UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

JUDY JIEN, *et al.*, Plaintiffs, v. PERDUE FARMS, INC., *et al.*, Defendants.	Civil Action No. SAG-19-02521 **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR CLASS REPRESENTATIVES**

Plaintiffs, on behalf of themselves and the Settlement Class, have entered into 20 Settlement Agreements with Defendants in this action. The Court preliminarily approved those settlements, ECF Nos. 529, 565, 620, 749, 817, 984, and has now granted final approval.

The Court has considered Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for Class Representatives, including all arguments and briefing presented and any opposition thereto.

The Court GRANTS the motion and ORDERS as follows:

1. Terms capitalized in this Order and not otherwise defined herein have the same meanings as those used in the Settlement Agreements.

I. Attorneys' Fees

2. Plaintiffs request the payment of attorneys' fees equal to 33.33% of the $398,050,000 overall settlement fund ($132,670,065) plus the interest earned thereon. This amount represents a 2.08 multiplier on Plaintiffs' Counsel's reported lodestar. In support of the request, each firm submitted a declaration that (1) identifies the attorneys and staff members who worked on the case and the tasks they performed and (2) describes the amount of time spent by each of the firm's attorneys and staff members, and the hourly rates for each of them.

3. Pursuant to the Federal Rule of Civil Procedure 23(h), a "court may award reasonable attorneys' fees" to plaintiffs' counsel in class action cases. There are two methods of calculating attorneys' fees in common fund class actions: (1) the percentage-of-the fund method; and (2) the lodestar method. *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260 (E.D. Va. 2009). "District courts in the Fourth Circuit 'overwhelmingly' prefer the percentage method in common-fund cases." *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 4674758, at *2 (M.D.N.C. Sep. 25, 2019) (citing *Phillips v. Triad Guar. Inc.*, No. 1:09CV71, 2016 WL 2636289, at *2 (M.D.N.C. May 9, 2016)).

4. The Court finds that the requested fee is reasonable and awards Plaintiffs' Counsel attorneys' fees equal to 33.33% of the $398,050,000 overall settlement fund ($132,670,065) plus the interest earned thereon. Co-Lead Counsel shall allocate the awarded attorneys' fees among Plaintiffs' Counsel.

A. Percentage-of-Fund Method

5. In determining the reasonableness of attorneys' fees, courts look at the following factors: "(1) the result obtained for the class; (2) the presence or absence of substantial objections by members of the class to the fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by the plaintiffs' counsel; and (7) awards in similar cases." *In re Genworth Sec. Litig.*, 210 F. Supp. 3d 837, 843 (E.D. Va. 2016). Certain district courts in this Circuit "have applied a slightly different version of this standard, replacing the sixth factor with public policy considerations." *In re Peanut Farmers Antitrust Litig.*, No. 2:19-cv-463, 2021 WL 9494033, at *2 (E.D. Va. Aug. 10, 2021). *See, e.g.*, *Graham v. Famous Dave's of Am., Inc.*, No. CV DKC 19-0486, 2022 WL 17584274, at *10-11 (D. Md. Dec. 12, 2022).

6. ***Result obtained for the class.*** "The first and most important factor for a court to consider when making a fee award is the result achieved." *Genworth*, 210 F. Supp. 3d at 843. Based on the Court's review of Plaintiffs' motion and the settlement agreements, Plaintiffs' Counsel obtained an excellent result for the settlement class. The settlement agreements provide $398,050,000 in compensation, which is the second-largest recovery in a wage-fixing case in the United States and the largest financial recovery for an antitrust class action in the Fourth Circuit. Unlike many antitrust class actions, Plaintiffs' Counsel identified and investigated the allegations in this case without the benefit of a prior government investigation. Instead, the Department of Justice brought its own follow-on lawsuits alleging the same conduct as that identified by Co-Lead Counsel, and ultimately settled those claims with the understanding that the settlements obtained by Plaintiffs' Counsel provided sufficient restitution to the settlement class.

7. ***Presence or absence of objections.*** No class members have filed objections to the Plaintiffs' requests for attorneys' fees, reimbursement of litigation expenses, or service awards for the Class Representatives.

8. ***Skill and efficiency of counsel.*** Plaintiffs' Counsel have substantial experience litigating complex class actions and antitrust cases in particular. The three co-lead firms—Cohen Milstein Sellers & Toll, Hagens Berman Sobol Shapiro, and Handley Farah & Anderson—specialize in prosecuting antitrust class actions against large corporations, and their lawyers have served as lead counsel in dozens of successful antitrust cases, including those alleging the suppression of compensation. Plaintiffs' Counsel consistently demonstrated strong and vigorous advocacy throughout the litigation, from a thorough pre-suit investigation to extensive discovery to effective settlement negotiations. Their skill and efficiency are further demonstrated by the strength and resources of defense counsel, which include some of the most respected law firms in

the country.

9. ***Complexity and duration of litigation.*** "An antitrust class action is arguably the most complex action to prosecute. . . . The legal and factual issues involved are always numerous and uncertain in outcome.'" *Peanut Farmers*, 2021 WL 9494033, at *3 (citing *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004)). This case is unusually complex, involving allegations of a multi-faceted conspiracy implemented by 26 Defendants to both exchange information about and fix compensation over a 20-year period. As a result of this complexity and the multitude of defendants, the development and litigation of the lawsuit lasted more than 6.5 years.

10. ***Risk of nonpayment.*** Plaintiffs' Counsel brought this litigation on a contingent-fee basis and therefore risked receiving no recovery or reimbursement of millions of dollars in expenses. The substantial risk of non-recovery supports a significant fee award. *Mills*, 265 F.R.D. at 263 ("[C]ounsel 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."). Indeed, there is a particularly "greater risk of nonpayment where an antitrust class action 'did not benefit from the fruits of a prior government investigation,'" as is the case here. *Peanut Farmers*, 2021 WL 9494033, at *4 (citing *Linerboard*, 2004 WL 1221350, at *11). *See Seaman*, 2019 WL 4674758, at *4 (awarding fee of 33.33% and noting that "unlike many other antitrust class actions, this case did not follow a government investigation or enforcement proceeding that might have given some confirmation of the scope of misconduct.").

11. ***Amount of time devoted to the case.*** Plaintiffs' Counsel have devoted over 91,000 hours to investigating and litigating this case, including contesting 24 motions to dismiss,

analyzing over one million documents, and deposing 65 witnesses.

12. ***Awards in similar cases.*** A fee award of 33.33% is typical for antitrust class actions and well within the range of awards in this Circuit. *In re Zetia (Ezetimibe) Antitrust Litig.*, 699 F. Supp. 3d 448, 462 (E.D. Va. 2023) ("District courts in the Fourth Circuit have frequently found that a percentage award of one-third of the Settlement Fund is within the range of reasonable percentage of recovery, and one-third of the fund is a common award in antitrust class actions."). *See Peanut Farmers*, 2021 WL 9494033, at *9 ("[A]n award of one-third is also common in antitrust class actions."); *Seaman*, 2019 WL 4674758, at *3 ("An award of one-third is also common in antitrust class actions."); *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-cv-00361, 2018 WL 2382091, at *5 (E.D. Va. Apr. 18, 2018) ("Fee awards of one-third of the settlement amount are commonly awarded in cases analogous to this one."); *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding 33.33% of $163,500,000); *In re: Interior Molded Doors Antitrust Litig.*, No. 3:18-cv-00718-JAG (E.D. Va. June 3, 2021) (ECF No. 376) (awarding 33.33% of $61,600,000). *See also In re Allura Fiber Cement Siding Litig.*, No. 2:19-mn-02886, 2021 WL 2043531, at *4 (D.S.C. May 21, 2021) ("Courts in the Fourth Circuit have held that attorneys' fees in the amount of 1/3 of the settlement fund are reasonable.").

13. ***Public policy.*** Public policy supports the requested fee award because it helps to "ensure that competent, experienced counsel will be encouraged to undertake the often risky and arduous task of representing a class . . . ." *Mills*, 265 F.R.D. at 260. "The cost and difficulty" of bringing an antitrust class action "stands as a deterrent from doing so, and one object of an award of attorneys' fees should be to counteract this deterrence and incentivize competent attorneys to pursue these cases when necessary." *Id.* at 263.

B. Lodestar Crosscheck

14. Plaintiffs' Counsel's lodestar confirms the reasonableness of the 33.33% fee award. "The purpose of a lodestar cross-check is to determine whether a proposed fee award is excessive relative to the hours reportedly worked by counsel, or whether the fee is within some reasonable multiplier of the lodestar." *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 467 (D. Md. 2014). "A lodestar cross-check first computes the plaintiffs' attorneys' reasonable hourly rate for the litigation and multiplies that rate by the number of hours dedicated to the case," and "then compares that figure with the attorneys' fees award, typically resulting in a positive multiplier." *Genworth*, 210 F. Supp. 3d at 845.

15. Plaintiffs' Counsel have spent 91,825.65 hours working on this case, generating a total lodestar of $63,878,422.25. Accordingly, the requested fee would result in a 2.08 multiplier on Plaintiffs' Counsel's lodestar. This multiplier is on the low end of the range accepted by courts as reasonable. "[T]his Court has previously held that 'lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee.'" *Fangman v. Genuine Title, LLC*, No. RDB-14-0081, 2017 WL 3434109, at *7 (D. Md. Aug. 10, 2017) (citing *Singleton*, 976 F. Supp. 2d at 689). *See also Seaman*, 2019 WL 4674758, at *6.

II. Expenses

16. Plaintiffs also seek the payment of $5,390,389.61 in Plaintiffs' Counsel's unreimbursed expenses. "It is well-established that plaintiffs who are entitled to recover attorneys' fees are also entitled to recover reasonable litigation-related expenses as part of their overall award." *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 689 (D. Md. 2013). Such costs include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988).

17. Plaintiffs seek the reimbursement of Plaintiffs' Counsel's costs reasonably incurred for the prosecution of the litigation, including expert costs, electronic discovery costs, travel for depositions and hearings, photocopying, overnight mail, deposition services and transcripts, and legal research. The categories of expenses for which Plaintiffs' Counsel seek reimbursement are those routinely charged to clients and thus should be reimbursed. *See, e.g.*, *Reynolds v. Fid. Investments Institutional Operations Co., Inc.*, No. 1:18-CV-423, 2020 WL 92092, at *4 (M.D.N.C. Jan. 8, 2020) (explaining that "mailing costs, online legal research, long-distance telephone use, expert and mediator fees, travel expenses for mediation and court proceedings, and court filing fees . . . are 'reasonable out-of-pocket expenses").

18. Plaintiffs' Counsel's request for the reimbursement of their expenses in the amount of $5,390,389.61 is granted.

III. Service Awards

19. Plaintiffs' Counsel also request a service award of $30,000 to each of the six Class Representatives. The Court finds that the requested service awards are reasonable. Each Class Representative actively participated in the litigation, including collecting and producing documents and responding to interrogatories, and risked retaliation from current or prospective employers. The requested service awards of $30,000 are in accord with amounts approved in other antitrust class actions in the Fourth Circuit. *See, e.g.*, *Seaman*, 2019 WL 4674758, at *7 (awarding class representative $125,000); *Celebrex*, 2018 WL 2382091, at *5 (three class representatives each awarded $100,000); *Titanium Dioxide*, 2013 WL 6577029, at *1 (one class representative awarded $125,000 and two class representatives awarded $25,000); *Peanut Farmers*, 2021 WL 9494033, at *9 (awarding $40,000 to each of the six class representatives).

20. Plaintiffs' request for a service award of $30,000 to each Class Representative is granted.

IT IS SO ORDERED.

DATED: ___________________ ____

HON. STEPHANIE A. GALLAGHER
UNITED STATES DISTRICT JUDGE

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