

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
CASE NO. 5:21-cv-00068-BJB
(Electronically Filed)

DANIEL MCNALLY,
Individually and on behalf of all
others similarly situated

PLAINTIFFS

v.

THE KINGDOM TRUST COMPANY

DEFENDANT.

**PLAINTIFFS' MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF CASE EXPENSES,
AND FOR SERVICE AWARDS**

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I. INTRODUCTION

The class Settlement in this case (“Action”) represents an excellent result for the class of investors (the “Class”) victimized by William Jordan and Defendant, The Kingdom Trust Company. The Settlement creates a \$1,000,000 cash common fund that will provide significant benefits to the Class Members. Class Counsel believes that the Settlement amount is the maximum amount recoverable given the circumstances and therefore represents the best result for Class members.

This Settlement would not have been possible without the efforts and skill of Class Counsel, who are entitled to reasonable compensation for prosecuting the Action and negotiating the settlement. Class Counsel have prosecuted this Action on a contingency basis for six years in various courts, putting them at significant risk of recovering nothing from their efforts and losing the out-of-pocket litigation expenses if the suit had failed. Accordingly, Class Counsel, on behalf of all counsel in the Action, hereby submit this application for an award of attorneys’ fees, for reimbursement of litigation expenses reasonably incurred in the prosecution of the Action, and for a service award to each of the two named Plaintiffs for their efforts on behalf of the entire Class (the Attorneys’ Fees, and Service Award Application” or Application”).

Having secured this hard-fought Settlement for the Class, Class Counsel respectfully request that they be compensated with a fee award of one third of the value of the common fund, and reimbursement of litigation expenses in the amount of \$18,006.87. In addition, the Class Representatives’ willingness to bring and participate in this litigation has benefited the rest of the Class members. Class Counsel respectfully suggest that Service Awards of \$15,000 each to each of the two Class Representatives are reasonable and well within the range courts typically approve in this situation, given the amount of work they contributed to this case.

II. FACTS

A. The Settlement Is the Product of Six-Years of Hard-Fought Litigation

Class Counsel obtained the Settlement of this Action through six years of hard work and diligent effort in three different courts. The case was originally filed in April of 2020 in the United States District Court for the Central District of California, where both the Securities and Exchange Commission (“SEC”) civil enforcement action against William Jordan (the “SEC Action”) and Jordan’s bankruptcy proceedings were pending. *See* Declaration of Paul J. Scarlato in Support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Case Expenses, and a Service Award submitted herewith ¶¶ 9, 12 (“Scarlato Decl. ¶ __”), Exhibit A. The detailed complaint in the original case was the product of more than a month’s long investigation by Class Counsel into the voluminous records in the Jordan bankruptcy, the SEC Action and through a search of other public documents. *Id.* ¶ 16. As a result of that investigation, Class Counsel was able to develop a sufficient factual predicate to assert claims against Kingdom Trust for violations of the California Corporation Code § 25504.1 (California’s Blue Sky Act), for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, civil conspiracy, negligence, breach of fiduciary duty, fraud, and negligent misrepresentation. *Id.*

In response to the original complaint, Defendant filed a 23-page motion to dismiss arguing, among other things, that an exclusive and mandatory forum selection clause in the contracts between the Jordan Funds and the Defendant required Plaintiff’s and the putative class’s claims to be filed in Kentucky State Court. *Id.* ¶ 17. Alternatively, Defendant challenged the claims on the merits arguing that the claims for negligence, breach of fiduciary duty, and civil conspiracy should be dismissed for lack of duty, that the aiding and abetting claims should be dismissed for failure to plead actual knowledge, the claims for violation of the California Blue Sky Law should be

dismissed for failure to allege intent, and that the fraud and negligent misrepresentation claims should be dismissed for additional reasons. *Id.*

Class Counsel on behalf of Plaintiff opposed Defendant's motion in a 24-page brief that was the product of thorough legal research, refuting Defendant's arguments that the forum selection clause applied to Plaintiff's claims, explaining that as a result of their investigation of the facts, Plaintiff sufficiently pled actual knowledge (an admittedly high hurdle), and that Plaintiff's other claims were adequately alleged. *Id.* ¶ 18. Thereafter, Defendant filed a Reply, and the parties submitted a Rule 26(f) report to the court. *Id.*

On November 30, 2020, the California District Court granted Defendant's motion to dismiss and held that the case was required to be filed in the county courts of Calloway County, Kentucky, pursuant to the form selection clause. *Id.* ¶ 19.

On May 13, 2021, Plaintiff McNally filed a new complaint against Defendant in the Commonwealth of Kentucky Calloway County Circuit Court, and, on June 9, 2021, Defendant removed the action to this Court. *Id.* ¶ 20. The complaint prepared by Class Counsel contained additional allegations about Jordan's scheme and Defendant's alleged role in the scheme based on Class Counsel's continuing investigation, and contained claims for violations of the Securities Act of Kentucky, in addition to claims for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, civil conspiracy, breach of fiduciary duty, fraud, and negligent misrepresentations and omissions. *Id.*

Class Counsel, on behalf of Plaintiff moved to remand the Action to the Calloway County Circuit Court, and Defendant opposed the motion. Class Counsel on behalf of Plaintiff filed a reply brief and Defendant sought and received permission to file a sur-reply. The court ultimately denied the motion on October 5, 2021. *Id.* ¶ 22.

Defendant moved to dismiss for failure to state a claim on June 17, 2021 attacking the legal sufficiency of each of the claims and asserting that the claims should be dismissed for failure to join an indispensable party. *Id.* ¶ 24. Class Counsel on behalf of Plaintiff filed a 25-page opposition brief refuting each of Defendant's arguments on November 1, 2021. *Id.* ¶ 25.

On January 25, 2022, the Court issued a 33-page Memorandum Opinion and Order sustaining Plaintiff's claims for violations of the Kentucky Securities Act, aiding and abetting breach of fiduciary duty, aiding and abetting fraud, fraud and negligent misrepresentations all survived the motion to dismiss. *Id.* ¶ 26.

After the Court's January 25, 2022, Order, a significant number of pleadings and briefs were filed, related to Defendant's attempts to add a number of third-party defendants to the Action. *Id.* ¶ 27. Class Counsel on behalf of Plaintiff opposed those requests, but ultimately those requests were granted. *Id.*

In addition, during the course of discovery, Class Counsel's investigation revealed that the Defendant seemingly wound up as an entity, ending its charter as a South Dakota trust company, and re-forming as a Nevada shell company. Class Counsel sought to amend the complaint to both add Plaintiff Danny Brager as an additional plaintiff, and to add other entities as successors in interest to Defendant as defendants in the Action. Defendant opposed the request to add successors in interest, and that motion was pending when the Settlement was reached. *Id.* ¶ 28.

B. The Settlement Is the Product of Substantial Discovery

Class Counsel had to spend substantial time conducting discovery in order to achieve the Settlement. *Id.* ¶ 29. The parties served and responded to each other's discovery requests, and Defendant produced thousands of documents in response thereto in multiple productions. Class Counsel had to review and analyze those documents in order to prosecute this action and prepare

for depositions, however, the manner in which the documents were produced made that review time-consuming and difficult. Specifically, Defendant produced its business records in non-Bates stamped, non-searchable PDF format meaning the documents could not be reviewed using search terms absent using specialized software. *Id.*

Class Counsel also needed to expend substantial effort and time preparing for and taking the depositions. *Id.* ¶ 30. More specifically, Class Counsel took four depositions of Defendant's witnesses, including its former President, an operations specialist who handled the Jordan Fund transfers at issue in this case, and Defendant's former General Counsel and Chief Operations Officer. *Id.* Similarly, Class Counsel spent substantial effort gathering and reviewing their own clients' documents, additional evidence surrounding the Jordan Fund, and thereafter preparing the clients and defending the two Class Representatives' depositions. *Id.*

C. The Settlement Negotiations Were Long and Protracted

The parties had ongoing settlement discussions through the course of 2022 through 2024, however the negotiations were not fruitful. *Id.* ¶ 34. The parties then agreed to participate in an in-person mediation in Denver, Colorado on April 3rd, 2025, with the assistance of Judge William Meyer (ret.), a highly regarded mediator and former Denver, Colorado District Court Judge with the Judicial Arbitrator Group ("JAG"). *Id.* In order to put their case in the best posture, Class Counsel prepared a comprehensive 28-page mediation statement, explaining the Plaintiffs' theory of the case, Counsel's assessment of the strengths and weaknesses, and articulating in detail the proof developed through discovery, an estimate of the amount of damages suffered by the Class, and the likelihood of collecting a judgment from the Defendant. *Id.* Plaintiffs' mediation statement contained numerous exhibits of important case documents, and was shared with Judge Meyer in advance of the mediation session. *Id.* On April 3rd, 2025, Class Counsel Hugh Berkson and Alan

Rosca, as well as both Class Representatives traveled to Denver to participate in the mediation. Licha Farah, outside counsel for Kingdom Trust, and its General Counsel, Sharif Nesheiwat, attended on behalf of Defendant. *Id.*

The mediation lasted approximately six hours but ended in an impasse. *Id.* ¶ 35. However, Judge Meyer maintained communication with the parties in an effort to facilitate a resolution to the dispute. In parallel, Class Counsel resumed the litigation efforts and noticed and, among other things, conducted depositions of Defendant's witnesses. Following numerous communications in parallel with the resumption of litigation, on July 2, 2025, the parties agreed on the essential terms of the Settlement, which was contingent upon certain confirmatory discovery, as more fully detailed below, and included Defendant paying a total of \$1 million cash in return for a release of claims. *Id.* Thereafter, the parties negotiated a term sheet that included the critical elements of the Settlement. *Id.*

D. Class Counsel Devoted Considerable Time and Effort to Confirmatory Discovery

As a condition of settlement, Kingdom Trust agreed to produce certain financial records to Plaintiffs to allow them to determine the nature and extent of any assets remaining with Defendant and its ability to pay a judgment. *Id.* ¶ 36. In addition, Kingdom Trust made available certain representatives of Defendant's parent company to answer questions regarding those financial statements, including the Chief Financial Officer of Defendant's new parent company. *Id.* Class Counsel analyzed the financial records Defendant produced and attorneys Hugh Berkson and Paul Scarlato conducted an interview of Defendant's parent company's representatives. *Id.*

The financial statements and responses to questions confirmed to Class Counsel that Kingdom Trust was a cash-strapped, distressed company, it had given up its trust license, and its insurance coverage has lapsed, and it was highly doubtful that Kingdom Trust would have had

sufficient assets with which to satisfy a judgment if the case proceeded to trial. *Id.* ¶ 37. Moreover, Defendant's financial situation created the high risk that, if no settlement was reached and litigation continued, its remaining assets would be consumed by litigation expenses, and a victory at trial could be ultimately Pyrrhic, with no actual recovery. *Id.*

E. Class Counsel Spent Considerable Time and Effort on the Settlement Approval Process

After reaching their agreement in principle to settle, Class Counsel undertook the task of drafting the Settlement papers and exhibits thereto, including the comprehensive Settlement Agreement, proposed Preliminary Approval Order, Final Approval Order, Class Notice and Claim Form. *Id.* ¶ 38. Class Counsel also drafted the 30-page Motion for Preliminary Approval seeking preliminary approval and certification of the Settlement Class, and 18-page Declaration in support thereof. *Id.* After the parties executed the Settlement Agreement on November 7, 2025, Class Counsel presented the Settlement to the Court via the Motion for Preliminary Approval and Declaration. *Id.* See Dkt. 145, 146. Thereafter, Class Counsel prepared for and participated in the Court's January 21, 2026, hearing thereon. *Id.* See Dkt. 149.

On January 28, 2026, the Court issued an Order granting preliminary approval of the Settlement, approving Class Counsel's proposal for a case schedule, preliminarily certifying the class for settlement purposes, preliminarily appointing attorneys Hugh Berkson, of McCarthy, Lebit, Crystal, Liffman Co., LPA and Alan Rosca and Paul Scarlato of Rosca Scarlato, LLC as class counsel, and approved the substance and requirements for class notice. *Id.* ¶ 39. Class Counsel has spent a substantial number of hours since preliminary approval working with the Claims Administrator to disseminate Notice pursuant to the terms of the preliminary Approval Order, to prepare the Motion for Final Approval and Declarations in support of the Settlement. *Id.* ¶ 40. Class Counsel anticipates it will spend many additional hours on such tasks as conducting

the Fairness Hearing, overseeing the Claims process, assisting Class members with submitting their Claims, and in connection with the distribution of the Settlement Fund. *Id.* Those hours are not included in this submission. *Id.*

The Claims Administrator sent 351 Notices to potential Class Members detailing the terms of the Settlement, the proposed Plan of Allocation, the amount of the fee award Class Counsel would seek, the maximum amount of case expense for which Counsel would seek reimbursement, and the amount of the requested Service Awards. See Ex. A to Final Approval Motion, Craig Decl. ¶ 3. To date, Class Counsel has not received any objections to the Settlement.

III. ARGUMENT

A. The Court should approve attorneys' fees of one-third of the common fund because that amount is reasonable and in line with the typical fee awarded in contingent class action litigation

The Court should approve the requested attorneys' fees to Class Counsel in the amount of one-third of the common fund. The percentage of the fund method is the most appropriate and efficient way of awarding fees when a common fund is recovered, and the standard one-third market rate is appropriate here. *See Heimbach v. Amazon.com, Inc. (In re Amazon.com, Inc.)*, No. 3:14-md-2504, 2024 U.S. Dist. LEXIS 120951, at *27 (W.D. Ky, July 10, 2024) ("The percentage method is generally preferred in common-fund cases."). (Citations omitted).

Federal Rule of Civil Procedure 23(h) provides that "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or the parties' agreement." As the Supreme Court has observed, "lawyer[s] who recover[] a common fund . . . [are] entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L.Ed.2d 676 (1980).

“When awarding attorney’s fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved.” *Rawlings v. Prudential-Bache Properties*, 9 F.3d 513, 516 (6th Cir.1993) (Internal citations omitted). A district court has discretion to use either the percentage of the fund method or the lodestar method to calculate attorneys’ fees. *Id.*¹ Each method has its own drawbacks and benefits:

The percentage of the fund method has a number of advantages: it is easy to calculate; it establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation. However, a percentage award may also provide incentives to attorneys to settle for too low a recovery because an early settlement provides them with a larger fee in terms of the time invested.

The lodestar method’s listing of hours spent and rates charged provides greater accountability. In addition, enhancing the lodestar with a separate multiplier can serve as a means to account for the risk an attorney assumes in undertaking a case, the quality of the attorney’s work product, and the public benefit achieved. The lodestar method also encourages lawyers to assess the marginal value of continuing work on the case, since the method is tied to hours and rates, and not simply a percentage of the resulting recovery.

Love v. Gannett Co., No. 3:19-cv-296-BJB-RSE, 2021 U.S. Dist. LEXIS 183196, at *10-11 (W.D.Ky. Sep. 24, 2021) (Beaton, J.).

Courts have held that fees calculated by both were reasonable, and “[i]f a fee award is reasonable under one of these two methods, it is within the court’s discretion, and the court is not required to “crosscheck” with the other method.” *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 281 (6th Cir.2016)

¹ The lodestar method demonstrates the reasonableness of Plaintiffs’ Counsel’s request. As set forth in the Declarations of Hugh Berkson and Paul Scarlato, attached hereto as Exhibits A and B, their respective law firms spent a combined 1,470.90 hours, valued at a total of \$1,033,841, as more fully detailed therein. The fees requested herein are far less than the lodestar value, resulting in a (0.32) negative multiplier.

The “trend” has been towards using the percentage of the fund method in awarding attorneys’ fees. *Rawlings v. Prudential-Bache Properties*, 9 F.3d, 515 (6th Cir.1993). “[T]he percentage of the fund method [for awarding fees] more accurately reflects the results achieved.” *Id.* at 516. It has “a number of advantages: it is easy to calculate; it establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.” *Id.* By contrast, “the lodestar method has been criticized for being too time-consuming of scarce judicial resources.” *Id.* (citing *Swedish Hosp. Corp. v. Shalala*, 303 U.S.App.D.C. 94, 1 F.3d 1261, 1267 (1993); *Court Awarded Attorneys’ Fees*, Report of the Third Circuit Task Force, 108 F.R.D. 237, 250 (1985)). Under the lodestar method, “[d]istrict courts must pore over time sheets, arrive at a reasonable hourly rate, and consider numerous factors in deciding whether to award a multiplier.” *Id.* “With the emphasis it places on the number of hours expended by counsel rather than the results obtained, it also provides incentives for overbilling and the avoidance of early settlement.” *Id.*

Six factors govern the reasonableness of class action fees:

- (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 of counsel involved on both sides.

Love v. Gannett Co., No. 3:19-cv-296-BJB-RSE, 2021 U.S. Dist. LEXIS 183196, at *14 (W.D.Ky. Sep. 24, 2021).

A court need not evaluate each factor, and, when a percentage fee is sought, attorney time is often not submitted. *See Ware v. CKF Ents., Inc.*, No. 5: 19-183-DCR, 2020 U.S. Dist. LEXIS

82879, at *44 (E.D.Ky. May 12, 2020) (quoting *Bowling v. Pfizer, Inc.*, 102 F.3d 777 (6th Cir. 1996)) (noting that class counsel did not provide time information but finding a one-third fee reasonable where the other factors favored that amount).

"Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-cv-95, 2007 U.S. Dist. LEXIS 79606, at *13 (W.D.Mich. Oct. 26, 2007) (Internal citations omitted). "[C]ourts within this circuit have found one-third common fund attorney's fee awards to be reasonable" in complex litigation. *See Ware v. CKF Ents., Inc.*, No. 5: 19-183-DCR, 2020 U.S. Dist. LEXIS 82879, at *16 (E.D.Ky. May 12, 2020); see also *Hebert v. Chesapeake Operating, Inc.*, No. 2:17-cv-852, 2019 U.S. Dist. LEXIS 160792, at *21-22 (S.D.Ohio Sep. 20, 2019) ("33% is typical for attorney's fees in common fund cases"); *Black v. Ray Jones Trucking, Inc.*, 2025 U.S. Dist. LEXIS 162558 at *18 ("[t]he rate of one-third the gross settlement amount is well-within the range of attorneys' fees previously approved by other class action settlements by the Sixth Circuit and this Court.") (citing *Green v. Platinum Rests. Mid-Am, LLC*, No. 3:14-CV-439, 2022 U.S. Dist. LEXIS 76455 (W.D. Ky. Apr. 27, 2022) (finding attorneys' fees of 39% of the common fund reasonable); *New England Health Care Emples. Pension Fund v. Fruit of the Loom*, 234 F.R.D. 627, 633 (W.D. Ky. 2006) ("Fee awards in common fund cases typically range from 20 to 50 percent of the common fund created."); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 U.S. Dist. LEXIS 119870, 2009 WL 5184352, at *11 (W.D. Ky. Dec. 22, 2009) (preliminarily approving attorneys' fees representing over 50% of the common fund).

In the present case, Class Counsel worked diligently to find a fair Settlement for all members of the Class when Defendant Kingdom Trust showed signs of being unable to fulfill a

judgement against it. Notwithstanding, Counsel negotiated a substantial cash Settlement that will provide an immediate benefit to the Class. Class Counsel respectfully suggests that it deserves to be fairly compensated for this work.

A one-third fee is appropriate here, and is consistent with each of the six factors identified in *Love, supra* at *14. First, the value of the benefit to the Class Members is significant, \$1,000,000, which will be used to provide cash payments to Class members with no reversion to Defendant. Second, Class Counsel took this litigation on a purely contingent fee basis, meaning they risked never recovering any fee for their time unless the litigation was successful. *Rotondo v. JPMorgan Chase Bank, N.A.*, No. 2:19-cv-2328, 2019 U.S. Dist. LEXIS 201616, at *21-22 (S.D. Ohio Nov. 20, 2019) (“Class Counsel represents that they took on this case pursuant to a contingency fee agreement. In doing so, Class Counsel assumed a real risk in taking on this case, preparing to invest time, effort, and money over a period of six years, with no guarantee of recovery. This factor weighs in favor of approving the requested fee award.”). (Internal citations omitted). Under Class Counsel’s lodestar structure, the total fees and expenses would have totaled \$1,051,847.87². Third, society has a stake in rewarding attorneys who produce benefits in Ponzi scheme cases, specifically Ponzi scheme cases against third-party custodians/trustees, because such suits serve not only to compensate victims but also to encourage other third-party custodians/trustees to take their fiduciary duties seriously and be mindful of serious red flags in their customer accounts. Fourth, the complexity of the matter was considerable and involved a myriad of issues that were fought at every level of the case, from its inception in the Central District of California, to the Calloway County Circuit Court, to this Court. The briefing on Defendant’s

² Counsel used its 2025 rates, which is when the Settlement was reached.

motion to dismiss filed in this matter alone helped set the law on a variety of issues relevant to investors throughout this Court's jurisdiction.

Finally, Class Counsel in this case are highly skilled in class action matters, in general, and Ponzi scheme cases, in particular. Rosca Scarlato is well-versed in securities class action litigation, its attorneys are leading class actions litigators, and they possess expertise in the type of claims brought in this action. Rosca Scarlato founding partners Alan Rosca and Paul Scarlato have, for decades, represented the interests of victims of securities fraud, violations of ERISA, corporate misconduct, anticompetitive conduct, deceptive consumer practices, and unscrupulous financial advisors. Particularly as to matters such as this one, pursued by investors against financial institutions that assist or facilitate Ponzi schemes, attorneys Rosca and Scarlato's prior cases have resulted in jurisprudence favorable to investors and cited by more recent, similar cases. McCarthy Lebit's practice includes the representation of businesses and individuals who have suffered losses in investments or retirement plans due to negligence, breach of fiduciary duty, and fraud. Hugh Berkson heads the firm's investor protection department and has extensive experience litigating claims related to securities fraud, having represented hundreds of clients in a variety of forums over the last twenty-five years. Mr. Berkson has been appointed co-lead class counsel in another matter. For a detailed background of Rosca Scarlato and McCarthy Lebit, *see* Class Counsel's biographies attached as Exhibits 2 and 3 to the Declaration of Hugh D. Berkson and Alan L. Rosca in Support of Plaintiffs Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and for Certification of a Settlement Class, Dkt. No. 146. Finally, while the period to object remains open, Class Counsel have thus far received no objections to the proposed one-third fee. In fact, the reception has been overwhelmingly positive with no Class Members electing to opt out of the settlement. This lends support to the reasonableness of the fee. *Moore v. Med. Fin.*

Servs., No. 2:20-cv-02443-MSN-cgc, 2021 U.S. Dist. LEXIS 249719, at *12 (W.D.Tenn. Nov. 30, 2021) (“The resolution of the matter with a substantive recovery for class members and no objections to either the settlement agreement or the attorney’s fees supports a recommendation that the fee request is appropriate.”).

B. The Court should approve reimbursement of reasonable litigation expenses in the amount of \$18,006.87

In addition to fees, “[u]nder the common fund doctrine, Class Counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses.” *New Eng. Health Care Empl. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 634-635 (W.D.Ky.2006) (internal quotation omitted). Courts recognize that when class counsel tries a case on a contingency fee basis, without any guarantee for reimbursement, class counsel has a strong incentive to keep costs at a “reasonable level.” *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 U.S. Dist. LEXIS 138880, at *16 (W.D.Mo. Aug. 16, 2019). (Internal citations omitted).

Here, the requested reimbursement of \$18,006.87 in expenses is modest and reasonable. The expenses are all normal costs of litigation such as charges for court filings, court reporter fees, travel to and from the mediation, and the mediator’s charges. Because Class Counsel has advanced the expenses on a contingent basis with no guarantee for recovery, Class Counsel was incentivized to only incur expenses necessary to prosecute the litigation successfully. The Court should therefore approve the requested reimbursement of expenses.

C. The Court should approve service awards of \$15,000 to each of the Class Representatives for their efforts because the requested amount is well within the range typically awarded

In addition to Class Counsel's compensation, the Court should approve the modest service awards of \$15,000 to each of the Class Representatives. "[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ross v. Jack Rabbit Servs., LLC*, No. 3:14-cv-44-DJH, 2016 U.S. Dist. LEXIS 173292, at *13 (W.D.Ky. Dec. 15, 2016) (internal citations omitted). In determining whether to approve incentive awards, courts in the Sixth Circuit have looked at the following factors:

- (1) the action taken by the Class Representatives to protect the interests of the Class Members and others and whether these actions resulted in a substantial benefit to Class Members;
- (2) whether the Class Representatives assumed substantial direct and indirect financial risk; and
- (3) the amount of time and effort spent by the Class Representatives in pursuing the litigation.

Love v. Gannett Co., No. 3:19-cv-296-BJB-RSE, 2021 U.S. Dist. LEXIS 183196, at *8 (W.D.Ky. Sep. 24, 2021) (internal citations omitted).

Courts in the Sixth Circuit have approved service awards of \$15,000 consistent with "[T]he extent of Plaintiffs' personal involvement in litigating these cases and the proportionality of the service awards to other class members' recoveries." *Branson v. Alliance Coal, LLC*, No. 4:19-cv-155-RGJ-HBB, 2025 U.S. Dist. LEXIS 216015, at *22 (W.D.Ky. Nov. 3, 2025). In the *Branson* case, the court looked at 1) the percentage of the overall settlement the service awards would account for 2) and the percentage of each individual settlement to the service awards. In this case, the settlement awards for the two named Plaintiffs combined account for three percent (3%) of the

overall gross settlement. Sixth Circuit courts have found service awards upwards of four percent to be reasonable:

Additionally, \$20,000 is around 4% of the total settlement amount and less than ten times the average payment to class members (Pl.'s Mem. Supp. Mot. Fees, Costs, & Award 16 n.7). A sister court has found that an incentive payment "10 times that of the class members . . . does not reflect the type of disproportionality typically requiring the court to step in." *Sellards*, 2023 U.S. Dist. LEXIS 92700, 2023 WL 3869023, at *6. The court noted that "[w]henver the sum needed to make individual class members whole is relatively small, even a modest incentive payment, as here, will always be a large multiple of the compensatory payment to class members." *Id.* The Court therefore approves Plaintiff's service award.

Back v. Ray Jones Trucking, Inc., No. 4:22-CV-00005-GNS-HBB, 2025 U.S. Dist. LEXIS 260735, at *21 (W.D.Ky. Dec. 17, 2025).

Courts also recognize that service awards "approximately within a ten-fold" of the average estimated overall gross settlement amount are within the upper limit of awards recognized in the Sixth Circuit. *Branson v. Alliance Coal, LLC*, No. 4:19-cv-155-RGJ-HBB, 2025 U.S. Dist. LEXIS 216015, at *23 (W.D.Ky. Nov. 3, 2025) (quoting *Sellards v. Midland Credit Mgt., Inc.*, No. 1:20-CV-02676, 2023 U.S. Dist. LEXIS 92700 (N.D. Ohio May 2, 2023)). Here, a \$15,000 service award for each Class Representative – a mere 3% of the total gross settlement, is well within the upper-limit of the ten-fold recognized by the Sixth Circuit.³

Both Class Representatives were actively involved in this Action and played a major role in securing this result for the class. In *Sellards*, the Court approved a \$15,000 service award in a case where named plaintiff *Sellards* only participated in two mediations. The Court noted that

³ The average recovery per class member, of \$2,849.00, is calculated by dividing the gross settlement of \$1,000,000 by the total number of claim notices mailed, 351. While it is unlikely in any claim administration process that 100% of the claim notice recipients become class members, Class Counsel used that number to reach the most conservative (lowest) calculation. For a lower number of class members, the calculation would result in a higher number.

Sellards's involvement would have been much more extensive had the case not been stayed and later settled and questioned the proportionality of the service award. However, the court in *Sellards* deemed the \$15,000 award "does not reflect the type of disproportionality typically requiring the court to step in." *Sellards v. Midland Credit Mgt., Inc.*, No. 1:20-CV-02676, 2023 U.S. Dist. LEXIS 92700 at *15 (N.D. Ohio May 2, 2023). The *Branson* case distinguishes *Sellards* in finding "[n]amed Plaintiffs were extensively involved in the litigation up to and including the settlement process." *Branson v. Alliance Coal, LLC*, No. 4:19-cv-155-RGJ-HBB, 2025 U.S. Dist. LEXIS 216015, at *24 (W.D. Ky. Nov. 3, 2025). The Court found that the named plaintiffs in the *Branson* case, like Plaintiffs in this case,

actively participate[d] in an extensive discovery process which included searching for and producing documents, responding to interrogatories and requests for production, preparing for deposition, and attending deposition; consulting with counsel throughout this litigation; and reviewing and approving the global settlement that was only reached after several rounds of mediation conducted by two mediators.

Id. Based on their extensive contribution to the case, the *Branson* court awarded the named plaintiffs \$15,000 in individual service awards. *Id.* at *23.

In the present case, Plaintiffs' experiences fall very closely to the facts of *Branson*. Plaintiffs have participated extensively in the prosecution of the Action. Plaintiffs, combined, spent over one-hundred-and-ninety (190) hours working on various tasks including gathering and producing documents, preparing and sitting for deposition, traveling to mediation in Denver, regular consultations with Class Counsel, and numerous other unique aspects that arise being the Class Representatives in a class action lawsuit. See, Exs. C and D. While, unlike in *Branson*, there was only one mediation, the case did not resolve at the mediation and the parties continued negotiating, while also litigating in parallel, for months. While in the present case, Messrs.

McNally and Brager have participated far more extensively than the Named Plaintiff in the *Sellards* case, alternatively, even if the court does not find their participation to be as extensive as the Named Plaintiffs in the *Branson* case, *Sellards* shows that the \$15,000 service award does not meet the threshold of disproportionality for the Court's intervention.

IV. CONCLUSION

In conjunction with final approval of the settlement, the Court should approve the requested payments for attorneys' fees, expenses, and service awards, which are all reasonable.

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2026, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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