage-Of-The-Fund Method Is the Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases.

[9] If Evans choses the extended-pay option, the fees from the $5,800,000 Settlement Amount, would be $1,933,333 ($50,000 more), plus one-third of the accrued interest.

When a representative party confers a substantial benefit upon a class, counsel is entitled to attorneys' fees based on the benefit obtained. *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980). Similarly, when considering awards of attorneys' fees in class actions, this Court has observed that Fed. R. Civ. P. 23(h) provides that "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." *Kirven v. Cent. States Health & Life Co. of Omaha*, No. 3:11-cv-2149, 2015 WL 1314086, at *11 (D.S.C. Mar. 23, 2015).

The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are "unjustly enriched" at the expense of the successful litigant. *Boeing,* 444 U.S. at 478. As a result, the Supreme Court and the Fourth Circuit have recognized that a court is to award "a reasonable attorney's fee to a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client…from the fund as a whole." *Brundle v. Wilmington Trust, N.A*., 919 F.3d 763, 785 (4th Cir. 2019), *as amended* (Mar. 22, 2019) (quoting *Boeing*, 444 U.S. at 478).

Further, "the percentage-of-recovery approach is not only permitted, but is the preferred approach to determine attorney's fees." *Savani v. URS Pro. Sols. LLC*, 121 F. Supp. 3d 564, 568–69 (D.S.C. 2015) (citations omitted). Indeed, in this Circuit, the "vast majority of courts use the percentage of recovery method" in the "context of class actions…which is advantageous because it ties the attorneys' award to the overall result achieved rather than the number of hours worked." *McClaran v. Carolina Ale House Operating Co. LLC*, No. 3:14-cv-03884, 2015 WL 5037836, at *3 (D.S.C. Aug. 26, 2015) (citing *Loudermilk Servs., Inc. v. Marathon Petroleum Co., LLC*, 623 F. Supp. 2d 713, 717-18 (S.D. W. Va. 2009)); *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 758 (S.D. W. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases.") (citations omitted); *Edmonds v. United States*, 658 F. Supp. 1126, 1129 (D.S.C. 1987) ("find[ing] that the percentage-of-the-fund method is the preferable approach to determine a reasonable fee in this matter").

For these reasons, Class Counsel requests that this Court award attorneys' fees according to the percentage-of-the-fund method. The requested fee of one-third of the Settlement Funds is warranted, as an analysis of the *Barber* factors demonstrate.

C. Class Counsel's Fee Request Is Reasonable Under Fourth Circuit Precedent.

Fourth Circuit courts have recognized the importance of incentivizing experienced class counsel to take on risky cases. *See, e.g., In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 788 (E.D. Va. 2001) (recognizing the need "to reward lead counsel for the favorable result achieved for the class and to provide an incentive for competent lawyers to pursue such actions in the future on an essentially contingent basis"); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 263 (E.D. Va. 2009) ("[C]lass counsel bore a substantial risk of nonpayment…[t]he outcome of the case was hardly a foregone conclusion, but nonetheless counsel accepted representation of the plaintiff and the class on a contingent fee basis, fronting the costs of litigation.")

Class Counsel requests a fee of one-third of the Settlement Funds, which is the Settlement Amounts plus the accrued interest.[10] The fundamental question in evaluating an attorneys' fee in

[10] Awarding a percentage of the Settlement Fund interest is the usual practice. *See e.g., In re Pork Antitrust Litig.*, No. 0:18-cv-01776, 2025 WL 2410294, at *1 (D. Minn. Aug. 13, 2025) (awarding 1/3 of the fund, including accrued interest); *In re Zetia (Ezetimibe) Antitrust Litig*., 699 F. Supp. 3d 448, 462-63 (E.D. Va. 2023) (awarding 1/3 of the settlement amount, including accrued interest); *In re Interior Molded Doors Indirect Purchaser Antitrust Litig*., No. 3:18-cv-00850, 2021 WL 5195089, at *3 (E.D. Va. July 27, 2021) (awarding attorneys' fees equal to 30% of the Settlement fund, "plus interest earned thereon to be paid from the Settlement Fund."); *In re Broiler Chicken Antitrust Litig*., No. 1:16-cv-08637, ECF No. 5543, at 3 (April 19, 2022)(Joint Decl., Ex. 14, page 2)(awarding interim attorneys' fees amounting to one third of the settlement fund, with a "proportional share of interest"); *In re Oracle Sec. Litig*., 852 F. Supp. 1437, 1458 (N.D. Cal. 1994) (applying the "standard approach" to interest, under which counsel receives an award of

this Circuit is whether the fee is reasonable. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 243 (4th Cir. 2010) ("*Pellegrin*") ("[T]he district court . . . properly noted that courts evaluate attorney's fees under a reasonableness standard."). When determining a reasonable fee, district courts within the Fourth Circuit have not established a benchmark for fee awards in common funds cases, but they have noted that most fee awards range from 25 percent to 40 percent of the settlement fund.

Local Civil Rule 54.02(A) provides that "[a]ny petition for attorneys' fees shall comply with the requirements set forth in *Barber v. Kimbrell's, Inc*., 577 F.2d 216 (4th Cir. 1978)," which "requirements are also relevant when a common fund is created and a percentage-fee method is sought in the application." Local Civil Rule 54.02; *see also Savani,* 121 F. Supp. 3d at 570 ("Local Rule 54.02(A) (D.S.C.) requires that petitions for [common fund] attorney's fees comply with the requirements of *Barber's v. Kimbrell's, Inc.* …). In determining the reasonableness of attorneys' fees, the Court considers the twelve factors set forth in *Barber:*

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

577 F.2d at 226 n.28.[11]

---

interest to the extent such interest arises out of counsel's portion of the settlement funds).

[11] Not all of the *Barber* factors are applicable in every case, and "there is no strict manner in which the factors are to be considered and applied." *Alexander S. By & Through Bowers v. Boyd*, 929 F. Supp. 925, 932 (D.S.C. 1995), *aff'd sub nom. Burnside v. Boyd*, 89 F.3d 827 (4th Cir. 1996) (citing *E.E.O.C. v. Service News Co*., 898 F.2d 958, 965 (4th Cir. 1990)) The following factors do not

Although courts have primarily focused on the degree of success obtained and what other courts have awarded (the "market rate") when assessing the reasonableness of the requested attorneys' fees, we address all relevant factors below. Application of the *Barber* factors supports Class Counsel's requests.

1. **The Time and Labor Expended Supports the Fee Request.**

Class Counsel has invested considerable time and resources in the investigation, research, and prosecution of this case. Litigation began in 2017, and these settlements were reached only after briefing, argument, and rulings on three motions to dismiss; extensive discovery and expert work; depositions; extensive econometric modeling; three extensive mediations; and with class certification pending. Joint Decl., ¶¶ 13, 15-18. Class Counsel conducted an extensive investigation into the underlying facts; engaged in voluminous discovery, including review of over 650,000 pages of documents, and conducted two dozen depositions; thoroughly researched the law pertaining to the Class Members' claims and the defenses to those claims; engaged in extensive and hard-fought motion practice, including two motions to dismiss and class certification; prepared for and participated in numerous court hearings; consulted extensively with liability and damage experts; and engaged in arm's-length settlement negotiations. Joint Decl., at ¶¶ 11, 12, 15-18. Class Counsel reasonably expended a total of 33,513.95 hours from January 1, 2017 through June 30, 2025. *See* Joint Decl., ¶¶ 41-43, Exhibits 1-11. The total lodestar submitted by Class Counsel is $19,881,820.50 (*Id.* at ¶ 43, Exhibit 13), more than three times the requested fee.

---

pertain to this Litigation: (7) time limitations imposed by the client or circumstances, and (11) the nature and length of the professional relationship with the client. Thus, Class Counsel will not analyze these factors. *See Pellegrin,* 605 F.3d at 245 (recognizing that "the district court correctly recognized that some factors may not have much, if anything, to add in a given case, [and] the factors that do apply should be considered.").

2. <u>The Novelty and Difficulty of the Questions Raised Supports the Fee Request.</u>

Class Counsel assumed a very real risk in taking on this complex case and, despite the novelty and difficulty of the issues raised, secured favorable results for the Class. Although this case is a prototypical antitrust case, some unique issues arose. The motions to dismiss raised issues of statute of limitations and fraudulent concealment, personal jurisdiction, and whether the correct corporate entities for the multi-national Defendants Lafarge, Argos, and Thomas were properly named as defendants. Joint Decl., ¶ 12. Because RMC is sold in local, not national markets, the issue of which RMC plants and transactions were part of a properly specified market has been heavily contested by Defendants. *Id*. Because of asset sales, Defendants' local ownership of certain RMC plants also changed during the class period, requiring Plaintiffs to understand the timing, terms, and continuity of changes to the pricing authority employees at Argos, Lafarge, Coastal and Thomas. *Id.*

3. <u>The Skill Required to Properly Perform the Legal Service Properly Supports the Fee Request.</u>

This complex antitrust class action required a significant amount of skill to reach a favorable resolution for the Class. As this Court recognized in *Edmonds v. United States*, the "prosecution and management of a complex . . . class action requires unique legal skills and abilities." 685 F. Supp. at 1137. "[C]lass actions have a well-deserved reputation as being most complex," *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998), with antitrust cases being among the most "complex, protracted, and bitterly fought," *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 669 (S.D.N.Y. 2015).

Class Counsel individually and collectively have decades of experience in prosecuting and trying complex antitrust class actions. Joint Decl., ¶ 24. Collectively, they have recovered billions of dollars for class members in other complex antitrust class actions. *Id*. Class Counsel dedicated significant time to litigating and resolving claims on behalf of members of the Settlement Classes. From the outset, Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, as well as the appropriate basis upon which to settle them due to their participation in other class action cases involving Ready-Mix Concrete including cases in Indiana and Iowa. *Id.*

The quality of opposing counsel can also be important in evaluating the quality of Class Counsel's work. *See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 683 (D. Md. 2013) ("quality of opposing counsel is a factor to be considered in evaluating Lead Counsel's performance") (citing *In re Warner Commc'ns Sec. Litig.,* 618 F. Supp. 735, 749 (S.D.N.Y. 1985)). Lafarge, Thomas, and Evans were all represented by highly skilled and capable counsel. The ability of Class Counsel to obtain favorable settlements for the Class in the face of such formidable opposition confirms the quality of Class Counsel's representation.

4. **Attorneys' Opportunity Costs in Pursuing the Litigation Supports the Fee Request.**

"This factor typically applies in circumstances where counsel was required to forgo some measure of compensation because of the time devoted to a case." *Uhlig, LLC v. Shirley*, 895 F. Supp. 2d 707, 716–17 (D.S.C. 2012) (citing *Daly v. Hill*, 790 F.2d 1071, 1082 n.15 (4th Cir. 1986)); *see also Trimper v. City of Norfolk, Va.*, 58 F.3d 68, 73 (4th Cir. 1995) (this factor looks at "the preclusion of other employment opportunities for the attorney due to the attorney's acceptance of the case"). As set forth in the Joint Declaration of Class Counsel, 33,513.95 hours were expended over a nearly eight-year period that could have been expended in other cases. Joint Decl., ¶ 35.

Class Counsel took the case on a contingency fee basis and invested substantial time, effort and money with no guarantee of any recovery. Given Class Counsel's significant investment of attorney time and costs and the contingent nature of counsel's representation, this factor supports approving the requested amount of attorney's fees. *See, e.g., Spell v. McDaniel*, 824 F.2d 1380, 1402–03 (4th Cir. 1987) (plaintiff's counsel "incurred substantial opportunity costs in pursuing the litigation, given the drain of resources on their four-person firm and the unpopularity of their case within the community"); *McCurley v. Flowers Foods, Inc.*, No. 5:16-cv-00194, 2018 WL 6650138, at *4 (D.S.C. Sept. 10, 2018) ("Courts consider the contingency of the litigation to determine the 'opportunity costs or preclusion from other employment'") (quoting *Lewis v. J.P. Stevens & Co*., Nos. 86-2094, 86-2098, 1988 WL 60546, at *4 (4th Cir. 1988)).

5. **The One-Third Fee Request is the Customary Fee and is Justified by Reference to Awards in Similar Cases.**

Circuit courts and scholars have encouraged the "mimic the market" approach in setting fees in common fund class action cases. In determining whether a requested rate is reasonable, the Court should consider the "prevailing market rates in the relevant community." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)); *see also Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635 (7th Cir. 2011) ("When attorney's fees are deducted from class damages, the district court must try to assign fees that mimic a hypothetical ex ante bargain between the class and its attorneys.")

As explained by the Fourth Circuit in *Rum Creek Coal*,

> This determination is fact-intensive and is best guided by what attorneys earn from paying clients for similar services in similar circumstances. [*Blum*, 465 U.S.] at 895 n.11. While evidence of fees paid to attorneys of comparable skill in similar circumstances is relevant, so too is the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client. []
>
> The relevant market for determining the prevailing rate is ordinarily the community in which the court where the action is prosecuted sits. *See National Wildlife Federation v. Hanson*, 859 F.2d 313 (4th Cir. 1988). In circumstances where it is reasonable to retain

> attorneys from other communities, however, the rates in those communities may also be considered. *Id*. at 317.

Id., 31 F.3d at 175.

Class Counsel confirms that the retention agreements with the Plaintiffs are contingency fee agreements. Joint Decl., at ¶ 39. "In non-class contingency fee litigation, a 30% to 40% contingency fee is typical." *Temp. Servs., Inc. v. Am. Int'l Grp., Inc.*, No. 3:08-cv-00271, 2012 WL 4061537, at *8 (D.S.C. Sept. 14, 2012). Thus, the requested fees are well within the customary range of fees for contingency fee litigation.

The fee requested by Class Counsel is further justified by reference to fees awarded in other cases. In class action contingent fee cases, a request of one-third of the Settlement Fund is commonly granted. "Contingent fees of one-third are common in this Circuit in cases of similar complexity," and the "high risk for Class Counsel, numerous contested issues, and a positive settlement for the class members" provide "more than sufficient reason to support a one-third contingent fee." *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758, at *3 (M.D.N.C. Sept. 25, 2019); *Smith v. Krispy Kreme Doughnut Corp*., No. 1:05-cv-00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007) ("In this jurisdiction, contingent fees of one-third (33.3%) are common."); *Anselmo v. W. Paces Hotel Grp., LLC*, No. 9:09-cv-02466, 2012 WL 5868887, at *3 (D.S.C. Nov. 19, 2012) ("The approximate 33% for fees provided here is reasonable in light of all pertinent factors, including precedent and beneficial results obtained."); *Robinson v. Tr. Council of Wateree Cmty. Actions, Inc*., No. 3:11-cv-00313-CMC, 2012 U.S. Dist. LEXIS 129069, at *16–17 (D.S.C. Sept. 10, 2012) ("A 33% contingency fee is within the range of reasonableness.") ; *see also In re TD Bank, N.A, Debit Card Overdraft Fee Litig.*, MDL 2613, ECF No. 233, slip op. at 13 (D.S.C. Jan. 9, 2020) (Hendricks, J.) (Joint Decl., Ex. 14, pages 7, 20) (awarding 30 percent of the $70 million total settlement value, noting that that 30% award was lower than other awards, and resulted in a multiplier of between 1.89 and 2.33).[12]

Indeed, in certain circumstances, fees of more than one-third have been awarded in this Circuit and others. *See Savani,* 121 F. Supp. 3d at 572 ("Class Counsel's request for 39.57%...fall within the range of previous awards in common benefit class actions…"); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) ("[W]e find no abuse of discretion in the district court's awarding 36% to class counsel who obtained significant monetary relief on behalf of the class . . . ."); *Kidrick v. ABC Television & Appliance Rental, Inc.*, No. 3:97-CV-69, 1999 WL 1027050, at *2 (N.D. W. Va. May 12, 1999) ("An award of 35% of the fund has been approved in this District[, and f]ees as high as 50% of the fund have been awarded.").

6. A Lodestar Cross-Check Supports a One-Third Fee.

Although Courts in the Fourth District are not so required, they may choose to "cross-check" the results of a percentage-fee award against the attorney's "lodestar." *See, e.g., Kay Co. v. Equitable Prod. Co*., 749 F. Supp. 2d 455, 463–64 (S.D. W. Va. 2010) ("I will also apply the lodestar cross-check as an element of objectivity in my analysis."); *see also Savani,* 121 F. Supp. 3d at 575 ("A court may choose to 'cross-check' the results of a percentage-fee award against the attorney's 'lodestar.'").[13] The Court is not obligated to perform a lodestar cross-check.[14]

---

[12] In fact, a comprehensive study of attorneys' fees in class action cases notes "a remarkable uniformity in awards between roughly 30% to 33% of the settlement amount." Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. of Empirical Legal Studies 27, 31, 33 (2004); *see also In re Rite Aid Corp. Sec. Litig*., 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "the average attorney's fees percentage is shown as 31.71%, and the median turns out to be one-third").

[13] Lodestar is defined as "the number of hours reasonably expended, multiplied by a reasonable hourly rate." *Rum Creek Coal Sales, Inc.*, 31 F.3d at 174.

[14] "Where the lodestar is greater than the requested fee award . . . the court may dispense with a cross-check." *Glaberson v. Comcast Corp*., No. 03-cv-6604, 2015 WL 5582251, at *14 (E.D. Pa. Sept. 22, 2015) (citing *Fleisher v. Fiber Composites, LLC*, No. 12-cv-1326, 2014 WL 866441, at *15 (E.D. Pa. Mar. 5, 2014)) ("Where, as here, counsel requests a fee that represents less than their lodestar, 'there is no need to discuss multipliers and the appropriateness of an increase to the

Nevertheless, recognizing that this Court at times conducts a lodestar cross-check, *see, e.g., TD Bank*, slip op. at 15 (conducting lodestar cross-check), Class Counsel has provided the Court with the information needed to do so.

Class Counsel's Joint Declaration demonstrates that they reasonably expended a total of 33,513.95 hours from January 1, 2017, through June 30, 2025. *See* Joint Decl., ¶¶ 42-43, Exhibits 1-11. The total lodestar submitted by Class Counsel is $19,881,820.50. *Id*. at ¶ 43, Exhibit 13. The average hourly rate submitted is $593.24 per hour. *Id*. That average hourly rate is comparable to those charged by other law firms with similar experience, expertise, and reputation, for similar services in the nation's leading legal markets. *Id*. *See, e.g., In re Lithium Ion Batteries Antitrust Litig*., No. 13-md-02420, 2020 WL 7264559, at *20 (N.D. Cal. Dec. 10, 2020) (citing Professor Rubenstein Declaration, finding a $528.11/hourly blended rate for forty approved class action settlements in the Northern District of California in 2016 and 2017).

The fee requested is a negative multiplier of less than .32 (or 32%) of the reported lodestar. Joint Decl., ¶ 43. That negative multiplier is significantly less than multipliers generally considered to be acceptable *See TD Bank*, slip. op. at 15; *see also Jones,* 601 F. Supp. 2d at 766 ("Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee"); *Anselmo*, 2012 WL 5868887, at *5 (same); *Robinson*, 2012 U.S. Dist. LEXIS 129069, at *15–16 ("multipliers from 1–3 are the norm" (citing 4 Newberg on Class Actions § 14:7)).

lodestar.'"'); *see also In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. 2013) ("A negative multiplier strongly underscores the risk counsel accepted to prosecute this case to trial…The lodestar crosscheck therefore provides additional support for approving the attorneys' fees request.").

7. **Class Counsel's Expectations at the Outset of the Litigation**

"It is well-established that litigation risk must be measured as of when the case is filed." *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 55 (2d Cir. 2000). Class Counsel confirms that the retention agreements with Plaintiffs are contingency fee agreements. Joint Decl., at ¶ 32. Class Counsel undertook representation on a contingent-fee basis, knowing they would not be compensated for their time if they lost. *Id.* at ¶ 7. In addition, Class Counsel advanced all the costs of litigation—over $4,214,727 to date and counting *Id.* at ¶¶ 36, 38; *The Mills Corp.*, 265 F.R.D. at 263 ("The outcome of the case was hardly a foregone conclusion, but nonetheless counsel accepted representation of the plaintiff and the class on a contingent fee basis, fronting the costs of litigation.'") (citing *Muhammad v. Nat'l City Mortg., Inc.*, No. 2:07-cv-0423, 2008 WL 5377783, at *8-9 (S.D. W. Va. Dec. 19, 2008)).

Requested fees are especially warranted when Class Counsel take on cases without the benefit of prior government criminal charges. When Class Counsel filed this civil case, it was in the headwind of a dismissal of the *Qui Tam* action. *Castro v. Sanofi Pasteur Inc.*, No. 11-cv-7178, 2017 WL 4776626, at *9 (D.N.J. Oct. 23, 2017) (finding the fact that the "case was investigated and brought entirely by private counsel" to be a benefit attributable to Co-Lead Counsel and factor weighing "strongly" in favor of court award of fees); *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2022 WL 6124787, at *4 (N.D. Ill. Oct. 7, 2022) ("The road to some of the settlements was eventually smoothed by later criminal indictments and corporate plea agreements. But Appointed Counsel's work appears to have prompted the government investigations that led to those indictments, rather than the reverse. A substantial award is warranted here as a proper incentive for high quality counsel to take on complex cases, requiring a massive investment of time and money, with such a high risk of non-payment").

"Without some upside benefit to having undertaken such risks, competent counsel could not be attracted to handle cases of this nature, which, in order to achieve the result obtained, effectively required certification of these . . . classes . . . against multiple Defendants." *Clark v. Experian Info. Sols., Inc*., No. 8:00-cv-1217, 2004 U.S. Dist. LEXIS 32063, at *77 (D.S.C. Apr. 22, 2004). Judge Anderson echoed the same in *In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig.,* MDL No. 2054, 2012 WL 5430841 (D.S.C. Nov. 7, 2012):

> In complex, multi-year class actions, the risks inherent in the litigation are immense and the risk of receiving little or no recovery is a major factor in awarding attorney fees. The risk of no recovery in complex cases of this sort is not merely hypothetical. Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and costs advanced, but lost the case despite their advocacy.

Id. at *4 (citations omitted).

8. <u>The Results Obtained Support the Requested Fee.</u>

According to the Fourth Circuit, "'the most critical factor' in calculating a reasonable fee award 'is the degree of success obtained.'" *Brodziak v. Runyon*, 145 F.3d 194, 196 (4th Cir. 1998) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." *Hensley*, 461 U.S. at 435.

The benefits achieved in this lawsuit are impressive. The $18,650,000 settlement amount equates to 68.1% of single damages. Joint Decl., at ¶ 28. If the Court awards the requested attorneys' fees, expenses, and Service Awards, the net recovery to date for Class Members would be approximately 31.8% of single damages. *Id*. The gross recovery is substantially more than the typical antitrust case recovery. *See, e.g., Lithium Ion Batteries*, 2020 WL 7264559, at *20 (granting final approval of the multiple settlements resolving the case, representing 11.7% of damages and describing the result for the class as "excellent"); *In re Lidoderm Antitrust Litig*., No. 14-md-02521, 2019 WL 4620695, at *4 (N.D. Cal. Sept. 20, 2018) (approving 33 1/3% fee award despite the Ninth Circuit's 25% benchmark because settlement recovered 46% of single damages estimate); *In re*

Packaged Seafood Prods. Antitrust Litig., Case No. 3:15-md-002670, 2022 WL 228823, at *6 (S.D. Cal. Jan. 26, 2022) (finding settlement totaling $20 million, which was about 1/3 of estimated damages "compares favorably to other antitrust and class action settlements"); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 07-cv-5944, 2016 WL 3648478, at *7 (N.D. Cal. July 7, 2016) (citing a law review article[15] finding that "median average settlement recovery among a survey of 71 settled cartel cases was 37% of single damages recovery, the weighted mean . . . 19% of single damages recovery"); *In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 581 n.5 (E.D. Pa. 2003) (gathering cases where courts approved settlements achieving single-digit percentages of potential recoveries).

Here, the net recovery for these three Settlements is in line with or exceeds the gross recovery common in antitrust class actions. By every objective metric, the Settlement is exceptional and merits the requested fee.

9. **The Experience, Reputation, and Ability of the Attorneys Supports the Requested Fee.**

Courts in this Circuit give substantial weight to the experience of the attorneys who prosecuted and negotiated the Settlement. *In re Bldg. Materials Corp. of Am. Asphalt Roofing Shingle Prod. Liab. Litig.,* No. 8:11-mn-02000, 2014 WL 12621614, at *4 (D.S.C. Oct. 15, 2014) ("Courts have given substantial weight to the experience of the attorneys who prosecuted and negotiated the settlement.") (citing *Muhammad*, 2008 WL 5377783, at *4); *The Mills Corp.*, 265 F.R.D. at 255 (observing that "Lead Counsel are highly experienced in the field of . . . class action litigation [, and] the potential difficulties in proving this case to a fact-finder"). Class Counsel have served as lead counsel or trial counsel in numerous antitrust class actions. In resolving a similar

---

[15] John M. Connor & Robert H. Lande, Not Treble Damages: Cartel Recoveries Are Mostly Less than Single Damages, 100 Iowa L. Rev. 1997, 1998 (2015).

ready-mix concrete price fixing case in Iowa against several well-heeled defendants, the court there congratulated Class Counsel for showing "that class actions can, indeed, work exactly as Congress and the federal courts intended—though they so rarely do." *In re Iowa Ready-Mix Concrete Antitrust Litig.,* No. C10-4038, ECF No. 309, slip op. at 9 (N.D. Iowa Nov. 9, 2011) (Joint Decl., Ex. 14, page 26) (finding "[Class Counsel] placed their clients' best interests light years ahead of their own, which is exactly the way the practice of law is *supposed* to work…")

10. The Undesirability of the Case Supports the Requested Attorneys' Fees and Expenses.

Class action cases have often been recognized as "undesirable" due to the financial burden on counsel and the time demands of litigating class actions of this size and complexity. *See, e.g., Millsap v. McDonnell Douglas Corp*., No. 94-CV-633, 2003 WL 21277124, at *12 (N.D. Okla. May 28, 2003) ("This case is…undesirable, in the way that all contingent fee cases are undesirable, because it produced no income, but has required significant expenditures…").

The Settlement Class is comprised of small and medium-sized regional ready-mix concrete customers. None of those businesses could have financed this litigation alone or even collectively. As in *McCurley*, 2018 WL 6650138, at *6, "[c]lass counsel took this complex, expensive, and time-consuming case on a contingency basis, with no guarantee of payment unless the litigation was successfully resolved by settlement or judgment," and they "brought this case knowing they would face vigorous, hard-fought litigation from a highly motivated and well-funded opponent," factors Judge Childs found "support[ed] the fee request." *Id.*

11. The Reaction of the Class supports the fee request.

Finally, the reaction of the Class confirms that the requested fee is reasonable. Copies of the Notice of Proposed Settlement were mailed to more than 1800 Settlement Class Members and the other Class Members were exposed to publication notice in local newspapers. That Notice

Program informed them that Class Counsel would move the Court for attorneys' fees in the amount of one-third (1/3) of the Settlement, plus one-third (1/3) of the accrued interest, and for payment of costs and expenses. As stated by the Fourth Circuit, "[t]he attitude of the members of the class, as expressed directly or by failure to object, after notice, to the settlement, is a proper consideration for the trial court…" *Flinn v. FMC Corp.,* 528 F.2d 1169, 1173 (4th Cir. 1975).

No Class member has objected to the Settlement or request for attorneys' fees, and only two opt-outs, by class members with 3/100 of 1% of the total volume of commerce, have been received. Joint Decl., at ¶ 37.[16] This strongly favors fee approval. *See Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 573–74 (E.D. Va. 2016) (settlement supported where "not a single objection was received").

D. This Court Should Reimburse Class Counsel For Their Reasonable Expenses.

For more than seven years, Class Counsel has funded and advanced the substantial expenses required to prosecute the litigation and did so without any guarantee of reimbursement. Having achieved the Settlements currently before the Court, counsel should be reimbursed for litigation expenses. Expenses and costs in this litigation exceed $4.2 million. Joint Decl., ¶¶ 46-48. These expenses have been for the common benefit of the Settlement Classes, are reasonable in amount, and are adequately supported by documentation in Class Counsel's possession. *Id*. at ¶48. Consistent with the Notice to the Settlement Class, Class Counsel seek reimbursement of $3.6 million of their incurred expenses.

[16] Blattner Energy only opted out of the Lafarge Settlement. Total known class period purchases are $21,855, which is 0.008% of total VOC. Willie Kittles Concrete Finishing opted out of the Thomas Settlement and Evans Settlement. Total known class period purchases are $65,682, which is 0.023% of total VOC. Combined the two opt out purchased $87,537.00, which is 0.031% of total VOC.

Under the common fund doctrine, class counsel customarily are entitled to reimbursement of reasonable expenses incurred during the litigation. Fed. R. Civ. P. 23(h); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of expenses where a common fund has been produced or preserved for the benefit of a class). Paying reasonable expenses to class counsel who create a common fund is necessary and routine. *Savani*, 121 F. Supp. 3d at 576 (citing *In re Synthroid Mktg. Litig*., 264 F.3d 712, 722 (7th Cir. 2001)).

Courts assess whether the expense is of the type for which clients typically reimburse counsel, that the expense was billed at reasonable, market rates, and that the expenses were necessary to prosecute the case. "The equitable principle that all reasonable expenses incurred in the creation of a fund for the benefit of a class are reimbursable proportionately by those who accept benefits from the fund authorizes reimbursement of full reasonable litigation expenses as costs of the suit." Alba Conte, 1 *Attorney Fee Awards* § 2:19 (3d ed. 2024); *accord U.S. v. 110-118 Riverside Tenants Corp.*, 5 F.3d 645, 646 (2d Cir. 1993); *In re Ready-Mixed Concrete Antitrust Litig*., No. 1:05-cv-00979, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (reimbursable expenses are those "that are consistent with market rates and practices."); *In re Microstrategy, Inc*., 172 F. Supp. 2d at 791 (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (finding that costs typically billed by attorneys to paying clients in the marketplace may be reimbursed)). Expenses that are normally charged to a fee-paying client, including mailing costs, online legal research, expert and mediator fees, travel expenses for mediation and court proceedings, and court filing fees, may be reimbursed. *Reynolds v. Fid. Inv. Inst. Operations Co. Inc.*, No. 1:18-CV-423, 2020 WL 92092, at *4 (M.D.N.C. Jan. 8, 2020); *see also Thomas v. MagnaChip Semiconductor Corp*., No. 14-cv-01160, 2018 WL 2234598, at *4 (N.D. Cal. May 15, 2018) (listing as reimbursable expenses "photocopying, printing, postage, court costs, research on online databases, experts and consultants, and reasonable travel expenses.")

Class Counsel and the Class's interests are aligned—to keep expenses as low as possible. Expenses might never be recovered if the litigation is not successful, and even when they are reimbursed, it is often after the costs have been carried by Class Counsel for years. Due to the risk that they might never be recovered, Class Counsel endeavored to keep expenses as low as possible, while still vigorously litigating this case. Joint Decl., ¶ 48. These expenses were required to effectively and efficiently prosecute a complex antitrust case against all Defendants, to support massive fact and expert discovery, to obtain class certification, and to prepare for *Daubert*, summary judgment motions, and to get trial-ready. Through September 30, 2025, Class Counsel has incurred expenses of at least $4,214,727.72. Joint Decl., at ¶¶ 46-48.

These incurred costs include, but are not limited to, costs for economic and industry experts, deposition transcripts and videography, ESI document database hosting fees, transcriptions of wire recordings obtained by Plaintiffs, and mediator fees. *Id*. at ¶47.[17] There is no category of expense that is unique to this case, nor are any expenses billed at atypical rates. *Id.*

As noted in the Joint Declaration, the most significant costs are expert witness fees, court reporting services, electronic document review hosting, without which the Settlements would not have been possible. *Id*. at ¶¶ 49-51. Those three categories alone total $3,812,828.34. Each settlement was reached after extensive mediation with a professional mediator, and only then via a mediator's proposal. *Id.* at ¶¶ 19, 21-22. Mediation expenses total $80,200. *Id*. at ¶ 16.

COMMON FUND EXPENSE CATEGORIES	
Professional/Expert/Consultant Fees & Costs (MEG & Matta)	$3,435,515.79

[17] Class Counsel can provide backup documentation if the Court so requests but would request to do so *in camera* so that the Defendants are not given an unfair look into Class Counsel's work product and strategies in this ongoing litigation.

ESI database, wire and phone records retrieval and transcription	$224,983.83
Transcripts/Deposition Expenses/Court Reports	$152,328.72
Mediation Fees & Costs	$80,200.00
TOTAL	**$3,893,028.34**

Expert costs billed through class certification and merits reports and depositions total more than $3,435,515.79. Joint Decl., ¶¶ 49-50. Professor Matta issued a report explaining the formulations of Ready-Mix Concrete, the strict industry specifications and the inability of purchasers to use other products if RMC is specified for a project. *Id*. at ¶ 49. All of these issues informed class certification.

The bulk of the expert charges, $3,368,415.79, were from Monument Economics Group, for the work of Dr. Lamb and his economic analysts. The economist's work included first providing preliminary damages estimates, based on a regression analysis, for use in Lafarge and Thomas settlement negotiations. *Id*. at ¶¶ 49-50. Subsequently, that regression work was included, along with industry and additional economic analysis, in the opening and rebuttal reports in support of the Plaintiffs' class certification motion. *Id*. at ¶ 49. The two reports cited hundreds of Defendants' documents and dozens of industry, economic, government, and other relevant sources, totaling 182 pages, including multiple charts, graphs, tables and appendices. *Id*. A significant share of the work was to build a transactional database of more than 800,000 ready-mix concrete transactions,[18] which had to be conformed across all Defendants to establish uniform reporting

[18] The database of transactions built by Dr. Lamb's office was used by Defendants' expert as well. As is common in antitrust cases, Defendants' economist uses the same data to develop their regression analysis. As required by Fed. R. Civ. P. 26 (2)(B) and the parties' stipulation, Plaintiffs produced all the data supporting their expert's work. That backup data would include the cleaned up transactional database and all of the regression formulas and outputs.

categories for various mixes and additives, fuel surcharges, and environmental charges. *Id*. at ¶ 50. Dr. Lamb also prepared initial and rebuttal reports on the merits. *Id*. Those reports, with appendices, charts, and tables, totaled 182 pages. Defendants deposed Dr. Lamb two times. *Id*.

Another substantial expense, as is common in complex litigation, is the development and operation of a fully searchable (ESI) document database. Those database charges, plus the cost of retrieving, uploading and transcribing selected texts and voice conversations have cost $224,983.83 to date. *Id*. at ¶ 51. Deposition transcripts, including video depositions which can be used at hearings and trial, and court hearing transcripts, cost $152,328.72. *Id*. And, as previously reported, carried costs, which include each firm's travel costs, online legal research expenses, filing fees, copies and other charges, total $321,699.38 through June 30, 2025.[19] *Id*. at ¶ 46.

In both the private market and in class action litigation, expenses in antitrust cases routinely run in the millions, or tens of millions. As the nation's top government enforcers recently noted "Litigating an antitrust case today routinely costs millions of dollars. Indeed, a *single* monopolization case can cost well over 25 million dollars in fees for outside experts." Letter from FTC Commission and State Attorneys General to Subcommittee on Competition Policy, Antitrust and Consumer Rights, January 17, 2025 (emphasis in original).[20] In the largest, multi-defendant, multi-product antitrust cases, expenses can run in the tens of millions. *See In re Generics Antitrust Litig*. Case 2:16-md-02724 (E.D. Pa. Sept. 26, 2025), ECF No. 3707 (Joint Decl., Ex. 14, pages 37-38) (awarding end-payor Class Counsel interim fees and expense reimbursement of

[19] Because the expenses incurred already significantly exceed the $3.6 million Class Counsel stated in the settlement class notice of these Settlements, Class Counsel did not ask firms to update their carried costs from their last report, which was filed with the prior motion. ECF No. 518.

[20] https://www.ftc.gov/system/files/ftc_gov/pdf/letter-sen-lee-antitrust-litigation-costs.pdf, last accessed Sept. 24, 2025 (noting that "Even when defendants purchase shoddy expert testimony that cannot withstand scrutiny, government enforcers must spend millions of dollars rebutting it.")

$25,700,911.41 from a partial settlement of the litigation); *In re Auto Parts Antitrust Litig.,* 2:13-cv-00703 (E.D. Mich. June 20, 2016), ECF No. 103 (Joint Decl., Ex. 14, page 39-40 (awarding $7,622,359.77 in costs and expenses incurred from the onset, and future litigation costs of $11,250,000).

When the 'lion's share' of expenses reflects the typical costs of complex litigation such as 'experts and consultants, trial consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses,' courts should not depart from 'the common practice in this Circuit of granting expense requests.'" *Kurtz v. Kimberly-Clark Corp*., Nos. 14-cv-1142, 15-cv-2910, 2024 WL 184375, at *4 (E.D.N.Y. Jan. 17, 2024); *see also In re Synthroid Mktg. Litig*., 264 F.3d at 722 ("Reducing litigation expenses because they are higher than the private market would permit is fine; reducing them because the district judge thinks costs too high in general is not.").

The economist bills here are in line with other antitrust cases. *See Lithium Ion Batteries*, 2020 WL 7264559, at *23 (granting reimbursement of $6,751,735.84 in expenses, including economic experts and consultants ($4,857,677.85), and online document database services ($951,168.46)); *In re: Cathode Ray Tube (CRT) Antitrust Litig*., MDL No. 1917 (N.D. Cal. Sept. 23, 2015), ECF No. 4740 (Joint Decl., Ex. 14, pages 41, 57)(reimbursing class counsel for $5.767 million in economist bills); *In re TFT-LCD (Flat Panel) Antitrust Litig*., MDL No. 1827 (N.D. Cal. Apr. 3, 2013), ECF Nos. 7697, 7221, 9185 (Joint Decl., Ex. 14, pages 61, 66, 73, 97 and 104-105)(reimbursing $6.192 million in economist expenses); *In re Zetia (Ezetimibe) Antitrust Litig*., Case 2:18-md-02836 (E.D. Va. Oct. 18, 2023), ECF No. 2168 (Joint Decl., Ex. 14, page 106, 127) ("The court notes that the reimbursement request of $3,905,175.85 is high, but the court is satisfied that this request is reasonable given the duration of the proceedings, the complex questions of facts and law present in this case. and the advanced stage of proceedings when the parties reached settlement."); *Lidoderm*, 2019 WL 4620695, at *4 (awarding reimbursement of $3,948,118 in expenses); *In re Loestrin 24 Fe Antitrust Litig.*, MDL No. 2472, 2020 WL 5201275, at *5 (D.R.I. Sept. 1, 2020) (awarding reimbursement of $3,743,996.58 in expenses).

Depending on when less-than-global settlements are reached, expenses incurred to date may be significant relative to the partial settlement amounts. *In re Packaged Seafood* is a good illustration of the principle that reasonably expended expenses are not expended at the same time settlements are reached and therefore are not assessed relative to the size of settlements but rather in relation to the duration and stage of litigation at the time the expenses are analyzed. In *Packaged Seafood*, the first settlement was with one Defendant for approximately $13 million, but that settlement was years in the making, and class counsel had already expended more than $4.4 million in expenses. The Court granted reimbursement of those expenses. *See In re Packaged Seafood Antitrust Litig.*, No. 3:15-md-02670 (S.D. Cal. Mar. 7, 2023), ECF No. 3012 (Joint Decl., Ex. 14, page 131). Later, the remaining defendants settled globally, for an additional $152.2m. The additional expenses incurred since the reimbursement order were $1,294,084.54. *See In re Packaged Seafood Antitrust Litig.*, No. 3:15-md-02670 (S.D. Cal. Nov. 22, 2024), ECF No. 3324 (Joint Decl., Ex. 14, page 134). In neither of the two *Packaged Seafood* expense reimbursement petitions did the court look at the size of the settlements to determine reasonableness of the expenses. Rather the court simply examined whether the expenses were billed at normal rates, were of the type that are customarily reimbursed as necessary to prosecute the litigation. *Id.*[21]

[21] It is not unusual, especially in partial settlement situations, for fee and expense awards to approach and even occasionally exceed the effective class recovery. *See In re Loestrin 24 Fe Antitrust Litig.*, MDL No. 2472 (Sept. 1, 2020), ECF No. 1460 (Joint Decl., Ex. 14, page 137, 139) (awarding the entire $1 million icebreaker and cooperation settlement to counsel's costs and expenses of litigation).

Here, the first Settlement was nearly seven years into litigation, and the third Settlement was negotiated after the submission of class certification briefing and the attendant expert reports. Thus, the expenses are higher, of course, than when a settlement is reached early in litigation. A rule that necessary expenses can only be reimbursed if they are in proportion to settlements' size would create the perverse incentive for class counsel to settle with more culpable or larger defendants early in the litigation, regardless of whether that makes litigation sense, to ensure their expenses would be timely reimbursed, rather than to carefully consider a settlement order that is based on the relative merits of continuing litigation against that defendant. And of course, milestones in cases—the results of key depositions, class certification, *Daubert*, summary judgment, etc.—are often major drivers in settlements. But the only way to get there is to extensively litigate, and that is expensive. Class Counsel cannot refuse to incur expert expenses until after the value of the case or any particular settlement is determined, for without expensive expert analysis, settlement negotiations would not be based on a full understanding of the damages sustained the class, class certification could not be granted, and trial could not commence. Plaintiffs' Counsel would be rational to abandon cases, either before or during litigation, if reimbursable expenses were set at an arbitrary ratio to a partial settlement or class wide damages.

Thus, even in global settlement situations, the expense reimbursement does not have to be proportionate to the settlement amounts recovered. For example, in the *Interest Rate Swaps* litigation, the court recently awarded a reimbursement of $23,386,346 in expenses from global settlements totaling $71 million. *In re Interest Rate Swaps Antitrust Litig.*, No. 1:16-md-02704 (S.D.N.Y., July 17, 2025) (Joint Decl., Ex. 14, pages 148-150 (awarding expense reimbursement that took 32.93% of the settlement funds finding that "In particular, though Co-Lead Counsel's expenses were very high relative to the total cash settlements secured, Co-Lead Counsel's expenses were justified as reasonable and necessary in relation to the total damages anticipated in the case" and "Public policy concerns favor the award of reasonable litigation expenses and expenses in class action litigation."); *Cf. In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. and Prods. Liab. Litig.*, 27 F.4th 291, 299 (4th Cir. 2022) (affirming fees and expenses award of $10.08 million for attorney's fees, $797,397.45 in costs and expenses, $1,194,500 in notice and administration costs, and $60,000 in service awards from the $22 million cash fund); *Nordhaus v. Reichenbach Rest. Grp.*, No. 15-cv-6689, 2024 WL 1514298, at *3 (S.D.N.Y. Apr. 8, 2024) (awarding fees and expenses totaling 50% of fund); *Rivas v. BG Retail, LLC*, No. 16-cv-06458, 2020 WL 264401, at *8 (N.D. Cal. Jan. 16, 2020) (awarding 45% fees and 11.8% expenses); *In re Veeco Instruments, Inc. Secs. Litig.*, No. 1:05-md-01695, 2007 WL 4115808, at *9-11 (S.D.N.Y. Nov. 7, 2007) (combined award totaling 44%, with expenses of 14%)*; In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 0:08-md-01958, 2013 WL 716460, at *5 (D. Minn. Feb. 27, 2013) (awarding $1.78 million in costs and expenses from a $8.5 million settlement fund for expenses (21% of the settlement fund) because they were "related and necessary to the prosecution of this type of litigation.")

Courts routinely recognize that class counsel should be reimbursed for their outlay of necessary litigation expenses. Without them, Plaintiffs could not have secured any recovery for the class. And without reimbursement, counsel in future cases would unduly shy away from, or under-invest in, complex antitrust cases such as this one—a local price-fixing cartel that did not have hundreds of millions of dollars in damages. *See In re Initial Pub. Offering Servs. Litig.*, 671 F. Supp. 2d 467, 514-15 (S.D.N.Y. 2009) (explaining that when counsel's requested fee is a negative multiplier, a further reduction "will serve only to further penalize counsel and chill other class actions.") The requested expense reimbursement should be granted.

E. This Court Should Award Class Representatives $35,000 Service Awards For Their Efforts

Class Counsel seek Service Awards of $35,000 for each Class Representative without whose commitment, risk, and sacrifice the Settlements could not have occurred. This represents a mere ½ of 1% percent (.0056) of the $18,650,000 Settlement Fund, thus making it reasonable.

Service awards are to reimburse and compensate class representatives for their time and efforts expended on behalf of the Class. *Savani,* 121 F. Supp. 3d at 576. "Serving as a class representative is a burdensome task and it is true that without class representatives, the entire class would receive nothing." *Robinson*, 2012 U.S. Dist. LEXIS 129069, at * 31–32 (quoting *Kay Co.*, 749 F. Supp. 2d at 472); *see also Brown*, 318 F.R.D. at 578 (stating that incentive awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general").

The Class Representatives provided substantial time and effort to the case. Each was required to provide detailed information to their attorneys before filing the case, review pleadings and documents, respond to written deposition, and submit to a grueling and stressful deposition. Joint Decl., ¶ 53.

The Class Representatives took risks by filing and pursuing this case against their Ready-Mix Concrete vendors when the risk for retaliation existed, the legal landscape for class action litigation is often difficult, and their theory of recovery was challenging. Their claims, which disclosed their business challenges and details, only enhanced the discomfort involved with taking on their industry's vendors and holding them accountable industrywide for their wrongdoing. Had they failed, they would have created a risk to their reputations and businesses. *Id*. at ¶ 57. *See, e.g., Dial Corp. v. News Corp*., 317 F.R.D. 426, 439 (S.D.N.Y. 2016) ("the named Plaintiffs in this case assumed a substantial risk in antagonizing a longstanding, powerful business partner and suffering sweeping consequences in the marketplace as a result of filing this action").

They should be commended for taking action to protect the many Class Members who were affected by Defendants' price fixing. They were never promised that they would receive any additional compensation for leading the case. *Id*. at ¶ 56. Rather, they devoted their time and efforts solely to recovery their own overcharges in the same manner as they seek for other Class members. *Id*. It cannot be disputed that the Class Representatives' efforts have created extraordinary financial benefits for the Settlement Class.

The amounts sought as Service Awards are typical and would be equitable.[22] *In re: Zetia (Ezetimibe) Antitrust Litig*., Case 2:18-md-02836, ECF No. 2168 (E.D. Va., Oct. 18, 2023) (awarding two class reps $75,000 and five other reps $30,000 after finding those amounts to be "fairly typical"); *In re Peanut Farmers Antitrust Litig.*, No. 2:19-cv-00463, 2021 WL 9494033, at *8 (E.D. Va. Aug. 10, 2021) (awarding $40,000 each to six class representatives); *In re Celebrex (Celecoxib) Antitrust Litig*., No. 2:14-cv-00361, 2018 WL 2382091, at *5 (E.D. Va. Apr. 18, 2018) (awarding $100,000 each to three class representatives); *In re Interior Molded Doors Antitrust Litig.*, No. 3:18-cv-00718 (E.D. Va. June 3, 2021), ECF No. 376 (Joint Decl., Ex. 14, pages 152-153 (awarding $75,000 service award to each named plaintiff); *In re Domestic Drywall Antitrust Litig*., No. 13-MD-2437, 2018 WL 3439454, at *17, *20 (E.D. Pa. July 17, 2018) (awarding

[22] The "equitable treatment requirement [of Rule 23(e)(2)(D)] protects the interests of class representatives who play an active role in the litigation—often providing the background information that forms the basis of the lawsuit, engaging in fact discovery, and devoting considerable time and effort into the settlement process—'from having absent class members free ride on their efforts.'" *Moses v. New York Times Co*., 79 F.4th 235, 253 (2d Cir. 2023). Further, "if 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 fee award, they have a fair argument that the settlement is not treating them equitably relative to the absent class members." *Id*. (quoting 5 Newberg and Rubenstein on Class Actions §§ 17:3-4).

$50,000 and $40,000 service awards to each of two named plaintiffs); *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-02509, 2015 WL 5158730, at *17-18 (N.D. Cal. Sept. 2, 2015) (approving service awards of $120,000 and $80,000). Finally, as with Class Counsel's attorneys' fee and expenses request, no Settlement Class member has objected to Class Counsel's request for Class Representatives' Service Awards. Joint Decl., ¶ 57.

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court award attorneys' fees of one-third of the Settlements, plus one-third (1/3) of the interest accrued on the Settlement Fund and expense reimbursement of $3,600,000. In addition, Plaintiffs request that the Court approve Service Awards of $35,000 for each of the three Class Representatives.

Dated: October 3, 2025

Respectfully submitted,

/s/Russell T. Burke
Russell T. Burke
Fed. Bar No. 1604
WILLIAMS BURKE LLP
1320 Main Street, Suite 300
Columbia, SC 29201
803-665-9670
Russell@williamsburke.com

Plaintiffs' South Carolina Counsel

Renae D. Steiner
Vincent J. Esades
HEINS MILLS & OLSON, P.L.C.
310 Clifton Avenue
Minneapolis, MN 55403
(612) 338-4605
rsteiner@heinsmills.com
vesades@heinsmills.com

Irwin B. Levin
Richard E. Shevitz
Scott D. Gilchrist
Vess A. Miller
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
(317) 636-6481
ilevin@cohenandmalad.com
rshevitz@cohenandmalad.com
sgilchrist@cohenandmalad.com
vmiller@cohenandmalad.com

Gregory P. Hansel[23]
Michael S. Smith
Elizabeth F. Quinby
Michael D. Hanify
PRETI FLAHERTY, BELIVEAU & PACHIOS LLP
One City Center
P.O. Box 9546
Portland, ME 04112
(207) 791-3000
ghansel@preti.com
msmith@preti.com
equinby@preti.com
mhanify@preti.com

Interim Plaintiffs' Co-Lead Counsel

[23] Special Counsel for Trustee Michelle Vieira of Forrest Concrete, LLC, *In re Forrest Concrete, LLC, Debtor*, Case No. 23-01171-jd, Chapter 7, U.S. Bankruptcy Court, District of South Carolina.

CERTIFICATE OF SERVICE

I certify that on October 3, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will cause a true and correct copy to be served via e-mail on all ECF-registered counsel of record.

/s/Russell T. Burke
Russell T. Burke