

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS : MULTIDISTRICT
ANTITRUST LITIGATION : LITIGATION
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THIS DOCUMENT APPLIES TO ALL : **No. 08-md-2002**
DIRECT PURCHASER ACTIONS :

ORDER

AND NOW, this 17th day of November, 2017, upon consideration of the following:

- 1) The Direct Purchaser Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Expenses (Doc Nos. 1537 & 1540).
- 2) The requested attorneys' fee represents 33% of the aggregate Michael Foods settlement agreement and the lodestar in the present case is 0.90.¹
- 3) The Court finds notice to the class to be adequate; no class members have objected to these fees.²
- 4) The Court finds that the requested attorney fees, representing 33% of the Michael Foods settlement and a .90 lodestar, to be fair and reasonable, and that such fees are akin to fees

¹ Courts must perform a "thorough judicial review of fee applications . . . in all class action settlements." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 819 (3d Cir. 1995). In assessing attorneys' fees, courts may use the percentage-of-recovery method or the lodestar method. "In this Circuit, the percentage of recovery method is 'generally favored' in cases involving a common settlement fund" such as this. *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at *3 (E.D. Pa. Jan. 3, 2008) (quoting *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001)). The Third Circuit Court of Appeals has "suggested that district courts cross-check the percentage award at which they arrive against the 'lodestar' award method." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). A lodestar award "is calculated by multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys." *Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 216 (E.D. Pa. 2011) (internal quotation omitted). The reasonableness of an hourly rate depends on the experience and skill of the attorneys and staff who worked on the litigation. *See id.* The reasonableness of the hours worked requires counsel to not spend excessive time on a case and to not use top legal talent for routine work that associates or paralegals could perform. *Id.* at 217. In calculating a lodestar award to evaluate a settlement that occurs before the conclusion of a case, courts may include the time spent by counsel performing tasks that are not directly related to the settlement. *See In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 282-85 (3d Cir. 2009).

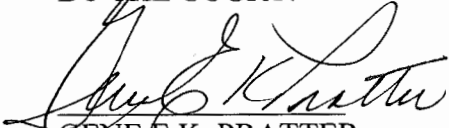
² For a detailed discussion of the sufficiency of notice, see this Court's November 17, 2017 memorandum opinion on the fairness of the settlement. Notice here was effectuated in the same manner analyzed in that opinion. Such notice far exceeded the minimum required to meet the requirements of Rule 23 and due process.

authorized in other similar cases and similar to previous settlements within this same MDL.³

Accordingly, it is **hereby ORDERED** that the Direct Purchaser Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Expenses (Doc. Nos. 1537 & 1540) is **GRANTED**. It is **FURTHER ORDERED** that:

1. Counsel for the Direct Purchaser Plaintiffs are awarded attorneys' fees in the amount of \$24,750,000, with accrued interest.
2. Counsel for the Direct Purchaser Plaintiffs are awarded reimbursement of litigation and individual firm expenses in the amount of \$2,613,674.80 with accrued interest.
3. Interim Co-Lead Counsel are responsible for allocating and distributing attorneys' fees and expenses among counsel for the Direct Purchaser Plaintiffs.
4. The Court retains jurisdiction over the Michael Foods settlement agreement to include resolution of any matters which may arise related to the allocation and distribution of attorneys' fees and expenses.

BY THE COURT:


GENE/E.K. PRATTER
UNITED STATES DISTRICT JUDGE

³ District courts "must consider" ten factors "[i]n determining what constitutes a reasonable percentage fee award[.]" *In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009). The factors are: (1) the size of the fund created and the number of beneficiaries; (2) the presence or absence of substantial objections by members of the class to the settlement terms or 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 plaintiffs' counsel; (7) the awards in similar cases; (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and (10) any innovative terms of settlement. *Id.* These factors weigh in favor of settlement. A 33% attorney fee is well within the range established within the Third Circuit, and the 0.90 lodestar is well below similar cases. *See, e.g., In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) ("multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied."); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739 (E.D. Pa. 2013) (2.99 lodestar, four-year antitrust litigation). The Court also incorporates the reasoning from this Court's November 17, 2017 memorandum opinion concerning the fairness of the Michael Foods settlement itself, insofar as it bears on the above factors.