IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Jamie Todd, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.: 3:24-cv-615-wmc
	)	
Ashley Furniture Industries, LLC, et al.,	)	
	)	
Defendants.	)	

CLASS COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEY'S FEES, EXPENSES, AND CASE CONTRIBUTION AWARDS

In light of the Settlement that they have achieved for the Class, the Class Representatives and Class Counsel respectfully petition the Court to approve: 1) attorneys' fees to Class Counsel in the amount of $2,860,926.18; 2) reimbursement of $139,073.82 in litigation costs; and 3) case contribution awards totaling $85,000.00 and allocated as further described below.

The requested distributions are appropriate and reasonable in comparison to awards in similar cases. The records support the requests as Class Counsel has presented evidence of the work performed to reach the Settlement, including its lodestar. Class Counsel's requested fees and costs are consistent with the amount typically awarded and reimbursed in complex, long-running consumer cases such as this one. Likewise, the proposed case contribution awards for the Class Representatives are authorized under the Settlement Agreement and are well within the bounds of what has been approved in other litigation. Accordingly, Class Representatives and Counsel respectfully request that the Court approve the requested distributions.

I. BACKGROUND

A. Case History

Plaintiffs initiated this lawsuit on August 30, 2024. Doc. 1. The groundwork for this case began well before though. In 2021, prior to filing suit, Class Counsel conducted a robust outreach to clients in order to gauge the full nature of the case. In particular, Class Counsel engaged with over 4,000 clients to gather data and details regarding the problems associated with the fiberglass materials in the subject mattresses. **Exhibit 1**, ¶ 10, Declaration of Daniel B. Snyder. Class Counsel crafted a case strategy that best fit the profile of the clients and issues. *Id*.

In an effort to facilitate pre-suit resolution, Class Counsel sent Defendants a letter, providing notice of the allegations pertaining to the use of fiberglass as a fire-retardant barrier in the inner sock of certain mattresses. Doc. 65-1, at ¶ 2.1. Following this correspondence, the parties discussed potential pre-suit resolution and exchanged documents and information to assist in the parties' evaluation of the claims. Then counsel for Ashley and the Plaintiffs participated in a pre-suit mediation on February 28, 2024, with mediator, Rodney A. Max. *Id*., ¶ 2.1, 2.2. This mediation was unsuccessful but did lay the groundwork for Class Counsel's case strategy and eventually another mediation after conducting a year and a half of discovery. *Id*., ¶ 2.11.

In response to Plaintiffs' Complaint, Defendants filed a Motion to Dismiss on November 26, 2024. Doc. 16. Plaintiffs opposed the Motion on December 17, 2024. Doc. 19. The parties then filed their Rule 26(f) report on December 26, 2024. Doc. 24. On January 7, 2025, Defendants filed their Reply brief in regard to the Motion to Dismiss. Doc. 27.

Over the next few months, the parties engaged in discovery and negotiations on scope including electronically stored information ("ESI"). Ultimately a joint stipulation was entered on May 30, 2025. Doc. 37. On July 9, 2025, Defendants filed a motion to compel discovery. Doc. 39. On August 6, 2025, Plaintiffs filed their opposition to Defendants' Motion. Doc. 51. On August 8, 2025, the Court denied the Motion to Compel as moot. Doc. 52.

On September 10, 2025, Plaintiffs filed their First Amended Complaint and added additional Named Plaintiffs to represent specific state sub-classes for their consumer claims. Doc. 56. On November 24, 2025, Plaintiffs filed their Notice of Expert Disclosures, reflecting that they had produced five expert reports in support of their forthcoming class certification motion. Doc. 57.

On December 17, 2025, the parties participated in another mediation, this time with James B. Baldinger, in Palm Beach, Florida. Doc. 65-1, ¶ 2.11. This mediation was also unsuccessful, but the parties made progress and exchanged additional information with the assistance of Mr. Baldinger. Over the next month, the parties continued these negotiations. On January 21, 2026, the parties reached a settlement agreement in principle, notifying the Court of same in a request to vacate the operative scheduling order. Doc. 60.

Up until this date, the Plaintiffs vigorously pursued their claims. In particular, both parties propounded and answered interrogatories and requests for production. The parties exchanged and reviewed voluminous amounts of ESI. The parties collected samples and tested subject mattresses. Plaintiffs prepared for depositions and provided deposition testimony. Class Counsel prepared for Defendants' depositions and drafted their Motion for Class Certification. At all times, Class Counsel, via the assistance of the Class Representatives, continued to evaluate the merits of the case, the chances of success, and weighed the value of resolution. Ultimately, Class Counsel and the Class Representatives determined the current Settlement reflected a fair, reasonable, and adequate resolution, particularly compared to the risk and chance of success at various later stages of the litigation.

On February 25, 2026, Plaintiffs asked the Court to preliminarily approve the Settlement. Doc. 65. On March 19, 2026, the Court issued an Order, preliminarily approving the Settlement, and directed the parties to send Notice to the Class. Doc. 70.

B. Settlement Terms and Relief

The Settlement provides a non-reversionary $12 million Fund, of which $9 million will be allocated for pro-rata vouchers to ashleyfurniture.com, nectarsleep.com, dreamcloudsleep.com, and sienasleep.com. The vouchers are transferable, stackable, and only expire after 365 days. The remaining $3 million is subject to Class Counsel's request for fees and costs to be determined at the Court's discretion. Should the Court decide to award less than $3 million, the difference will not revert to Defendants, but will instead be distributed on a pro rata basis to the participating class members. Doc. 65-1, ¶ 3.3.5. Defendants are paying all costs associated with administering the notice[1] and claims process via the assistance of the third-party settlement administrator, Epiq. These costs are valued at roughly $380,000.00. Doc. 65-1, ¶ 3.6. Defendants have also agreed to pay Service Awards to the Class Representatives totaling $85,000.00, subject to the Court's approval. Doc. 65-1, ¶ 3.5.

These benefits are in addition to the prospective relief already attained by Class Counsel after first putting Defendants on notice of the allegations. Namely, Defendants modified the disclaimers on their mattress tags and websites regarding the use of fiberglass as a fire-retardant material in the inner sock of certain mattresses and subsequently stopped using that material in their mattresses.

II. WORK OF CLASS COUNSEL

[1]Class Counsel is, however, paying the costs of the round of notice associated with this fee petition which is valued at roughly $26,000.00, and is not included in the itemized expenses requested.

Class Çounsel collectively expended 6,051.79 hours prosecuting this action on behalf of the class, resulting in total lodestar fees of $4,254,086.75. This work was performed by attorneys across three firms — Wiggins, Childs, Pantazis, Fisher & Goldfarb, LLC; Environmental Litigation Group, P.C.; and Cueto Law Group, P.C. — over the course of the litigation, from initial case evaluation, intake, and complaint filing, through motion practice, discovery, mediation, settlement, and preliminary approval. The summary below sets forth the hours devoted to each principal category of work, together with a description of the tasks performed within that category.

Hours by Firm

Firm	Hours
Wiggins, Childs, Pantazis, Fisher & Goldfarb, LLC	1,854.15
Environmental Litigation Group, P.C.	3,539.04
Cueto Law Group, P.C.	658.6
TOTAL	**6,051.79**

Class Counsel submits that this work was reasonable and necessary in order to evaluate and prosecute a case of this size and magnitude. To assist in the Court's review of the legal work performed in this case, Class Counsel has broken down the hours worked into categories, with detailed descriptions, and offered to provide the exact time entries *in camera* to the Court (Doc. 88). A summary of the work performed in each category, along with the hours worked, is as follows:

A. Intake, Review and Strategy (47.4 hours): To begin, Class Counsel spent time working with clients nationwide to evaluate the claims and understand the breadth of the issues at hand. This category reflects the earliest work on the case. This work includes contact and communication with clients, correspondence among counsel, evaluation of the claims with consultants, and development of case strategy prior to filing suit. This category does not include mediation and document drafting.

B. Pleadings and Complaint Drafting (174.7 hours): Class Counsel drafted and revised original and amended complaints, added additional plaintiffs, updated factual findings, coordinated edits among co-counsel, and prepared accompanying motions for filing with the Court, including but not limited to responses to motions to dismiss, motions to compel, and their own motion for preliminary approval. This category also includes preliminary drafts of the class certification briefings that were not ultimately filed.

C. Legal Research (141.2 hours): Class Counsel researched applicable law and the science underlying Plaintiffs' core factual allegations, including the presence and behavior of fiberglass in the mattresses at issue. This research informed the drafting of the complaint (and subsequent amendment), discovery efforts, mediation strategies, class certification presentation, expert report creation, and supported the legal and factual theories advanced throughout the litigation.

D. Discovery, ESI, and Document Review (513.65 hours): This category encompasses the collection, review, and organization of electronically sored information and client documents. It includes the intake files for new clients, mattress purchase and damages documentation, medical records, and accompanying media for all clients. It also includes the maintenance and review of Defendants' records, including financial modeling, spreadsheets, textile manufacturing data, sales data, and labeling and marketing information. This work greatly guided the overall strategy of the case, as well as the ultimate evaluation of the lawsuit's merits.

E. Discovery, Responses, and Production (477.23 hours): Class Counsel prepared, revised, and finalized responses for almost all of the named Plaintiffs. This work also included coordinating document production, travel nationwide to procure documents and mattress samples, and work with IT and other experts to make sure the production was performed properly and produced in an organized manner.

F. Class Representative Research and Vetting (259.8 hours): This category reflects the work performed to identify, vet, and organize information related to class representatives who could best provide representation for each state subclass. This was a nationwide review effort involving interviews, document collection, and analysis of corresponding state consumer protection laws. It included the maintenance of master contact and mattress make/model spreadsheets, review of documentation and preparation of materials to support each client's claims.

G. Expert Witness Coordination (647.7 hours): Class Counsel worked with retained experts to manage document production for expert review, organize materials for review, prepare disclosures, and model case presentation strategies. This category also includes sample testing, protocol development, and class certification analysis. It also included ultimate case evaluation that was crucial to developing and analyzing the merits of the case.

H. Expert Report Review and Drafting (241.1 hours): This category reflects the substantive review, discussions, and finalization of five expert reports and their supporting exhibits and appendices. It was crucial that Class Counsel and their experts were aligned in making their expert disclosures and reports in an effort to prepare for Class Certification and ultimately Summary Judgment and trial.

I. Mediation Preparation (139.7 hours): Class Counsel prepared for mediation by drafting and revising multiple pre-mediation statements, compiling and presenting supporting exhibits, and organizing materials and case documents to support demands for class wide resolution.

J. Mediation (316.1 hours): This category covers the mediation proceedings themselves, travel and appearances at the mediation session, follow-up conferences with the mediator and opposing counsel, negotiation and development of term sheets, and related presentations and filings with the Court memorializing the parties' agreement in principle.

K. Settlement Negotiation and Agreement (300.93 hours): Class Counsel drafted and redlined the settlement agreement and its exhibits, coordinated presentation and materials with the settlement administrator, prepared the motion for preliminary approval along with supporting documents and declarations, and obtained signatures from all class representatives. This category only captures time spent prior to Class Counsel's motion for preliminary approval.

L. Depositions (298.6 hours): This category reflects preparation for and coordination of party and class representative depositions, and expert depositions. This includes scheduling through the court reporting service, preparing deposition and deposition-preparation schedules, coordinating attorney coverage for each deposition, compiling document and reviewing with the clients, and meetings with each client to prepare for their depositions.

M. Court Filings and Procedural motions (502.8 hours): Class Counsel and their staff prepared, finalized, and e-filed numerous procedural submissions with the Court, including motions for pro hac vice, joint motions to continue briefing and case schedule, responses to Defendants' motions and motions to amend the complaint. This work was in addition to the Pleadings and Complaint drafting, and the legal research previously identified.

N. Client Communication (140.7 hours): This category reflects additional direct communication with the Plaintiff and class members not previously identified. It includes status updates, letters, responses to individual client inquiries, settlement and case development discussions, and correspondence regarding availability and mattress testing.

O. Internal Team Meetings, Calls, and Case Development (1,409.58 hours): This category reflects the substantial coordination required across three law firms to prosecute a nationwide consumer litigation affecting over 6 million people. Over the life of the litigation, this work included internal strategy conferences, case status calls, day-to-day communication necessary to move the case forward, and routine discussions regarding strategy, settlement, motions, discovery, clients, legal research, case value, experts, and firm by firm delegation and coordination. Class Counsel spent significant time cooperatively to evaluate the claims and understand the breadth of the issues at hand. This category reflects the work from the beginning of the case through settlement.

P. Opposing Counsel Communication (185.8 hours): This category covers direct correspondence and conferences with defense counsel, including negotiation of scheduling matters, discussing of redlines, and negotiation and resolution of discovery and production disputes without Court intervention where possible.

Q. Travel (67.8 hours): This category reflects travel time by attorneys and staff that was associated with the litigation, including travel to and from mediation, travel undertaken to meet with class representatives and experts and home visits and document collection work.

R. Administrative (187 hours): This category encompasses basic case administration work that does not fall neatly within the more substantive categories above. It includes docket monitoring, file organization, invoice process, and maintenance of internal tracking spreadsheets to manage case workflow, case documents, and client information.

S. Expenses: Additionally, Class Counsel incurred $139,073.82 in costs in their prosecution of this case, through the filing for preliminary approval. Class Counsel spent this money with no promise of repayment, and solely in an effort to prepare the case for class certification, summary judgment, and ultimately trial. The itemized expenses have been presented as part of Class Counsel's submissions.

See, **Exhibit 2**, Declaration of D. G. Pantazis, Jr.

In sum, the 6,051.79 hours reflected above demonstrates the work that was reasonable and necessary to litigate this class action. **Exhibit 2**, ¶¶ 11-13. The detailed, contemporaneous time records supporting each category of work have been reviewed and confirmed based on each firm's time keeping systems; Class Counsel is prepared to submit to the Court for review *in camera*. **Exhibit 2**, at ¶ 24. The expenses incurred have been presented in an itemized format for review and were also reasonable and necessary to prosecute and resolve the nationwide class action lawsuit. **Exhibit 2**, at ¶ 13; see also **Attachment C** to **Exhibit 2**. Class Counsel is not seeking repayment for expenses incurred after filing for preliminary approval, nor have they included time spent working on the case after this date[2].

III. ARGUMENT

The Court should approve the requested fees, expenses, and contribution awards because the Settlement is fair, reasonable, and adequate, and without the work of Class Counsel and the Class Representatives, it would not have been achieved. The first step in the Court's analysis should be to determine whether the Settlement is a "coupon" settlement under 28 U.S.C. § 1712.

Upon review, the Court should determine that it is not and analyze the requested fees and costs under the common-fund doctrine typically employed by the Seventh Circuit. *Levitt v. Southwest Airlines Co. (In re Southwest Airlines Voucher Litig.),* 898 F.3d 740, 746 ("The

[2]Class Counsel is still accruing additional costs and lodestar; Class Counsel estimates they will incur over $46,000 in additional expenses and that they have spent an additional 500 hours working on the case to date. **Exhibit 2**, at ¶ 14.

common-fund doctrine applies as a default rule"). (7th Cir. 2018). Because the relief afforded by the Settlement is real, and the fee request is less than 24% of the common fund, it falls well within the standard fee afforded to Class Counsel. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (Noting that the typical contingent fee is between 33 and 40 percent).

If the Court disagrees and determines the Settlement to be a "coupon" settlement under the CAFA (Class Action Fairness Act), the Court should then review Class Counsel's request under the lodestar methodology[3]. *Levitt v. Southwest Airlines Co. (In re Southwest Airlines Voucher Litig.),* 799 F.3d 701, 710 (7th Cir. 2015). Class Counsel has provided detailed descriptions of the lodestar in this case (**Exhibit 2, Attachment B**), and is prepared to submit itemized time entries to the Court *in camera*. **Exhibit 2**, at ¶ 24. The Court should also evaluate "critically the claims of success on behalf of a class receiving coupons" and determine that Class Counsel afforded real and legitimate relief to the Class via the Settlement, not only in the value of the vouchers afforded, but also the significant injunctive relief achieved. *Id*.

The Court should also find the expenses incurred as reasonable and necessary in the prosecution of this class action. *See Johnson v. Meriter Health Servs. Emple. Ret. Plan*, 2015 U.S. Dist. LEXIS 158859, *17 (W.D. Wis. Jan. 5. 2015) ("The court finds the expenses adequately documented, reasonably incurred in connection with the prosecution of this action, and reasonable for a case of this complexity, scope and duration").

Lastly, this Settlement would not be possible without the Class Representatives. Their time and attention to this case was integral to the litigation and the settlement process. **Exhibit 2**, at ¶

[3]This process avoids the confusion found in the language of § 1712 regarding "redemption value". *Redman v. Radioshack Corp.,* 768 F.3d 622, 634. However, it still includes a review of the degree of success, "thereby fitting well with the congressional intent underpinning CAFA — that is, to mandate more careful scrutiny of 'coupon' class action settlements so as to ensure that the benefits conferred on the class reasonably support the award of attorney's fees". *Cantu-Guerrero v. Lumber Liquidators, Inc. (In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., sales Practices & Prods. Liab. Litig.),* 27 F.4th 291, 303.

26. Both long serving and more recently added plaintiffs committed their names and energy to a litigation process that benefited the entire Class. Therefore, the reasonable awards requested should be approved. *See Bruzek v. Husky Oil Operations Ltd.,* 2022 U.S. Dist. LEXIS 175702, *7 (W.D. Wis. Jan. 31. 2022) ("In similar cases, this court has previously awarded incentive fees equivalent to and greater than the amount requested here based on similar commitments of time by and other demands on the class representative").

A. The Settlement is Not a Coupon Settlement Under 28 U.S.C. § 1712

The Court should first determine whether § 1712 of the CAFA applies, as this decision will dictate the level of scrutiny afforded to the fee request. Class Counsel submits the Settlement does not qualify as a coupon settlement under CAFA. A review of the relevant factors the Seventh Circuit and other Courts have employed in making such a determination demonstrate the non-application of § 1712. The Court stated in its Preliminary Approval Order,

> [I]n assessing whether a settlement should be considered a coupon settlement under CAFA, the court must consider whether: "[1] the coupons have value only if a class member is willing to do business again with the defendant who has injured her in some way[; 2] the coupons have modest value compared to the new purchase for which they must be used[; 3] the coupons expire soon[; 4] are not transferable[; 5] and/or cannot be aggregated."

Preliminary Approval Order, Doc. 70, at 12 (quoting *In re Sw. Airlines Voucher Litig*., 799 F.3d 701, 706 (7th Cir. 2015)). In reviewing the Settlement, the Court found the following:

> Here, the proposed settlement agreement and notices establish that the vouchers will be valid for a period of one year and will be freely transferrable and stackable, which adequately address the third, fourth, and fifth factors. (Dkt. #65-1, ¶ 3.2; Pls.' Br. in Supp. of Prelim. Settlement Approval (Dkt. #65) 26.) Moreover, the settlement agreement provides that all $9 million of allocated funds will go towards the class in the form of a pro-rata voucher; any difference between the $3 million in attorneys' fees requested and the amount awarded will go to the class; and there is no "clear-sailing" provision, where defendants agree not to contest class counsels' request for fees. Together, these provisions in the proposed settlement agreement obviously avoid several, potential indicators of an unfair coupon

> settlement. *In re Sw. Airlines Voucher Litig*., 799 F.3d at 705-706; 712 (7th Cir. 2015); *Redman v. RadioShack Corp*., 768 F.3d 622, 637 (7th Cir. 2014).

Doc. 70, at 13. The Court then reserved ruling on whether the settlement was a coupon settlement under the CAFA because "counsel has not yet represented to the court that the value of the voucher for each class member mitigates the concerns that the coupons have value only if a class member is willing to do business again with the defendant who has injured her in some way[; and] the coupons have modest value compared to the new purchase for which they must be used." Doc. 70, at 13 (quoting *In re Sw. Airlines Voucher Litig*., 799 F.3d at 506)(internal quotations removed). Now having the benefit of additional information following the claims and notice period, Class Counsel can further address the first and second factors. With 144,439 of Class Members making claims, each voucher will be worth $62.31 for use at the following stores: ashleyfurniture.com, nectarsleep.com, dreamcloudsleep.com, and sienasleep.com. Defendants' data reflects that as of July 31, 2026, there were 5,921 in-stock product items available on ashleyfurniture.com that were priced at $60 or below. These items include a range of home goods and furnishings encompassing, among many other things, desks, bookcases, home décor items, rugs, sheets, mattress protectors, and pillows that each Claimant would be likely to purchase within the redemption period. Thus, while the voucher must be used in a single transaction and will not have remaining value afterward, there is significant and real purchasing power associated with the vouchers.

Class Counsel also submits the declaration of Anya Verkhovskaya from Class Experts Group, LLC. Based on her extensive work in settlement administration and familiarity with the application of CAFA, she confirms that the structure of this Settlement does not amount to a coupon settlement as it maximizes the value of the vouchers to the class members. *See* **Exhibit 4**, Declaration of Anya Verkhovskaya.

In sum, an analysis of the factors articulated in the Court's Preliminary Approval Order reflects that 4 of the 5 factors[4] do not meet the criteria of a coupon settlement under the CAFA. Additionally, there are no "clear-sailing" or "kicker" clauses in the Settlement Agreement. Doc. 70, at 13. The Parties followed the precedent in this circuit in crafting a Settlement Agreement that avoided the pitfalls outlined in § 1712 of the CAFA and submit that a review of the entirety of the Settlement does not warrant the designation of a "coupon settlement" under § 1712.

B. Class Counsel's Requested Fee Award and Expenses are Reasonable

If the Court agrees that the Settlement is not a coupon settlement under § 1712, Class Counsel submits the appropriate methodology for addressing attorneys' fees is the percentage of the fund. Considering that Class Counsel's fee request amounts to less than 24% of the Settlement Fund ($12 million), excluding Settlement Administration costs and Case Contribution Awards, it is less than the amount typically awarded in class action cases such as this. *Summerton v. Goldco Direct LLC.*, 2026 U.S. Dist. LEXIS 66083, *7-8 (W.D. Wis. March 26, 2026)("This court has previously approved awards of attorneys' fees amounting to one-third of the settlement fund in other class action matters").

If the Court disagrees and determines that the Settlement is a coupon settlement under § 1712, Class Counsel submits that the request should be reviewed under the lodestar methodology. Class Counsel's lodestar is far greater than the requested fee, and the Settlement is still fair, reasonable, and adequate, even after higher scrutiny is afforded "so as to ensure that the benefits conferred on the class reasonably support the award of attorney's fees". *Cantu-Guerrero v. Lumber Liquidators, Inc. (In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., sales*

[4]Factor #1 (doing business again with the defendant) being the sole factor that skews toward coupon consideration.

Practices & Prods. Liab. Litig.), 27 F.4th 291, 303 (4th Cir. 2022). Ultimately, the Court has already noted that it has,

> ... discretion to use either the lodestar method or percentage method, including in coupon settlements. *See In re SW. Airlines Voucher Litig.,* 799 F.3d 701, 713 (7th Cir. 2015) (lodestar method); *Redman v. RadioShack Corp.* 768 F.3d 622, 634 (7th Cir. 2014) (percentage method).

Doc. 70, at 15. Here, under either finding, and under either analysis, the requested fee is reasonable.

1. The Requested Fee is Reasonable Under the Common-Fund Doctrine

Class Counsel's combined fee and expense request is 25% of the Settlement Fund, and the attorneys' fee request is less than 24% of the Settlement Fund. This calculation excludes settlement administration costs, notice, and claims handling costs (roughly $380,000.00 total), requested service awards ($85,000.00), and all of the prospective relief obtained by the Plaintiffs. As this Court has previously explained, in making a common-fund doctrine fee request determination,

> ... the court still considers the same factors: "... actual fee contracts that were privately negotiated for similar litigation, information from other cases, and data from class-counsel auctions," in addition to "the amount of work involved, the risks of nonpayment, and the quality of representation." *Williams*, 658 F.3d at 635-36 (quoting *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005)) (citing *Synthroid*, 264 F.3d at 721).

Johnson v. Meriter Health Servs. Emple. Ret. Plan, 2015 U.S. Dist. LEXIS 158859, at *13 (W.D. Wis. Jan. 5. 2015). Each of these factors support the reasonableness of Class Counsel's request.

a) Fee Awards in Similar Cases are Higher

Wisconsin federal courts routinely grant fee requests above the requested amount. *See Farnham v. Caribou Coffee Co.*, 2017 U.S. Dist. LEXIS 214929, at *39 (W.D. Wis. Dec. 17, 2017) (approving attorneys' fees of 1/3 of the net settlement fund and noting "30% is an appropriate fee recovery in this case, where the net settlement fund is around $10 million." (internal citations omitted)); *Arandell Corp. v. Xcel Energy Inc.,* 2023 U.S. Dist. LEXIS 38691, *14 (preliminarily approving a fee request of 35% plus litigation expenses and noting that "the same 35% net fee recovery was approved in six prior Wisconsin class settlements."); *Chesemore v. Alliance Holdings, Inc.*, No. 09-cv–413, 2014 WL 4415919, at *7 (W.D. Wis. Sept. 5, 2014) (noting that 35% of a common fund is reasonable and 37% from a lodestar perspective would be reasonable).

Here, Class Counsel's combined fee and expense request is 25% of the Settlement Fund, which is less than similar cases. Thus, it is reasonable.

b) The Market Rate is Higher than the Fee Request

In a common fund settlement, "courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (quoting *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001)). "When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee is the 'market rate.'" *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986); *Hale v. State Farm Mut. Auto.Ins. Co.*, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018); *Martin v. Caterpillar Inc.*, 2010 WL 11614985, at *2 (C.D. Ill. Sept. 10, 2010.) Here, Class Counsel's requested fee is lower than the market rate for similar services.

Indeed, Class Counsel's standard fee contracts range from 33% to 50% contingency, after deducting expenses, which is consistent with the contracts used in this litigation. *See* **Exhibit 1**, Declaration of Daniel B. Snyder; **Exhibit 2**, Declaration of D.G. Pantazis, Jr.; and **Exhibit 3**, Declaration of Christopher Cueto and Lloyd M. Cueto. The typical practice in a consumer case is to negotiate a contingency fee agreement. *Wright v. Nationstar Mortg. LLC*, 2016 U.S. Dist. LEXIS 115729, *52-53 (N.D. Ill. Aug. 5. 2016) ("a percentage-of-recovery method is proper, because when considering the market rate for counsel's services in an ex ante position, the normal practice in consumer class actions is to negotiate[] a fee arrangement based on a percentage of the recovery.")(internal quotations omitted).

The market for Plaintiffs' attorney work in complex class actions is a contingency fee. *See Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010); *Hale*, 2018 WL 6606079, at *7 (noting "it is essentially unheard of for sophisticated lawyers to take on a case of this magnitude and type on any basis other than a contingency fee, expressed as a percentage of the relief obtained.") A one-third contingency fee is generally considered consistent with the market in the Seventh Circuit. *See, e.g., Kujat v. Roundy's Supermarkets Inc.*, 2021 WL 4551198, at *4 (N.D. Ill. Aug. 11, 2021); *Brewer v. Molina Healthcare, Inc.*, 2018 WL 2966956, at *3 (N.D. Ill. June 12, 2018).

Thus, the fee request is consistent with the rate negotiated in this case and in other cases filed by Class Counsel.

c) The Quality of the Representation and the Amount of Work Involved

Class Counsel is highly experienced in class action litigation such as this and invested significant time and effort on the matter. To date, Class Counsel has spent 6,051.79 hours litigating the case through preliminary approval. As described in greater detail in § B(2) *infra*, this work was performed by qualified counsel and their staff, with the support of experts, and was necessary to prosecute this style of case. Ultimately, the work resulted in a robust settlement fund providing over $12 million in value, and causing the practices complained of to cease.

The Court is not required to perform a lodestar cross-check. *See Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011). However, Class Counsel has already provided detailed descriptions of the lodestar, along with the underlying billing and expense records to the

Court. The requested fee actually results in a large discount from the lodestar; thus, a basic crosscheck further supports approval and reflects the large amount of high-quality legal work performed to reach this result.

d) The Risk of Nonpayment and the Stakes of the Case

In undertaking to prosecute this complex case on a completely contingent fee basis, Class Counsel assumed a significant risk of nonpayment and/or underpayment. This risk was assumed at the expense of taking on other potential litigation. Class actions take years to resolve and require immense upfront expense. And there is no guarantee of a successful resolution through class certification, trial, and appeal.

That was certainly the case in this lawsuit, as nationwide consumer cases are increasingly rare, and nationwide personal injury cases are practically non-existent. Moreover, Class Counsel spent close to $140,000.00 of their own money at no risk to their clients, in order to prosecute this case and reach a favorable settlement.

Accordingly, these factors also support the conclusion that the requested fee is reasonable. *See City of Detroit v. Grinnell*, 495 F.2d 448, 470 (2d Cir. 1974) ("No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success.")

2. The Requested Fee is Reasonable Under the Lodestar Methodology

Should the Court deem the Settlement to trigger the coupon provisions of § 1712 of the CAFA, the best way to analyze Class Counsel's fee request is under the lodestar methodology, rather than the common-fund doctrine. This is so because of the manner in which § 1712 is written.

Notably, § 1712(a) prescribes that in assessing a "contingent fee" in a coupon settlement that "the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons ***that are redeemed***." 28 USCS § 1712 (emphasis added). The Seventh Circuit Court of Appeals has diagnosed the difficulty with this provision over a decade ago:

> This is a badly drafted statute. To begin with, read literally the statutory phrase "value to class members of the coupons that are redeemed" would prevent class counsel from being paid in full until the settlement had been fully implemented. For until then one wouldn't know how many coupons had been redeemed. An alternative interpretation of "value ... of the coupons that are redeemed" would be the face value of the coupons received by class members who responded positively to notice of the class action. In this case that would be 83,000 of the millions of class members who received notice, though not all 83,000 will actually use the coupon.

Redman v. Radioshack Corp., 768 F.3d 622, 633-634 (7th Cir. 2014). The Court of Appeals clarified an alternate in approach in *In re Southwest Airlines Voucher Litigation*, 799 F.3d 701 (7th Cir. 2015) ("*Sw. Airlines*"). Specifically, in *Sw. Airlines*, the Seventh Circuit affirmed a lodestar-based fee in an all-coupon settlement providing replacement drink vouchers, reasoning that § 1712 "allowed the district court to award class counsel an attorney fee based on the lodestar method rather than the value of the redeemed coupons." 799 F.3d at 70410. Thus, the alternate lodestar methodology allowed under § 1712(b)(1) is the ideal way to review the attorney's fee request here. Recently, the 4th Circuit Court of Appeals analyzed Seventh Circuit precedent in this regard:

> the *Southwest Airlines* decision assessed whether CAFA permitted the district court to calculate attorney's fees using the lodestar approach in connection with a settlement that provided solely airline drink coupons. *See* 799 F.3d 701, 710 (7th Cir. 2015). After answering that question in the affirmative, the Seventh Circuit only counseled that, in applying the lodestar method, district courts should "bear in mind the potential for abuse posed by coupon settlements and should evaluate critically the claims of success on behalf of a class receiving coupons." *Id.* As in *Redman*, the court did not speak to whether an evaluation of the "success obtained" should take stock of "coupon" redemption rates.

Cantu-Guerrero v. Lumber Liquidators, Inc. (In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., sales Practices & Prods. Liab. Litig.), 27 F.4th 291, 305 (4th Cir. 2022). The Court went on to explain:

> There is accordingly no express requirement — in this circuit or elsewhere — to consider "coupon" redemption rates in assessing the "success obtained" by class counsel as part of a lodestar analysis under CAFA. Rather, a district court applying the lodestar approach must carefully contemplate the makeup of the settlement at hand in deciding whether the calculated lodestar award is reasonable, and that judgment is committed to the court's discretion.

Id.

With this background in mind, Class Counsel submits that its lodestar is $4.254,086.75 million. *See* E **Exhibit 2**, at ¶ 20. As stated in ¶ 25, this was a complex and difficult, nationwide class action that required multiple firms, lawyers, and staff to litigate. In addition to typical discovery processes of a case this large and complex, Class Counsel evaluated claims on behalf of over 4,000 clients, prepared five (5) lengthy expert reports, and included over 40 Named Plaintiffs to properly represent each state consumer class. *See,* **Exhibit 2**. At the time of settlement, Class Counsel was participating in depositions, preparing each Named Plaintiff for their depositions, conducting destructive mattress testing, and scheduling nationwide travel for months at a time.

All of this work was done at the expense of other litigation; in other words, Class Counsel worked on this case instead of working on other cases with no certain outcome. Indeed, Class Counsel risked over one hundred thousand dollars of their own money, with no guarantee of success in a lawsuit that carried extreme risk, even at the class certification stage.

Although the lodestar method yields a "presumptively reasonable fee," *World Outreach Conf. Ctr. v. City of Chicago*, 896 F.3d 779, 783 (7th Cir. 2018), the district court has discretion to "determine whether an adjustment is warranted under the case-specific circumstances." *Nichols v. Illinois Dep't of Transportation*, 4 F.4th 437, 441 (7th Cir. 2021). The Court's analysis should consider whether plaintiffs "achieve[d] a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

Here, the fee request is almost $1.4 million less than the accrued lodestar. Class Counsel does not request a multiplier[5] which is often awarded but instead seeks a fee that is significantly less than their lodestar, in an effort to craft a Settlement that might satisfy the additional scrutiny prescribed by § 1712.

Class Counsel submits their own affidavits, descriptions of their billing records, and expense itemization in support of their lodestar. *See* **Exhibit 1**, Declaration of Daniel B. Snyder; **Exhibit 2**, Declaration of D.G. Pantazis, Jr.; and **Exhibit 3**, Declaration of Christopher Cueto and Lloyd M. Cueto. Specifically, Class Counsel spent 6,051.79 hours of work on the case and attributes hourly rates ranging from $450 to $925 for attorneys and $150 for paralegals. Additionally, the effective, blended hourly rate of the requested fee award equates to $472.74. Per category of timekeeper, the effective hourly rate amounts to $622.06 for partners, $302.63 for associates, and $100.88 for paralegals. In reviewing this request,

> The best evidence of the market rate is the amount the attorney actually bills for similar work, but if that rate can't be determined, then the district court may rely on evidence of rates charged by similarly experienced attorneys in the community and evidence of rates set for the attorney in similar cases.

Montanez v. Simon, 755 F.3d 547, 553.

Here, Class Counsel has confirmed these hourly rates to be consistent with their billing for this type of work and awards in similar cases. *See* **Exhibits 1 -3**. Additionally, the hourly rates are

[5]See *Johnson v. Meriter Health Servs. Emple. Ret. Plan*, 2015 U.S. Dist. LEXIS 158859, *17 ("The amount requested reflects approximately twice the lodestar value (or as previously described as a multiplier of 2), which is well within the bounds of reason. *See, e.g., Williams v. Rohm & Haas Pension Plan,* No. 04-0078-SEB, 2010 U.S. Dist. LEXIS 121648, 2010 WL 4723725 (S.D. Ind. Nov. 12, 2010), *aff'd*, 658 F.3d 629 (7th Cir. 2011) (awarded fees of $43.5 million, representing 5.85 multiplier)").

similar to rates routinely deemed reasonable in this district and circuit. *See Contreras v. Kijakazi,* No. 19-cv-669-jdp, 2023 U.S. Dist. LEXIS 86870*,* at *3 (W.D. Wis. May 17, 2023) *(*approving the hourly rate of $1,196 as reasonable); *Evans v. Berryhill*, No. 12-CV-888-JDP, 2018 U.S. Dist. LEXIS 22976, at *6 (W.D. Wis. Feb. 13, 2018) (awarding fees at implied hourly rate of $1,000); *Pazour v. Saul*, No. 16-cv-020-wmc, 2019 U.S. Dist. LEXIS 175241, at * 1 (W.D. Wis. Oct. 9, 2019) (same); *Heise v. Colvin*, No. 14-cv-739-jdp, 2017 U.S. Dist. LEXIS 83730, at *2 (W.D. Wis. June 1, 2017). (awarding fees at implied hourly rate of $1,100 for attorney time); *Polli v. Berryhill*, No. 17-cv-1102, 2019 U.S. Dist. LEXIS 233198, at *3-4 (N.D. Ill. Feb. 27, 2019) (effective hourly rate of $1,000.00); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney's fees with hourly rates ranging from $400 to $1,500); *Long v. Saul*, No. 3:19-cv-155-jd, 2021 U.S. Dist. LEXIS 117995, 2021 WL 2588110, at *5 (N.D. Ind. June 24, 2021) (awarding a fee equating to $1,711.96 per hour); *Ringle v. Kijakazi*, 2021 WL 3550892, at *1 (N.D. Ind. Aug. 11, 2021) (awarding fee equating to $1,923.00 per hour). The same is true for the rates reasonably and customarily charged for paralegals and administrative staff. *See Bruzek v. Husky Oil Operations Ltd.,* 2023 U.S. Dist. LEXIS 69377, *11 (W.D. Wis. April 19, 2023)(finding hourly rates of "$200 to $315 for paralegals" to be reasonable); *McCabe v. Tire Web, LLC,* 2024 U.S. Dist. LEXIS 232781, *7 (E.D. Wis. Dec. 24, 2024) ("The court finds that $175 an hour is a reasonable rate for the paralegal work"); *Okeke v. Nantomah,* 2025 U.S. Dist. LEXIS 217879, *5 (E.D. Wis. Nov. 5, 2025)("the court finds that $150 an hour is a reasonable rate" for paralegal work).

Class Counsel also submits the affidavit of Robert M. Foote who has practiced law for over four decades in the Seventh Circuit, including in Wisconsin as a graduate of the University of Wisconsin law school. Mr. Foote confirms the work performed and the hourly rates to be reasonable, particularly in light of the relief obtained and CAFA. *See,* **Exhibit 5**, Declaration of Robert M. Foote.

It should also be noted that the mediator who helped resolve this case, James B. Baldinger, was aware of the lodestar during the settlement negotiations involving attorneys' fees. As he previously stated to the Court, the "parties did not agree on any amount of attorneys' fees that may be awarded to Plaintiffs' counsel until after the parties reached agreement on all relief to be provided to the proposed class members" and the "settlement and mediation process in which I participated in this case was conducted fairly, at arms-length, free from coercion or undue influence, and in compliance with all applicable legal and ethical requirements". Doc. 66, ¶ 10-11.

Lastly, the Seventh Circuit has cautioned courts to "evaluate critically the claims of success on behalf of a class receiving coupons" as the final step in reviewing a lodestar-based fee request under § 1712(b)(1). *See Levitt v. Southwest Airlines Co. (In re Southwest Airlines Voucher Litig.),* 799 F.3d 701, 710 (7th Cir. 2015). It is here where the Court should consider the entirety of the litigation process and Settlement achieved, both from a numerical value to the class ($12 million plus administrative costs and case contribution awards) but also the prospective relief which halted the practice complained of (selling mattresses with fiberglass fire retardant materials) and added additional warnings and disclaimers to the marketplace. Upon this full review, there should be no doubt that the Settlement is fair, reasonable, and adequate which is consistent with the Court's own preliminary finding of the same under § 1712(e). *See* Doc. 70, at 14.

Accordingly, Class Counsel submits that under the lodestar methodology, attorneys' fees in the amount of $2,860,926.18 are reasonable for the level of work required to achieve this Settlement, and in accordance with Seventh Circuit precedent and § 1712 of the CAFA.

C. The Service Award to the Class Representatives Should be Approved

The Court appointed each Named Plaintiff in this litigation as a Class Representative. Doc. 70 at 7. Class Counsel requests the Court approve service awards to each, totaling $85,000. Without their willingness to litigate this case, the Settlement would not have been achieved. **Exhibit 2, ¶ 26**. In particular, the Class Representatives allowed their name to be on case documents (most notably the Complaint), participated in the discovery process via retention and production of documents, answered questions both formally and informally, reviewed case materials, discussed case strategy, provided (or scheduled) depositions, and agreed to put the interest of the class above their own personal gains. These efforts were instrumental to the litigation and settlement negotiation process. *Id*.

Service awards compensating named plaintiffs for work done on behalf of the class are routinely awarded. Such awards encourage individual plaintiffs to undertake the responsibility of representative lawsuits. *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that "because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit"); *Synthroid I*, 264 F.3d at 722 ("Incentive awards are justified when necessary to induce individuals to become named representatives."). Indeed, without Plaintiffs serving as Class Representatives, the Class would not have been able to recover anything. *See In re Iowa Ready-Mix Concrete Antitrust Litig*., No. 10-4038, 2011 WL 5547159, at *5 (N.D. Iowa Nov. 9, 2011) ("[E]ach . . . plaintiff has provided invaluable assistance and demonstrated an ongoing commitment to protecting the interests of class members. The requested incentive award for each named plaintiff recognizes this commitment and the benefits secured for other class members, and is thus reasonable under the circumstances of this case.").

Class Counsel proposes Service Awards totaling $85,000.00 (collectively, for all Named Plaintiffs), subject to the Court's Approval. In particular, the longer serving Named Plaintiffs seek awards of $5,000.00 each, and the recently added Named Plaintiffs seek awards of $1,315.79 each. The Service Awards are fair, reasonable, and adequate because of Class Representatives time and effort on behalf of the Class and the substantial recovery achieved for the Class in this case. Doc. 65, p. 5.

The original named plaintiffs, Jamie Todd, on her own behalf and on behalf of her minor child, G.T., Andrew Todd, on his own behalf and on behalf of his minor child, G.T., Allen McClure, Angel McClure, Logan McClure, Jacob McClure, and Killian McClure, were listed on the pleadings since August 30, 2024. Doc. 1. They provided personal records and testimony related to healthcare and also participated in inspections of their homes and mattresses. They reviewed pleadings, participated in case analysis, answered discovery and produced documents, prepared for depositions, and reviewed and approved the settlement agreement. **Exhibit 2,** at ¶ 26. Without them, this case would not have begun, and their willingness to participate in the case development, actively and attentively, for the entirety of the case was extremely valuable.

The additional named plaintiffs who joined more recently were also integral to the case development, strategy, and negotiations. They each agreed to join the case and serve as a state-specific class representative, which helped facilitate settlement negotiations and provide a stronger basis for class certification. Moreover, these Class Representatives lent their name to the litigation on the pleadings, answered written discovery, produced and maintained documents, participated in and/or scheduled depositions, discussed case strategy and approved pleadings, reviewed and approved the settlement, and kept in routine contact with Class Counsel. *Id*. Some of these Class Representatives also participated in destructive mattress testing and facilitated expert testimony.

In sum, while their participation was shorter in time than the original named plaintiffs, it was extremely valuable to the case development and settlement process.

It should be noted that one Class Representative, Malinda Gipson, chose to opt-out and not sign the Settlement Agreement, and is thus no longer an adequate Class Representative[6]. However, another Class Representative, Adam Aldrich, was subsequently added. Doc. 80. He prosecuted his own litigation and was the lead Plaintiff in *Aldrich v. Resident Home, LLC*, No. 5: 25-cv-01791 (C.D. Cal.). Mr. Aldrich lent his name to a class action seeking similar redress to the other Class Representatives and provided value, time and resources to the cause of this litigation. He approved the Complaint and details therein, stayed in constant communication with his counsel, and discussed case strategy. Accordingly, Class Counsel requests that he too receive a case contribution award equaling $1,315.79.

The amount requested for each Class Representative is comparable to or less than other awards approved by federal district courts in Wisconsin and throughout the Seventh Circuit. *See, e.g., Novin v. Johnson Controls, Inc.*, No. 24-cv-46-pp 2026 U.S. Dist. LEXIS 3112, at *10 (E.D. Wis. Jan. 8, 2026) (approving service awards of $7,000 per named plaintiff); *Evrley v. Foresight Energy LLC*, No. 23-cv-3265, 2025 U.S. Dist. LEXIS 190943, at *8 (C.D. Ill. June 3, 2025) (approving $5,000 service award); *Cardenas v. Zignego Co., Inc.*, No. 22-cv-961-pp, 2025 U.S. Dist. LEXIS 82847, at *16 (E.D. Wis. May 1, 2025) (approving $8,885.77 service award); *Bohnert v. RB Royal Indus.*, No. 23-cv-141-pp, 2025 U.S. Dist. LEXIS 34294, at *12 (E.D. Wis. Feb. 26, 2025) (approving $5000 service award); *Weigand v. Grp. 1001 Ins. Holdings, LLC*, No. 1:23-cv-01452-RLY-TAB, 2024 U.S. Dist. LEXIS 250316, at *12 (S.D. Ind. Oct. 3, 2024) (same); *Linman v. Marten Transp., Ltd.*, No.: 3:22-cv- 00204-jdp, 2024 U.S. Dist. LEXIS 225166, at *7 (W.D. Wis.

[6]Accordingly, she is also ineligible for a service award.

Dec. 11, 2024) (same); *see also King v Trek Travel, LLC*, No. 18-cv-345-wmc, 2019 U.S. Dist. LEXIS 215838, at *5, (W.D. Wis. Dec.12, 2019) (finding a service award is reasonable because of plaintiffs' "efforts in bringing this claim and the assistance he provided counsel in bringing this matter to resolution."). Accordingly, the Service Awards requested are justified here.

IV. CONCLUSION

For these reasons, Class Counsel respectfully requests that the Court approve their request for attorneys' fees, expenses, and case contribution awards.

Respectfully submitted,

/s/ D. G. Pantazis, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will serve a Notice of Electronic Filing generated by CM/ECF on all counsel of record.

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