

IN THE CIRCUIT COURT OF BALTIMORE COUNTY, MARYLAND

MICHAEL STARKE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

STANLEY BLACK & DECKER, INC.

Defendant.

Case No. C-03-CV-21-001091

**MOTION FOR ATTORNEYS' FEES, LITIGATION COSTS
AND INCENTIVE PAYMENT**

Plaintiff, by counsel, respectfully moves this Court for an order approving and awarding attorneys' fees, litigation costs, and incentive payment. By this motion, Plaintiff seeks:

1. \$360,000.00 in attorneys' fees;
2. \$15,000.00 in litigation costs; and
3. Incentive payment of \$2,500.00 for the named Class Representative Plaintiff.

In support of this motion, Plaintiff submits the accompanying: (1) Memorandum of Law in Support of Plaintiff's Motion for Attorneys' Fees, Litigation Costs, and Incentive Payment; (2) Declaration of Jason P. Sultzer; and (3) Declaration of Daniel S. Katz.

WHEREFORE, Plaintiff respectfully requests that this Court enter the Order in the form of the proposed order contemporaneously filed herewith.

Dated: March 7, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2022, a copy of Plaintiff's Motion for Final Approval of Class Action Settlement and supporting papers was electronically served through the Court's electronic filing system on:

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES, LITIGATION COSTS, AND INCENTIVE PAYMENT**

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I. PRELIMINARY STATEMENT

Plaintiff Michael Starke (“Plaintiff”), individually and on behalf of all others similarly situated, respectfully submits this memorandum of law in support of Plaintiff’s Motion For Attorneys’ Fees, Litigation Costs, And Incentive Payment.

The parties reached a settlement that provides significant relief for the benefit of the Settlement Class.¹ The settlement, which was preliminarily approved by this Court on October 13, 2021, provides that Defendant Stanley Black & Decker (“Black & Decker” or “Defendant”) will pay Participating Claimants 40% of their purchase price, up to a maximum Benefit Payment of \$8.00 per household, and make appropriate changes to its product labeling, marketing and advertising concerning the products at issue. The settlement secured by Settlement Class Counsel was only achieved following several months of arm’s-length negotiations through a respected mediator, Hon. James R. Eyler (Ret.).

The settlement reflects the skill, expertise, and diligent work of Settlement Class Counsel. The resulting benefit to Settlement Class Members is substantial when compared to the considerable litigation risks, including the legal uncertainty of proving Plaintiff’s claims and the substantial resources of Black & Decker, a large manufacturer of industrial tools and household hardware. Settlement Class Counsel devoted substantial time, effort and resources in prosecuting this Action prior to the settlement. *See generally* Declaration of Jason P. Sultzer in Support of Plaintiffs’ (1) Motion For Final Approval of Class Action Settlement and (2) Motion For An Award of Attorneys’ Fees, For Reimbursement of Litigation Expenses, and Incentive Payment For The Named Plaintiff (“Sultzer Decl.”). Settlement Class Counsel faced risks in continuing to

¹ Unless otherwise indicated, capitalized terms shall have the same meaning as they do in the Settlement Agreement. References to “§” are to sections of the Settlement Agreement, attached as Ex. A to Plaintiff’s Motion for Preliminary Approval.

litigate including the legal uncertainty surrounding Plaintiff's claims and the financial risks in proceeding through fact and expert discovery. *Id.* ¶¶ 24-29. The significant benefits—both monetary and injunctive in nature—that Settlement Class Counsel obtained on behalf of the Class weighed together with the risk inherent in any complex class action, specifically this Action, elucidate the strength of this result for class members. Finally, the significant result obtained by Settlement Class Counsel was achieved only after months of hard-fought settlement negotiations and with Judge Eyler's (ret.) assistance and recommendation which led to the Agreement between the parties. *Id.* ¶¶ 15-19.

Settlement Class Counsel respectfully request that the Court award attorneys' fees in the amount of \$360,000 as compensation for their efforts. The requested fee represents approximately 22% of the \$1,627,500 in monetary benefits available to the Settlement Class and approximately one-third of \$1,078,531.88, representing the total dollar amount of the settlement expected to be paid out based on the number of claims received, which, as explained below (Section II.B.5 *infra*), is well within the amounts of fees awarded in Maryland and other courts throughout the country. The reasonableness of this award is further supported and confirmed by the fact that the requested attorneys' fees are lower than Settlement Class Counsels' lodestar. In addition, Settlement Class Counsel also seek reimbursement in the amount of \$15,000 for reasonable and necessary litigation expenses, which were advanced by Settlement Class Counsel without any guarantee that they would be reimbursed, as well as modest incentive payment of \$2,500 to the named Plaintiff in recognition of his efforts and sacrifices in leading this litigation.

The requested fee was also well received by the Settlement Class given that no valid objections were made regarding Settlement Class Counsel's request. The Notice informed all Class Members that Settlement Class Counsel would seek an award of attorneys' fees and reimbursement

of litigation expenses consistent with this motion. Class members were also informed of the Settlement Website that was established, <https://www.titaniumcobaltsettlement.com>, on which the Notice could be found. This motion will be posted on the Settlement Website contemporaneously upon filing. Furthermore, the Notice also informed Class members that the Court will determine the amount of the attorneys' fees and litigation expenses to be paid to Settlement Class Counsel.

As detailed herein, this motion comports with applicable law, is well-justified, and should be granted.

II. ARGUMENT

A. Applicable Standard

An award of attorneys' fees is "premised on underlying equitable or policy considerations which support the need for such recovery." *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 660-61 (2003). It must be "reasonable" under Rule 1.5(a) of the Maryland Rules of Professional Conduct. *Suntrust Bank v. Goldman*, 210 Md. App. 390, 407 (2011); *United Cable Television of Balt. v. Burch*, 354 Md. 658, 686-88 (1999), *superseded by statute on other grounds as stated in Plein v. Dep't of Labor*, 369 Md. 427, 433 n.5 (2002); *Garcia*, 155 Md. App. at 663. In assessing any fee award, the ultimate objective is to fairly and reasonably compensate plaintiff's counsel for their efforts. *See Carroll v. Wolpoff & Abramson*, 53 F.3d 626, 628 (4th Cir. 1995). ("It is for the district court in the first instance to calculate an appropriate award of attorney's fees.")².

² Maryland courts have frequently stated that where a local rule and federal rule are similar, the federal court decisions interpreting the federal rule are persuasive authority. *See Pleasant v. Pleasant*, 97 Md. App. 711, 732 (1993) ("When, as here, there is no Maryland appellate decision to guide us, we may look to federal decisions construing the corresponding federal rule for guidance in construing the similar Maryland rule.") (citations omitted); *Estep v. Georgetown Leather Design*, 320 Md. 277, 284 (1990) ("In addition to these Maryland cases, we can turn to the federal courts for guidance. Rule 2-602 is derived from federal rule 54(b), and interpretations of this federal rule are especially persuasive as to the meaning of the Maryland rule."); *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772, 786 (1992). "[Rule 2-231 was] adopted in 1984 ... and is patterned after the then existing 1984 version of Fed. R. Civ. P.23. ... With the adoption of this rule, standards are now provided for establishing class actions, and the body of law that has developed in the federal courts is useful in interpreting this rule." P. Niemeyer, L. Schuett and J.

Maryland courts have enumerated several factors to consider when determining the reasonableness of attorneys' fees. These factors include: (1) the results obtained; (2) whether the fee is fixed or contingent; (3) the time, labor and skill required; (4) the fee customarily charged in the locality for similar legal services; and (5) the experience, reputation, and ability of counsel. *See* Maryland Rule 16-812; Maryland Rule of Professional Conduct 1.5 (2005) ("MRPC 1.5"); *Friolo v. Frankel*, 373 Md. 501, 527 (2003) (the determination of attorneys' fees involves consideration of the factors set forth in MRPC 1.5).

There are two primary methods of calculating attorneys' fees: (1) the "percentage of recovery" or "percentage of the fund" method; and (2) the "lodestar" method. *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 480-83 (D. Md. 2014). With either method, the goal is to make sure that counsel is fairly compensated. *Boyd v. Coventry Health Care, Inc.*, 299 F.R.D. 451, 462 (D. Md. 2014). The "current trend among the courts of appeal favors the use of a percentage method to calculate an award of attorneys' fees in common fund cases." *Goldenberg v. Marriott PLP Corp.*, 33 F.Supp.2d 434, 438 (D. Md. 1998).

B. The Requested Fee is Reasonable and Should be Approved

As set forth below, the fees sought by Settlement Class Counsel here are reasonable and appropriate in light of the factors Maryland and other courts traditionally consider in determining fee awards. While this settlement is a claims made settlement, the percentage of recovery method with a lodestar cross-check, is still the appropriate method here. *See Shalihar, et.al., v. Asahi Beer USA Inc.*, BC702360, Minute Order (CA Sup. Ct., L.A. County Jan. 14, 2020) (applying principles of award on a percentage basis to a claims made settlement) ("*Asahi Beer*"); *see also Torres v.*

Smithey, Maryland Rules Commentary, at 210-11 (4th ed.2014); *see also Pollokoff v. Maryland Nat'l Bank*, 44 Md. App. 188, 192 (1979) (analogizing Maryland and federal class action rules).

Gristede's Operating Corp., 519 Fed. App'x 1, 5-6 (2d Cir. 2013) (affirming award of fees after considering lodestar and percentage in a non-common fund settlement.).

1. The Benefits Obtained in the Litigation

In assessing the reasonableness of a requested fee, the primary factor the Court should consider is the results achieved. *See Hall v. Cole*, 412 U.S. 1, 5 (1973) (payment of attorneys' fees is appropriate where plaintiffs' litigation results in a "substantial benefit on the members of an ascertainable class"); *see also Virginia Hosp. Ass'n v. Kenley*, 74 F.R.D. 417, 479-20 (E.D. Va. 1977).

As detailed in the concurrently filed Memorandum in Support of Plaintiff's Motion for Final Approval, Settlement Class Counsel's efforts in litigating and settling this Action resulted in benefits that reach, and continue to reach, consumers and will persist into the future.

In addition to the significant monetary recovery for Settlement Class Members, the settlement requires that Black & Decker modify its website and packaging of the Covered Products to indicate that the drill bits are made with Titanium Nitride coating or Cobalt alloy steel, as appropriate. §§ 4.1-2. Regardless of whether Class Members submit a Claim, they and the consuming public will avoid millions in economic losses from potentially being duped into buying Covered Products that are not worth the purchase price. Sultzer Decl. ¶ 21. Cessation of deceptive advertising claims facilitates a highly visible and competitive marketplace by promoting credibility and fair competition, raises the floor of truth-telling in advertising by elevating the customary standard of practice across the industry, and ensures fidelity to consumer protection laws that benefit consumers, the public, and the market. *Id.* ¶ 22. Many courts throughout the country have recognized the significant value of such injunctive relief when determining fee awards. "A settlement's fairness should be evaluated in its entirety, including both monetary and non-monetary

benefits, and weighed against the risks of proceeding.” *Williams v. Reckitt Benckiser Llc*, No. 20-23564-CIV-COOKE/GOODMAN, 2021 U.S. Dist. LEXIS 239722, at *80-8, (S.D. Fla. Dec. 15, 2021) (approving settlement in a fraudulent advertising and labeling case) (citing *Wilson v. EverBank*, No. 14-civ-22264, 2016 U.S. Dist. LEXIS 15751, at *35 (S.D. Fla. Feb. 3, 2016) (“[C]ourts rightly consider the value of injunctive and monetary relief together in assessing whether a class action settlement provides sufficient relief to the class.”). Accordingly, these courts have held that in evaluating the fee request both the monetary and non-monetary benefits should be considered. *See Williams*, 2021 U.S. Dist. LEXIS 239722, at *102-103 (citing *Poertner v. Gillette Co.*, 618 F. App’x 624, 628-29 (11th Cir. 2015) (pointing out that class counsel’s fee award should also be based on consideration of “any non-monetary benefits conferred upon the class by the settlement,” such as injunctive relief, as well as “the economics involved in prosecuting a class action.”); *see also Hutton v. Nat’l Bd. of Exam’rs in Optometry, Inc.*, No. JKB-16-3025, 2019 U.S. Dist. LEXIS 120558 (D. Md. July 15, 2019) (approving fee request based on, inter alia, the substantial value of the injunctive relief).

Moreover, the settlement provides a significant, immediate, and certain cash payment to the Settlement Class. *See Gay v. Tri-Wire Eng’g Solutions, Inc.*, No. 12-cv-2231 (KAM) (JO), 2014 U.S. Dist. LEXIS 232, at *28 (E.D.N.Y. Jan. 2, 2014) (quoting *Massiah v. MliboretroPlus Health Plan, Inc.*, No. 11-cv-05669 (BMC), 2012 U.S. Dist. LEXIS 166383, at *13 (E.D.N.Y. Nov. 20, 2012) (“When a settlement ‘assures immediate payment of substantial amounts to class members, even if it means sacrificing speculative payment of a hypothetically larger amount years down the road, settlement is reasonable under this factor.’”); *Sykes v. Mel Harris & Assocs., LLC*, 09 Civ. 8486 (DC), 2016 U.S. Dist. LEXIS 74566, at *42 (S.D.N.Y. May 24, 2016) (“[M]uch of the value of a settlement lies in the ability to make funds available promptly”).

Accordingly, Settlement Class Counsel have unquestionably obtained significant benefits for Settlement Class Members and consumers at large through their litigation efforts.

2. The Contingent Nature of the Fee

Courts consistently recognize that the contingent nature of fee arrangements must be taken into account when determining attorneys' fee awards. *See* MRPC 1.5(a)(8); *Rauch v. McCall*, 134 Md. App. 624, 640 (2000) (citing MRPC 1.5(a)(8)) (stating that a court must consider whether the fee is fixed or contingent when awarding attorneys' fees); *see also Chrysler Corp. v. Dann*, 223 A.2d 384, 389 (Del. 1966) (court exercised "sound business judgment" by taking "the contingent nature of the litigation," into consideration in fixing the amount of attorneys' fees). As the Fourth Circuit observed in *McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir. 1967), "[c]harges on the basis of a minimal hourly rate are surely inappropriate for a lawyer who has performed creditably when payment of *any* fee is so uncertain." (Emphasis added.)

Not all class action litigation undertaken on a contingent basis results in success. Some cases take years to litigate - even up to and including trial on the merits - and end with no fees awarded to counsel for the plaintiffs. The contingent nature of the fee and the risks of litigation in this case should be given weight by the court in considering Settlement Class Counsel's application for payment of reasonable fees and expenses.

As detailed in the concurrently filed Memorandum in Support of Plaintiffs' Motion for Final Approval, Settlement Class Counsel have invested time, effort, and expense to this litigation, and they have done so entirely on a contingent basis with no guarantee of compensation or even reimbursement of expenses. As fully set forth in Section II.D. below, since the inception of this case, Settlement Class Counsel have dedicated 677.87 hours of attorney and other legal professional time through February 28, 2022. Settlement Class Counsel have also spent

\$15,812.50 for reasonable and necessary litigation expenses in prosecuting this Litigation. *See* Section II.F., *infra*. Settlement Class Counsel has been working on this case since at least March 2020, when they began their detailed investigations into Black & Decker's products and the titanium and cobalt representations. Sultzer Decl. ¶ 37. Settlement Class Counsel interviewed numerous potential class representatives and reviewed publicly available information as part of their investigations. *Id.* Settlement Class Counsel also spent significant time and resources drafting pleadings, including the complaint, and reviewing information exchanged ahead of mediation. *Id.* ¶ 39.

Settlement Class Counsel engaged in several months of arms'-length settlement negotiations. *Id.* ¶ 15. As part of the settlement negotiations, a mediation session with Judge Eyler (Ret.). *Id.* ¶ 16. On or about December 4, 2020, the Parties reached an agreement in principle. *Id.* ¶ 17. In addition, Settlement Class Counsel sought bids from notice providers and ultimately engaged the services of Simpluris. *Id.* ¶ 31. Settlement Class Counsel worked to develop a Notice Plan and the notice documents that would be submitted to the Court with Plaintiffs' Motion For Preliminary Approval. *Id.* Preliminary approval of the Settlement was granted on October 13, 2021. That Settlement Class Counsel reached an excellent and expeditious settlement should not impede their ability to recover for their efforts.

Thus, this factor weighs heavily in favor of this fee application.

3. The Efforts of Counsel

The Action, although efficiently managed, required a substantial commitment of time. The amount of attorneys' fees and expenses sought here is fair and reasonable because it is proportionate to the extensive work performed by Settlement Class Counsel in this litigation. As discussed in Plaintiff's Memorandum in Support of Motion for Final Approval and in Section

II.B.2. above, Settlement Class Counsel conducted a detailed and extensive analysis of the claims alleged in the Complaint, the metallic composition of the Covered Products (which included having a sample of the Covered Products tested by Metallurgical Technologies, Inc., that resulted in a report detailing the chemical composition of the drill bit base metals), consumer surveys and industry specific literature. Sultzer Decl. ¶¶ 10-12. Counsel engaged in multiple discussions and, based on those discussions, the parties' exchange of information, and their respective investigations into the claims and defenses in the Action, the parties agreed to engage in settlement negotiations with a private mediator before filing the complaint. *Id.* ¶¶ 13.

Ahead of mediation, Settlement Class Counsel thoroughly analyzed the legal landscape, including conducting research into the various state consumer protection laws and available remedies and evaluating matters relating to class certification, in order to fully evaluate the risks and benefits to potential early resolution. *Id.* ¶ 14. Counsel engaged in settlement negotiations over a period of several months. *Id.* ¶ 15. On December 4, 2020, the parties participated in a full-day virtual mediation with Hon. James R. Eyler (ret.). *Id.* ¶ 16. And, after agreeing in principle, Settlement Class Counsel spent months working out the details of the Settlement Agreement. *Id.* ¶¶ 17-18.

To obtain the substantial benefits conferred on the Settlement Class and consumers, Settlement Class Counsel spent a total of 677.87 hours pursuing this litigation, not including the time to prepare this application for fees and expenses, and incurred \$15,812.50 of unreimbursed expenses. *See Id.* ¶¶ 51-52.

Accordingly, the efforts of Settlement Class Counsel heavily weigh in favor of approving this fee application.

4. The Experience, Reputation, and Ability of Counsel

The quality of the representation by and standing of Settlement Class Counsel are additional important factors that support the reasonableness of the requested fee. *See In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400, 2010 U.S. Dist. LEXIS 119702, at *82 (S.D.N.Y. Nov. 8, 2010). A great deal of skill was required to achieve a settlement at this level in this particular case. Settlement Class Counsel are nationally known leaders in the fields of class actions and complex litigation. This favorable settlement is attributable to the diligence, determination, hard work, and reputation of Settlement Class Counsel, who developed, litigated, and successfully negotiated the benefits conferred by the litigation and settlement of this Action, without the risk of further litigation. As demonstrated by the resumes of the firms representing Plaintiff in the Action, *see* Sultzer Decl., Exhibit A; Declaration of Daniel S. Katz Decl. (“Katz Decl.”), Ex. 1., Settlement Class Counsel are among the most experienced and skilled practitioners in the class action field, and have served as lead or co-lead counsel in hundreds of such actions in state and federal courts throughout the country. Settlement Class Counsel used their unparalleled experience and expertise to effectively and efficiently prosecute the Action and create a significant benefit Plaintiff, and the Settlement Class Members. *Id.*

The standing of opposing counsel may also be considered in determining an allowance of counsel fees. *Reed v. Big Water Resort, LLC*, No. 2:14-cv-01583-DCN, 2016 U.S. Dist. LEXIS 187745, at *26 (D.S.C. May 26, 2016) (“The skill required by Class Counsel here is reflected in part by the quality of opposing counsel.”). Defendant was also represented by skilled counsel. These are experienced, skillful and well-respected law firms that vigorously defended their clients' interests. Obtaining the favorable result of the settlement against such formidable adversaries further supports the approval of the requested fee.

5. The Fees Customarily Awarded in Similar Cases Demonstrate the Requested Fee is Reasonable

The requested attorneys' fees, including reimbursement of costs and expenses, are comparable to awards in similar cases and should be approved as fair and reasonable. In *Yang v. G& C Golf, Inc.*, the court in approving a fee request equal to one-third of the common fund reviewed recent cases and determined that an award in the amount of one-third of the total settlement was a reasonable award. Case No. 403885-V, 2018 Md. Cir. Ct. LEXIS 1, *31-32 (Cir. Ct, Montgomery Cty Jan 10, 2018) (collecting cases). This conclusion is in line with numerous other decisions in class action settlements in Maryland courts. Indeed "[c]ontingent fees of up to one-third are common in this circuit." *Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 U.S. Dist. LEXIS 14772, at *8 (D. Md. Jan. 28, 2020) (collecting cases); *see also Decohen*, 299 F.R.D. at 483; *In re Titanium Dioxide Antitrust Litig.*, No. 10-318, 2013 U.S. Dist. LEXIS 176099, at *8 (D. Md. Dec. 13, 2013); *McDaniels v. Westlake Servs. LLC*, Civil Action No. ELH-11-1837, 2014 U.S. Dist. LEXIS 16081, at *38 (D. Md. Feb. 7, 2014) (approving fee request of 33 1/3% of common fund as reasonable). Even cases without common funds have reached similar conclusions that a reasonable percentage of the recovery obtained is proper. *See Asahi Beer*, at 15 (approving fee award of 37% of the monetary benefit actually obtained by the class).

C. The Requested Fee is Reasonable Under a Percentage-of-Recovery Analysis

The Supreme Court has "recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is 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). Under the "percentage of recovery" or "percentage of the fund" method, the court awards attorneys' fees as a percentage of the common fund used to pay class members' damages and claims. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984); *See also Boyd*, 299 F.R.D. at 462. The "current trend among the courts of

appeal favors the use of a percentage method to calculate an award of attorneys' fees." *Goldenberg*, 33 F.Supp.2d at 438; *see also Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F.Supp. 499, 503 (E.D. Va. 1995) ("the percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases."); *Boyd*, 299 F.R.D. at 462; *Yang*, 2018 Md. Cir. Ct. LEXIS at *31-32.

While this settlement is a claims made settlement, analysis under the percentage of recovery method is nonetheless appropriate. Courts routinely analyze requests for an award of attorneys' fees in claims made settlements in this way. *See Asahi*, at 15 (applying principles of award on a percentage basis to a claims made settlement); *Zink v. First Niagara Bank, N.A.*, No. 13-CV-01076-JJM, 2016 U.S. Dist. LEXIS 179900, *19 (W.D.N.Y. Dec. 29, 2016) ("although a claims-made settlement does not result in the creation of a separate fund, it has repeatedly been recognized that such a settlement is 'the functional equivalent of a common fund settlement where the unclaimed funds revert to the defendant [T]he two are fully synonymous'" (citing *Newberg*, §13:7); *Poertner v. Gillette Co.*, 618 Fed. Appx. 624, 629 n. 2 (11th Cir. 2015) ("attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class While no published opinion of ours extends [the] percentage-of-recovery rule to claims-made settlements, no principled reason counsels against doing so"); *Torres*, 519 Fed. App'x at 5-6 (affirming award of fees after considering lodestar and percentage in a non-common fund settlement.).

When analyzing a percentage of recovery in a claims made settlement, the court should consider the total value of the settlement obtained for the class. *See Asahi Beer*, at p. 15; *Poertner*, 618 Fed. App'x. at 628-29 (affirming district court's award of fees that were calculated based on the total value of the settlement). This is equivalent to analyzing percentage of a recovery in a

common fund case as the common fund would include the payments to the class, administration costs and attorneys' fees. *Hart v. BHH, LLC*, No. 15cv4804, 2020 U.S. Dist. LEXIS 173634, at *21 (S.D.N.Y. Sep. 22, 2020) ("In a typical settlement, there is a common fund from which Plaintiffs' counsel's fees are derived. That common fund serves as the denominator in the fee calculation. But that common fund would necessarily include the attorneys' fees, costs, expenses and the incentive award. It would make little sense to not apply the same logic to a claims-based settlement."). Many cases have gone a step further holding that the total available value of settlement should be included when analyzing the percentage of recovery in a claims made settlement. *See Zink*, 2016 U.S. Dist. LEXIS 179900, at *22-23 (citing *Newberg*, §15:70); *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 284 (6th Cir. 2016). Additionally, a fee award based on a percentage of the full value that would exceed the amount paid to the class "is not by itself fatal to the request." *Id.* at 23; *Torres*, 519 Fed. App'x at 1, 3 (court approved "an award of \$3,858,059.85 - comprising \$3,415,450.00 in attorney's fees and \$442,609.85 in costs - in connection with a \$3,530,000 settlement on the eve of trial of class action claims" noting that "[c]alculated on the basis of the total funds made available . . . the \$3.86 million total award of costs and fees here represents 52.2% of the entire \$7.39 million recovered by plaintiffs. Such an award does not constitute an abuse of discretion.").

Here, a determination of whether to include the total available value of settlement is not necessary as Class Counsel's request is fair and reasonable solely on the value actually obtained. The total value of the settlement obtained is \$1,078,531.88, equal to the value of the claims submitted (\$452,031.88), administrative expenses (\$250,000), incentive payment (\$2,500) and requested attorneys fees (\$360,000) and litigation expenses (\$15,000). Additionally, the injunctive relief adds significant value to the settlement. Accordingly, one-third of the total \$1,078,531.88

value is \$359,510.63 which is essentially equal to the \$360,000 Settlement Class Counsel requests.³

The fee requested by this motion is consistent with many other fee awards granted in other class actions in this state. Additionally, Settlement Class Counsel's fee request is reasonable given the complexities and risks discussed herein and within the parameters of fee awards in similar class actions in this state. As discussed above in Section II.B., Settlement Class Counsel's fee request is also supported by the factors enumerated in MRPC 1.5. Therefore, Settlement Class Counsel's requested fee is reasonable under a percentage-of-recovery analysis.

D. A Lodestar "Cross-Check" Further Confirms the Reasonableness of Settlement Class Counsel's Requested Fee

The requested fees are also supported under a "lodestar cross check." Under the "lodestar" method, a court identifies a lodestar figure by multiplying the number of hours expended by class counsel by a reasonable hourly rate. *Grissom v. The Mills Corp.*, 549 F.3d 313, 320 (4th Cir. 2008). The court may then adjust the lodestar figure using a "multiplier" derived from a number of factors, including the benefit obtained for the settlement class, the complexity of the case, and the quality of the representation. *Boyd*, 299 F.R.D. at 467 (citing *Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 462 (S.D. W. Va. 2010)). "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*, 299 F.R.D. at 467 (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) ("The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method")). Importantly, "where the lodestar fee is

³ If the total available value of settlement were included, Settlement Class Counsel's requested fee would equal 22% of the \$1,627,500.

used ‘as a mere cross-check’ to the percentage method of determining reasonable attorneys’ fees, ‘the hours documented by counsel need not be exhaustively scrutinized by the district court.’” *Boyd*, 299 F.R.D. at 467 (quoting *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006)).

As stated above, Settlement Class Counsel jointly expended 677.87 hours in the investigation and prosecution of the Action (exclusive of time spent on the fee and expense application). *See* Sultzer Decl. ¶¶ 42, 52; Katz Decl. ¶ 3. Multiplied by each attorney’s, paralegal’s, and other professional staff member’s customary billing rate, this represents a lodestar amount of \$412,526.00. Thus, the requested fee of \$360,000 is *less* than the lodestar of Settlement Class Counsel. Generally, class counsel is awarded a *multiplier* of its lodestar when approving attorneys’ fees, meaning that it is customary to award class counsel attorneys’ fees that are *greater* than their lodestar not less, as Settlement Class Counsel requests here. *See Decohen*, 299 F.R.D. at 493 (lodestar multipliers “falling between 2 and 4.5 demonstrate a reasonable attorney’s fee”); *Boyd*, 299 F.R.D. at 467 (“Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys’ fee.”).

Therefore, Settlement Class Counsel respectfully submit that the lodestar cross-check supports the reasonableness of the requested fee award.

E. The Reaction of the Class Members Supports Settlement Class Counsel’s Fee Request

Finally, the reaction of Class members to the settlement and Settlement Class Counsel’s fee and litigation expense request, which was disclosed in the Notice disseminated on November 12, 2021, confirms the reasonableness of Settlement Class Counsel’s request. *See In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM, 2014 U.S. Dist. LEXIS 177175, at *48 (S.D.N.Y. Dec. 19, 2014) (courts “consider the reaction of the class to the fee request in deciding how large

a fee to award.”). The Notice informed members of the Settlement Class that Settlement Class Counsel intended to seek a fee award of up to \$360,00 and an award of litigation expenses of up to \$15,000. *See* Long Form Notice, Ex. C to Motion for Preliminary Approval. This motion is consistent with the Notice provided. There have been no objections to the fee award requested by Settlement Class Counsel (or any other valid objection to the settlement). The absence of objections is compelling evidence of the fairness of the fee request. Additionally, pursuant to the Long Form Notice, this motion will be posted on the Settlement Website before the Final Approval hearing.

F. Settlement Class Counsel’s Request for Reimbursement of Litigation Costs is Reasonable

“Plaintiffs entitled to recover attorney’s fees may also recover “reasonable litigation-related expenses as part of their overall award.” *Decohen*, 299 F.R.D. at 483; (quoting *Singleton v. Domino’s Pizza*, 976 F. Supp. 2d 665, 689 (D. Md. 2013) and *Kabore v. Anchor Staffing, Inc.*, No. L-10-3204, 2012 U.S. Dist. LEXIS 149761, at *27 (D. Md. Oct. 17, 2012) (internal quotations omitted)). Here, Settlement Class Counsel have incurred \$15,812.50 in reasonable and necessary litigation costs and expenses. Sultzer Decl. ¶¶ 44, 53; Katz Decl. ¶ 4. These expenses include all investigation, consultant, expert, filing, general litigation, and mediation-related expenses that were all incurred in the normal course of business and were essential to the successful prosecution of this lawsuit. Settlement Class Counsel are entitled to be reimbursed for those expenses in addition to the attorneys’ fees because they are “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.” *Kabore*, 2012 U.S. Dist. LEXIS 149761, at *27 (quoting *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988)). None of Settlement Class Counsel’s expenditures have yet been

reimbursed. Settlement Class Counsel therefore respectfully request that, in accordance with the Settlement Agreement, litigation costs and expenses in the amount of \$15,000 be reimbursed.

G. Plaintiff's Request for a Modest Incentive Payment is Reasonable

Settlement Class Counsel seeks a \$2,500 incentive payment for the named Plaintiffs for his active participation in this Action. "As part of a class action settlement, 'named plaintiffs . . . are eligible for reasonable incentive payments.'" *Decohen*, 299 F.R.D. at 483 (quoting *Stanton v. Boeign Co.*, 327 F.3d 938, 977 (9th Cir. 2003)). Plaintiff's participation in this Litigation included carefully reviewing pleadings including the complaint and amended complaint, regular communication with Settlement Class Counsel, and participation in mediation. *Singleton*, 976 F. Supp 2d at 690-91 (approving incentive payment of \$2,500 to each named plaintiff because each had devoted considerable time to helping Settlement Class Counsel prepare for the litigation and participating in the mediation and undertook some personal risk to further the lawsuit).

Accordingly, Settlement Class Counsel request the Court grant a \$2,500 incentive payment to named Plaintiff.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court approve the request for: (i) the payment of attorneys' fees in the amount of \$360,000; (ii) reimbursement of reasonable and necessary litigation expenses in the amount of \$15,000 and (iii) a \$2,500 incentive payment for the named Plaintiff.

Dated: March 7, 2022.

Respectfully submitted,

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Settlement Class Counsel

THE CIRCUIT COURT OF BALTIMORE COUNTY, MARYLAND

MICHAEL STARKE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

STANLEY BLACK & DECKER, INC.

Defendant.

Case No. C-03-CV-21-001091

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS'
FEES, COST, AND INCENTIVE PAYMENT**

Michael Starke (“**Plaintiff**”) filed his Motion for Attorneys’ Fees, Litigation Costs, and Incentive Payment on March 7, 2022 (the “**Motion**”). Having considered the Settlement Agreement (the “**Settlement Agreement**”); the Motion, memorandum of law, supporting declarations and exhibits; the lack of any opposition or objection to the Motion; all arguments presented at any hearing of this matter; all relevant papers on file herein; and finding good cause appearing hereby **ORDERS**:

1. This Court has subject-matter jurisdiction over this Action pursuant to Md. Code Ann., Cts. & Jud. Proc. § 21-501 and personal jurisdiction over the Parties, including all Settlement Class Members, for all matters relating to this Action.

2. Unless otherwise defined herein, the Court adopts the terms and definitions set forth in the Settlement Agreement.

3. Counsel for the Settlement Class¹ (“**Settlement Class Counsel**”) provided adequate Notice of the Fee and Expense Application to the potential class members in a reasonable manner. The Notice provided to all potential class members stated that Class Counsel could seek attorneys’ fees up to \$360,000.00 plus \$15,000 in litigation costs and expenses, and further directed Settlement Class Members to a website on which the full Motion was accessible as of March 7, 2022.

4. I hereby award **\$360,000.00** in attorneys’ fees to Class Counsel. As of February 28, 2022, Class Counsel, collectively, have devoted approximately 677.87 hours, with a lodestar of \$412,526.00 to achieve the Settlement in this Action. This award is less than Class Counsel’s lodestar. Having reviewed Class Counsel’s Motion, the Court finds the requested amount of attorneys’ fees to be fair, reasonable, and appropriate and shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement.

5. The Court also finds that Class Counsel have incurred \$15,812.50 in litigation costs and expenses. All of these costs and expenses were reasonably incurred in the ordinary course of prosecuting this case and were necessary given the complex nature and scope of this case. The Court finds that Class Counsel are entitled to reimbursement for **\$15,000.00** of these costs and expenses.

6. The Court further approves an incentive award of **\$2,500.00** for the Settlement Class Representative for his active participation in this Action. This incentive award is justified by: (1) the risks Class Representative Plaintiff faced in bringing this lawsuit, financial and otherwise; (2) the amount of time and effort spent on this Action by the Class Representative

¹ As used herein and as appointed by the Court in the Preliminary Approval Order, “Settlement Class Counsel” refers to The Sultz Law Group P.C and Tydings & Rosenberg, LLP.

Plaintiff; and (3) the benefits the Class Representative Plaintiff helped obtain for the Settlement Class Members under the Settlement Agreement.

7. The Attorneys' Fees, Costs, and Service Award set forth in this Order shall be paid and distributed in accordance with the terms of the Settlement Agreement.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE CIRCUIT COURT