

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

In re DENTAL SUPPLIES ANTITRUST LITIGATION	No. 1:16-CV-00696-BMC-GRB ALL CASES
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**PLAINTIFFS' NOTICE OF MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND PAYMENT OF SERVICE AWARDS TO
THE CLASS REPRESENTATIVES**

PLEASE TAKE NOTICE THAT, upon the Memorandum of Law in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives; the Declaration of Eric L. Cramer, Esq. in support; and all other papers and proceedings herein, Class Plaintiffs hereby move the Court to enter an order: (1) awarding attorneys' fees in the amount of one-third of the \$80 million Settlement Fund plus interest accrued in escrow (\$26.67 million plus interest); (2) approving reimbursement of reasonably incurred expenses as they appear on the books and records of the firms acting as Class Counsel in this litigation in the amount of \$4,395,366.43; (3) approving an allocation of up to \$200,000 from the Settlement Fund to pay for anticipated future expert work related to claims administration; (4) granting service awards of \$50,000 for each of the seven Class Representatives; and (5) authorizing Co-Lead Class Counsel to appropriately allocate the fee award.

Dated: March 22, 2019

Respectfully submitted,

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FOR THE EASTERN DISTRICT OF NEW YORK**

In re DENTAL SUPPLIES ANTITRUST LITIGATION	No. 1:16-CV-00696-BMC-GRB ALL CASES
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**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF
SERVICE AWARDS TO THE CLASS REPRESENTATIVES**

WHEREAS, this matter comes before the Court on Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives;

WHEREAS, the Court, having considered: (a) the Settlement Agreement, dated September 28, 2018 (ECF No. 310-1); (b) the Court's January 9, 2019 Preliminary Approval Order (ECF No. 317); (c) Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives and supporting documents; and (d) the Declaration of Eric L. Cramer, Esq. on Behalf of Class Counsel in Support of Plaintiffs' Motion for Final Approval of Class Settlement and Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives ("Cramer Decl."), and related exhibits;

WHEREAS, the Court held a Fairness Hearing on May 22, 2019;

WHEREAS, the Court having considered all of the submissions and arguments with respect to the Settlement, and otherwise being fully informed, and good cause appearing therefore;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All terms in initial capitalization used in this Order shall have the same meanings as set forth in the Settlement, unless otherwise defined herein.

I. AWARD OF ATTORNEYS' FEES

2. Upon review of the record, the Court finds that Class Counsel's requested award of attorneys' fees in the amount of one-third of the \$80 million cash value of the Settlement (the "Settlement Fund") plus interest—\$26,666,666.67 (plus accrued interest)—is well within the

applicable range of reasonable attorneys' fees percentage-of-recovery awards established by relevant precedent.

3. The percentage-of-recovery method of calculating attorneys' fee awards is appropriate in this Action. *See, e.g., Wal-Mart Stores, Inc. v. Visa U. S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method."). All criteria used to determine whether a common fund fee is reasonable, as articulated by the Second Circuit in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2d Cir. 2000), support a finding that the requested fee is reasonable. The requested fee of one-third is in line with fees awarded by other Courts in the Second Circuit in comparable complex class action litigation settlements. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (identifying "comparing awards in similar case" as an "important factor in fee-award cases"); *Klein v. PDG Remediation, Inc.*, No. 95-cv-4954, 1999 WL 38179, at *4 (S.D.N.Y. Jan. 28, 1999) ("33% of the settlement fund . . . is within the range of reasonable attorney fees awarded in the Second Circuit"); *In re Med. X-Ray Film Antitrust Litig.*, No. 93-cv-5904, 1998 WL 661515, at *7 (E.D.N.Y. Aug. 7, 1998) (holding that class counsel's request for one-third of the \$39.4 million settlement fund "is well within the range accepted by courts in this circuit").

4. A lodestar crosscheck further supports the reasonableness of the requested fee award. Class Counsel have spent 35,049.3 hours litigating the Action, producing a total historical lodestar amount of \$18,358,220.70 based on each firm's standard historical hourly rates. *See Cramer Decl.* ¶ 39. Thus, a fee award of one-third of the Settlement Fund reflects a multiplier of 1.45 on this historical lodestar. *Id.* This lodestar crosscheck multiplier is in line with—and indeed, significantly lower than—lodestar multipliers that courts in this Circuit have found to be reasonable in comparable common fund cases. *See, e.g., Wal-Mart*, 396 F.3d at 123 (upholding

multiplier of 3.5 as reasonable and observing that “multipliers of between 3 and 4.5 have become common”).

5. Both the Long-Form and the Short-Form Notices indicated that Class Counsel would seek a fee award of up to one-third of the Settlement amount in addition to reimbursement of costs and service awards, and each of the Class Representatives affirmatively supports the fee and expense request. *See* Cramer Decl. ¶ 30.

II. REIMBURSEMENT OF EXPENSES

6. The Court finds that Class Counsel’s request for reimbursement of their reasonably incurred expenses should be granted. From the inception of the litigation through February 28, 2019, Class Counsel have incurred \$4,395,366.43 in unreimbursed litigation expenses while prosecuting this action, the majority of which was for expert fees. *See* Cramer Decl. ¶¶ 45-46. These collective expenses were reasonably incurred and expended for the direct benefit of the Class, and should therefore be reimbursed. *See In re Arakis Energy Corp. Sec. Litig.*, No. 95-cv-3431-ARR, 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) (“Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course.”). Accordingly, Class Counsel’s request for reimbursement of litigation costs and expenses in the amount of \$4,395,366.43 is granted.

III. EXPERT COSTS RELATED TO CLAIMS ADMINISTRATION

7. The Court finds that Class Counsel’s request to pay up to \$200,000 from the Settlement Fund for anticipated future expert work related to claims administration should be granted.

8. If the actual expert costs related to the administration of the Settlement exceed \$200,000, Plaintiffs shall file a motion requesting Court approval for the disbursement of additional funds.

IV. SERVICE AWARDS TO THE SEVEN CLASS REPRESENTATIVES

9. The Court finds that Class Counsel's request for service awards of \$50,000 for each of the seven Class Representatives is appropriate. Each of the Class Representatives has expended considerable time and effort to aid in the prosecution of this case, including devoting substantial time towards document productions, traveling to and attending depositions, preparing for those depositions in advance with Class Counsel, and regularly communicating with Class Counsel regarding developments in the case. *See* Cramer Decl. ¶ 59; *see generally* *Viafara v. MCIZ Corp.*, 2014 WL 1777438, *16 (S.D.N.Y. 2014) ("Service awards are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs."); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010) ("Case law in this and other circuits fully supports compensating class representatives for their work on behalf of the class, which has benefited from their representation.").

10. The total requested service award of \$350,000 represents just 0.44% of the \$80 million Settlement Fund. Courts in analogous cases have awarded equivalent service awards. *See, e.g., In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05-cv-02237, ECF No. 113 (S.D.N.Y. Nov. 28, 2011) (awarding service awards to three plaintiffs representing 0.44% of the settlement fund). Accordingly, Class Counsel's request for service awards of \$50,000 for each of the seven Class Representatives is granted.

V. CO-LEAD COUNSEL IS AUTHORIZED TO DISTRIBUTE THE AWARDED ATTORNEYS' FEES

11. Co-Lead Class Counsel shall allocate the fees and expenses among all of the counsel representing plaintiffs based upon Co-Lead Counsel's evaluation of the contribution of such counsel to the prosecution and resolution of this litigation. "Courts generally approve joint fee applications which request a single aggregate fee award with allocations to specific firms to be determined by Co-Lead Counsel, who are most familiar with the work done by each firm and each firm's overall contribution to the litigation." *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at *7 (E.D. Pa. Jan. 3, 2008); *see also McKinney on behalf of Res. Capital Corp. v. Cohen*, No. 17-cv-1381-LLS, 2017 WL 2271541, at *3 (S.D.N.Y. May 9, 2017) (ordering co-lead counsel "to appropriately distribute any Plaintiffs' attorneys' fees that may be awarded by the Court"). Accordingly, Co-Lead Class Counsel is authorized to appropriately allocate the fee award.

VI. THE COURT RETAINS JURISDICTION

12. Without affecting the finality of this Order in any respect, this Court reserves jurisdiction over any matters related to or ancillary to this Order.

SO ORDERED.

DATED: _____, 2019

The Honorable Brian M. Cogan
United States District Judge