UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

GAYL JACKSON, *et al.*

Plaintiffs

v.

VIKING GROUP, INC., *et al.*

Defendants.

Civil Action No. 8:18-cv-02356-PJM

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

Plaintiffs Gayl Jackson, Michelle Ebner, and Denise Turner (collectively "Plaintiffs"), by and through their respective counsel of record, submit this Memorandum of Law in support of their Motion for Attorneys' Fees, Costs, and Service Awards.

I. INTRODUCTION

After litigating this case since July 31, 2018, on a wholly contingent basis – and after successfully negotiating a settlement that creates substantial benefits for the Settlement Class provisionally certified by this Court – Plaintiffs now seek an Order that provides for Defendants Viking Group, Inc., The Viking Corporation, and Supply Network, Inc., d/b/a Viking Supplynet (collectively, "Viking" or "Defendants") to pay (a) $2,950,000 to Plaintiffs' counsel for the payment of their attorneys' fees and reimbursement of expenses and (b) $3,000 to Plaintiff Gayl Jackson, $1,000 to Michelle Ebner, and $1,000 to Denise Turner as service awards. (ECF No. 28-2, at 34-35.)

The parties negotiated at arms' length and under the supervision of an experienced mediator and reached agreement regarding these provisions only after they had agreed upon all other material terms of the Settlement Agreement ("SA"), including the relief to the Settlement

Class. Significantly, the amount paid for fees, expenses, and Plaintiff service awards – if approved – will not reduce or impact in any way the settlement consideration made available to the Class pursuant to the SA.

Consistent with the terms of the SA, Plaintiffs' ability to request these amounts of attorneys' fees, expenses and service awards was contained in the notice that was provided to Settlement Class Members pursuant to the notice program, links to which are included on the settlement website.[1] Thus the Settlement Class has been apprised not only of the nature of the requests, but the total amount being sought.

As discussed below, given the amount of work performed by Class Counsel, the outstanding results achieved and other applicable factors, the fee and expense requests are reasonable and should be approved. The service awards requested by Plaintiffs are also well within the range of those awards approved by this Court and are warranted here in recognition of the substantial time and effort Plaintiffs have already committed to this case and will continue to commit through the claims process, which was indispensable to its successful resolution. Plaintiffs respectfully request that the Court enter the proposed Order submitted herewith granting each of these requests.

II. FACTUAL BACKGROUND

A. History of the Litigation

This Lawsuit was first commenced on July 31, 2018. It was filed after an extensive pre-suit investigation by Plaintiffs' counsel that began in approximately August of 2017. This investigation included, *inter alia*, speaking with members of the potential class, reviewing

[1] *See* https://www.vk457sprinklersettlement.com/Content/Documents/Notice.pdf/ (last visited May 22, 2020).

documents provided by class members, reviewing the design of Viking's VK457 sprinklers in conjunction with consulting experts, and investigating potential legal claims applicable to the class.

Prior to filing suit, Plaintiffs sent pre-suit notice to Defendants regarding Defendants' alleged violations of the California Consumers Legal Remedies Act, Cal. Civ. Code § 1782. On August 31, 2018, Defendants sent a substantive response to the notice detailing their anticipated defenses in the Lawsuit. Shortly thereafter, the parties began to informally exchange information and discussed the possibility of mediation. In February of 2019, Plaintiffs requested, and Defendants produced, discovery pursuant to Fed. R. Evid. 408 in anticipation of mediation.

On March 20, 2019, the parties mediated the Lawsuit with the Honorable Diane Welsh (Ret.) at JAMS in Philadelphia, Pennsylvania. Prior to the mediation, both parties submitted confidential mediation statements that addressed the strengths and weaknesses of Plaintiffs' claims and the defenses thereto. With the assistance of Judge Welsh, the parties negotiated the material terms of the structure of relief to the proposed Settlement Class set forth in a Memorandum of Understanding ("MOU") and, over the course of the next several months, negotiated the Settlement Agreement.

Viking's production of documents, materials, and information was significant. Class Counsel reviewed 80,000 pages of documents related to the design and manufacturing of the Subject Sprinklers, warranty and product liability claims made to Viking for non-fire activations, Viking's internal communications regarding the activation of the Subject Sprinklers without the presence of a fire, and Viking's internal analysis of claims made to Viking. In addition, Plaintiffs interviewed scores of class members, Homeowners' Associations, and contractors to understand the damages. Plaintiffs also interviewed an employee of Viking concerning the Subject Sprinklers

and the 80,000 documents produced by Viking. In addition to the topics related to the Subject Sprinklers identified above, the interview also confirmed the VK494 Sprinkler to be a suitable replacement sprinkler.

B. Terms of the Settlement Agreement

The proposed Settlement Class has been provisionally certified to include:

> All Persons that currently or at any time previously have owned a residential or commercial structure in the United States while it contains or contained Subject Sprinklers or while the structure sustained water damage from a non-fire activation of a Subject Sprinkler, including their spouses, joint owners, heirs, executors, administrators, mortgagees, residents, tenants, creditors, lenders, predecessors, successors, trusts and trustees, and assigns ("Occupant Persons"); as well as all Persons who have standing and are entitled to assert a claim on behalf of any such Occupant Persons, such as, but not limited to, a builder, contractor, installer, distributor, seller, subrogated insurance carrier, or other Person who has claims for contribution, indemnity or otherwise against Viking based on claims for a non-fire activation of a Subject Sprinkler with respect to such residential or commercial structures. The Settlement Class includes all Persons who subsequently purchase or otherwise obtain an interest in a property covered by this Settlement without the need of a formal assignment by contract or court order.[2]

As described further below, the proposed Settlement would provide substantial benefits and value to the Settlement Class Members if approved.

Plaintiffs initially brought this Lawsuit on behalf of all persons in the United States who purchased VK457 fire sprinklers or purchased structures with Viking VK457 fire sprinklers installed in them. (ECF No. 1, ¶ 42.) Between the pre-mediation and post-mediation discovery efforts, Viking produced approximately 80,000 pages of documents in response to Plaintiffs' discovery requests. These documents related to, among other topics, the design and manufacture

[2] Excluded from the Settlement Class are: (i) Viking, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Viking has a controlling interest; (ii) the judge presiding over the Lawsuit; and (iii) local, municipal, state, and federal governmental entities.

of the VK457 fire sprinklers, including production dates for fire sprinklers that activated without the presence of a fire. After a comprehensive review of these materials, Plaintiffs and Class Counsel have concluded that the VK457 sprinklers sold by Viking between January 1, 2013 and March 31, 2015 were manufactured in production lots in the upper range of the allowable load on the solder link, thus making them susceptible to activation without the presence of a fire. Thus, Plaintiffs and Class Counsel concluded that the claims in the Lawsuit and the Settlement were appropriately confined to the sprinklers sold within the proposed January 1, 2013 to March 31, 2015 date range (the Subject Sprinklers) that were made differently than other VK457 sprinklers produced before and after this range. After completing their review of the documents and information produced, Plaintiffs' filed a First Amended Complaint limiting the class to the Subject Sprinklers. (ECF No. 24.)

1. The Replacement Program

Significantly, Settlement Class Members are eligible to submit a claim for the no-cost replacement and installation of all Subject Sprinklers in their residential or commercial structure with a different model sprinkler, referred to as the Viking VK494 (the "Replacement Sprinklers").[3] Settlement Class Members will be given ample opportunity to request a replacement -- the Replacement Claim Period extends for eighteen months after the Effective Date. The Replacement Sprinklers will be installed by contractors selected and retained by Defendants at no cost to the Settlement Class Member. The Replacement Sprinklers also will be accompanied by Viking's standard warranty.

[3] The Settlement provides in the alternative that replacements sprinklers of equal or greater quality to the VK494 may be used, and also confirms that the Subject Sprinklers (which no longer are being manufactured) will not be used in the replacement program.

Settlement Class Members who had already paid to replace Subject Sprinklers prior to the Notice Date (April 6, 2020) will be eligible to submit a claim for reimbursement of out-of-pocket costs associated with the replacements, up to a maximum amount of $35.00 per Subject Sprinkler replaced, inclusive of materials and labor.

To participate in the Replacement Program, Settlement Class Members simply will need to submit a straightforward Claim Form. Among other information, the Claim Form will require Settlement Class Members seeking reimbursement to submit documentation and other information supporting their Claim.

2. Claims for Future Activations

In addition to having all of the Subject Sprinklers replaced thus mitigating against the potential for a future activation, the Settlement provides that Settlement Class Members who do happen to incur property damage caused by the activation of a Subject Sprinkler without the presence of a fire that occurs on or after June 6, 2020 may submit a Claim for payment of 70% of their Reasonably Proven Recoverable Damages. The Activation Claim Period will extend for two years after the Effective Date, and Settlement Class Members will be given 180 days from the date of the qualifying activation to submit a Claim.

The Activation Claim remedy will reimburse Settlement Class Members for a wide range of reasonably proved out-of-pocket losses consisting of: (a) proven expenses paid to remediate water damage as a direct result of the non-fire activation, (b) proven expenses paid to repair or replace property damaged as a direct result of the non-fire activation, (c) the material and labor costs reasonably necessary to bring the structure and its contents back to the same finish and quality as existed before the non-fire activation, and (d) reasonable costs of alternative lodging and meals for those displaced by the non-fire activation for a reasonable duration not to exceed the amount

of time reasonably necessary to return the home to a condition for reasonable occupancy (together, "Reasonably Proven Recoverable Damages").[4] Settlement Class Members will also be instructed in the Notice to retain and submit the activated sprinkler and components with their Activation Claim, including for purposes of establishing the installation and qualifying activation of a Subject Sprinkler.[5]

III. ARGUMENT

A. The Fee Request Should Be Evaluated Under the Lodestar Method

Rule 23(h) of the Federal Rules of Civil Procedure provides that in a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Courts employ two methods to calculate attorneys' fees: the lodestar method or the percentage of the recovery method. *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 481 (D. Md. 2014). The percentage of the recovery method is used when a common fund is created. *Id.* The lodestar method is used when a common fund is not created, or as a cross-check to ensure an award form a common fund is reasonable. *Id.* Plaintiffs respectfully submit that the Court should utilize the lodestar method, as no common fund has been created.

[4] Reasonably Proven Recoverable Damage does not include, *inter alia*: (a) any claimed economic losses arising from the loss of value of the property, (b) lost wages, or (c) any amounts paid by a Person other than the Claimant or that were paid by the Claimant and then reimbursed or refunded by another Person, *i.e.*, there shall be no double recovery.

[5] Proof of eligibility for an Activation Claim shall be made by a Claimant through the Claimant's submission of a Claim Form to the Settlement Administrator that shall include the failed Subject Sprinkler or a reason why it is not available for submission, and any valid reason (*e.g.*, the reason the failed Subject Sprinkler is not available for submission) shall be acceptable to the Settlement Administrator.

1. The Lodestar Method

Under the lodestar method, a district court identifies a lodestar figure by multiplying the number of hours expended by class counsel by a reasonable hourly rate. *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 688 (D. Md. 2013). The court can 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." *Id.* (citations omitted). "Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee." *Id.* (citing *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 438 (D. Md. 1998) (Messitte, J.) (holding "$2.55 million fee requested amounted to a lodestar enhancement of 3.6—well within the average range of 3-4.5 for comparable cases").

2. Class Counsel's Lodestar Figure is Reasonable

The accompanying declarations of Joseph G. Sauder and James P. Ulwick recount the time and expenses incurred by the law firms of Kramon & Graham and Sauder Schelkopf. Class Counsel billed their time at their current billing rates charged to their clients, and all of the billable time was necessary to secure the results obtained. From inception until May 1, 2020, the combined lodestar for Class Counsel is $812,147.50. They have also collectively incurred $15,497.54 in unreimbursed expenses. All of these fees and expenses, plus the fees and expenses incurred for what is projected to be hundreds if not thousands of hours of additional work on behalf of the Settlement Class from May 1, 2020 forward, will be paid from the $2,950,000.00 amount requested.

The Settlement and the requested fee were also mediated by an experienced mediator, the Honorable Diane Welsh (Ret.) of JAMS. (ECF No. 28-1, 8). "Over the past 23 years, as a JAMS neutral and a United States Magistrate Judge, she has successfully resolved over 5000 matters, covering virtually every type of complex dispute. Judge Welsh has extraordinary skill in resolving

high-stakes multi-party commercial disputes, employment matters, catastrophic personal injury cases, class actions, mass torts and multi-district litigations (MDL's). She was recognized as a 2016-2018 'ADR Champion' by the National Law Journal."[6] As such, there is no question that the settlement negotiations were conducted at arms'-length. *See, e.g.*, *In re Am. Capital Shareholder Derivative Litig.*, No. 11-2424-PJM, 2013 WL 3322294, at *4 (D. Md. June 28, 2013) (noting negotiations between counsel were "appropriately adverse and at arms' length"); *G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) ("[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

The fee negotiations took into account Class Counsel's hourly rates, the work done at the time of mediation, and the estimated amount of work required through final approval of the settlement and the end of the claims period. An hourly rate is reasonable if it is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Duprey v. Scotts Co. LLC*, 30 F. Supp. 3d 404, 412 (D. Md. 2014). Class Counsel's hourly rates of between $350 to $725 are reasonable for experienced class action firms with national practices. *See, e.g.*, *Klugmann v. American Capital Ltd.*, No. 8:09-cv-00005-PJM, ECF Nos. 83-7, 87 (approving hourly rates between $300 and $700 in 2009); *Boyd*, 299 F.R.D. at 467 (finding rates between $325 and $700 per hour reasonable for firms with national class action practices).

[6] *See* https://www.jamsadr.com/welsh/ (last visited May 22, 2020).

B. The Relevant Factors Confirm the Reasonableness of the Fee Request

District courts commonly use seven factors when evaluating a fee request[7]: (1) the results obtained for the class; (2) the quality, skill, and efficiency of the attorneys involved; (3) the risk of nonpayment; (4) objections by members of the class to the settlement terms and/or fees requested by counsel; (5) awards in similar cases; (6) the complexity and duration of the case; and (7) public policy. *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, at 481 (D. Md. 2014). Importantly, "fee award reasonableness factors 'need not be applied in a formulaic way' because each case is different, 'and in certain cases, one factor may outweigh the rest.'" *In re AT & T Corp.*, 455 F.3d 160, 166 (3d Cir.2006) (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301 (3rd Cir.2005)).

1. The Results Obtained for the Class

In the Fourth Circuit, "the most critical factor in calculating a reasonable fee award is the degree of success obtained." *McKnight v. Circuit City Stores, Inc.*, 14 Fed. App'x 147, 149 (4th Cir. 2001). Here, the proposed settlement provides tremendous benefits to the Settlement Class. Settlement Class Members are eligible for a no-cost replacement of their Subject Sprinklers with Viking VK494 sprinklers. For Settlement Class Members who already paid to replace their Subject Sprinklers prior to the Notice Date, they can submit a claim for reimbursement of their out-of-pocket expenses of up to $35.00 per Subject Sprinkler. For any Settlement Class Members that incur property damage caused by the activation of a Subject Sprinkler without the presence of a fire that occurs after the Objection and Opt-Out Deadline, but during the Activation Claim Period, they can submit claims to receive 70% of their Reasonably Proven Recoverable Damages.

[7] These factors are typically analyzed in the context of a percentage-of-the-fund fee request. These factors, however, are similarly able to guide the Court in assessing the reasonableness of Class Counsel's fee request pursuant to the lodestar method.

As submitted with Plaintiffs' Response to the Court's Memorandum Order (ECF No. 30), a fair estimate of the value of the Replacement Program alone is between $30.45 million and $50.75 million. Defendants have estimated that the cost to replace the Subject Sprinklers is approximately $21 per Subject Sprinkler ($16 in labor for the installer, and $5 for Viking's costs in materials). Multiplied by 35 sprinklers (a rough average of sprinklers utilized per residential structure) yields a $735 benefit to the Settlement Class Member. For Settlement Class Members who previously paid to replace their Subject Sprinklers, they can submit a claim for reimbursement at a rate of up to $35.00 per Subject Sprinkler, inclusive of labor and materials. Multiplied by an average of 35 sprinklers would yield a recovery of $1,225 to the Settlement Class Member.

There is no question that the settlement represents a significant recovery for the Settlement Class. As such, this factor supports approval of Class Counsel's fee request.

2. The Quality, Skill, and Efficiency of the Attorneys

Class Counsel have significant experience in the area of consumer class actions and products liability law. *See* Declaration of James P. Ulwick, attached hereto as **Exhibit A**; Declaration of Joseph G. Sauder, attached hereto as **Exhibit B.** Through this experience, Class Counsel were able to negotiate the settlement in this litigation that confers the benefits described above. *Decohen*, 299 F.R.D. at 481 (observing "class counsel have significant experience in consumer class action litigation and are nationally recognized for excellence"). Class Counsel respectfully submit that their submissions to the Court were of high quality and that they vigorously pursued recovery for the class. As such, this factor supports approval of Class Counsel's fee request.

3. The Risk of Nonpayment

Class Counsel brought this litigation on a purely contingent basis and the risk of non-recovery was sufficiently substantial to justify the instant fee request. *Fangman v. Genuine Title,*

LLC, No. 14-0081, 2017 WL 2591525, at *5 (D. Md. June 15, 2017) (observing that, despite risks and "looming uncertainty" of success, class counsel were able to achieve a substantial settlement which supported approval of requested fee.); *Decohen*, 299 F.R.D. at 482 (approving fee request in part because of contingent fee nature of case and because "defendants vigorously contested their liability"). The Court should note that Viking maintains that the Subject Sprinklers are not defective and, but for the settlement, the parties would be engaged in contested motion practice and protracted proceedings -- including dispositive motions that would have threatened any relief to the class and recovery of fees and costs -- through to trial. Thus, this factor also supports Class Counsel's requested fee.

4. Objections by Members of the Class

Settlement Class Members have until June 5, 2020 to opt-out or object to the settlement. While this fee motion is being filed before the expiration of these periods, no objections and only seven opt-outs have been received as of the filing of this Motion.[8] The dearth of objections supports approval of the requested fee. *Decohen*, 299 F.R.D. at 481 (finding that "no one has objected to the settlement or opted out of the class" supported fee request); *Fangman*, 2017 WL 2591525, at *5 (same) (citing *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 681 (D. Md. 2013) ("The lack of objections tends to show that at least from the class members' perspective, the requested fee is reasonable for the services provided and the benefits achieved by class counsel.").

[8] Plaintiffs reserve the right to address any objection(s) that may be filed in their motion seeking final approval of the settlement, and will also be prepared to address any questions or concerns the Court may have about any such objection at the fairness hearing.

5. Awards in Similar Cases

A review of similar cases demonstrates that the fee request here is reasonable and appropriate. Class Counsel's current lodestar is $812,147.50, which will increase as a result of additional work in May, June and July. The requested fee currently reflects a multiplier of 3.6. This is within the range of awards in similar cases within the Fourth Circuit. *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 439, n.6 (D. Md. 1998) (Messitte, J.) (citing cases approving a 3.6 multiplier and observing average range of 3-4.5 multipliers for comparable cases); *Decohen*, 299 F.R.D. at 483 (approving 3.9 multiplier); *Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 470 (S.D.W. Va. 2010) (approving between a 2.8 and 3.4 multiplier, reflecting 20% of a $27 million fund); *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 262 (E.D. Va. 2009) (citing study reflecting that the average lodestar risk multiplier was 4.35); *George v. Duke Energy Ret. Cash Balance Plan*, No. 8:06-CV-00373-JMC, 2011 WL 13218031, at *9 (D.S.C. May 16, 2011) (collecting cases of lodestar multipliers between 4 and 8); *Nieman v. Duke Energy Corp.*, No. 3:12-cv-456-MOC-DSC, 2015 U.S. Dist. LEXIS 148260, at *4 (W.D.N.C. Nov. 2, 2015) ("A multiplie[r] of 4.5 would, in the circumstances of this case, be inappropriately too low."); *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 WL 6305785, at *6 (M.D.N.C. Dec. 3, 2018) (approving 4.39 multiplier).

In addition, the claims period for the Replacement Program will run for eighteen months following the Effective Date, and Activation Claims can be submitted for two years following the Effective Date. (ECF No. 28-1, 4-6.) Class Counsel anticipate spending significant time after final approval overseeing the to the multi-year claims process, which will further reduce the lodestar multiplier.

6. The Complexity and Duration of the Case

This complex class action litigation has been contentious and has required extensive work by Class Counsel for approximately two years, including pre-complaint factual investigation, the exchange of written discovery, the review of approximately 80,000 pages of documents, a confirmatory discovery interview of a Viking employee, and mediation before the Honorable Diane Welsh (Ret.) of JAMS to result in a successful resolution. Several courts have also recognized that consumer protection class actions present significant risks, including risks related to choice of law and class certification. *See, e.g.*, *Thomas v. FTS USA, LLC*, No. 3:13CV825 (REP), 2017 WL 1148283, at *2 (E.D. Va. Jan. 9, 2017), *report and recommendation adopted*, No. 3:13CV825, 2017 WL 1147460 (E.D. Va. Mar. 27, 2017) ("Class counsel play a vital role in protecting the rights of class members. . . . Class counsel help protect consumers by enforcing the rights created by the FCRA and other consumer protection statutes."); *Fangman*, 2017 WL 2591525, at *6 ("Settlement Counsel engaged in extensive discovery, including serving Interrogatories and Requests for Production . . . [and] further noted the deposition of Net Equity's President, although that deposition did not ultimately occur as the parties had begun settlement discussions by that time. The length and duration of this case weigh in favor of granting Settlement Counsels' requested award."); *Decohen*, 299 F.R.D. at 482 (finding "although the litigation did not involve extensive discovery or motions practice, the uncertainty and difficulty of the issues, length of litigation, and intensity of settlement negotiations favor the requested award").

The complexity and duration of this litigation weighs in favor of approving Class Counsel's fee request.

7. Public Policy

Finally, public policy favors the requested award. Courts are to balance "the policy goals of encouraging counsel to pursue meritorious . . . consumer litigation . . . while also protecting against excessive fees." *Decohen*, 299 F.R.D. at 482 (quoting *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 476 (W.D. Va. 2011). As this court has recognized, "[t]he most frequent complaint surrounding class action fees is that they are artificially high, with the result (among others) that plaintiffs' lawyers receive too much of the funds set aside to compensate victims." *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 466 (D. Md. 2014) (internal quotation marks and citation omitted). In order to properly balance the public policy encouraging meritorious consumer litigation while protecting against overcompensation, courts ensure that "the requested fee-award is in-line with those awarded in consumer class actions involving a similar degree of complexity and risk to counsel." *Decohen*, 299 F.R.D. at 482 (citation omitted).

Here, as established above, the requested fee is similar to other class action cases approved in the Fourth Circuit. Moreover, the substantial benefits offered through the settlement establish that this litigation was meritorious from the onset and achieved its goal of protecting purchasers of allegedly defective Subject Sprinklers. Most important, the concern articulated by this Court in *Boyd* - that the plaintiffs' lawyers will receive too much of the funds set aside for the victims - does not apply here. Because Viking is separately paying the attorneys' fees, the fees have not diminished the relief to the Settlement Class and the benefits available under the settlement in any respects. In short, public policy supports the requested fee.

C. The Common Fund Approach Also Supports the Requested Fee

Although there is no common fund being created by the settlement, the approximate value of the settlement also supports the requested fee. A fair estimate of the value of the Replacement

Program is between $30.45 million and $50.75 million.[9] Attorneys' fees awarded by a percentage of the recovery method are generally between 25% and 30% of the common fund. *Singleton*, 976 F. Supp. 2d at 684-85; *Decohen*, 299 F.R.D. at 485. Using the lower end of that range against the value of the replacement program alone yields a proposed fee of $7.6 million to $12.68 million - far in greater than the amounts being sought by this Motion. Plaintiffs' requested $2.95 million fee and expenses is clearly reasonable, since it is between 5.8%% and 9.68% of the value of the no-cost replacement program alone, which is well below the typical awards in common fund cases. Indeed, this Court has noted that twenty-five percent (25%) of the overall recovery is frequently deemed a reasonable attorneys' fee in common fund cases. *Polascek v. Dedicated Consumer Counseling, Inc.*, No. 04-CV-00631 PJM, 2006 WL 8457130, *2 (D. Md. Sept. 18, 2006).

Factoring in the significant value Settlement Class Members will receive through the Activation Claims in addition to the Replacement Program further reduces counsel's fee request to between 5% and 9% of the value of the class recovery. And, of course, common fund fees are paid from the common fund, reducing the recovery of the class members. Here, the Defendants are paying the entire fee, meaning that there will be no reduction to the benefits the class will receive. As such, the common fund method also supports the reasonableness of Class Counsel's requested fee.

[9] These values are arrived by multiplying the approximately 1.45 million Subject Sprinklers eligible for replacement by the $21.00 per-sprinkler replacement cost (1.45 million x $21.00 = $30,450,000). The program provides value to the class as high as $50.75 million if the $35.00 maximum reimbursement were provided for every one of the Subject Sprinklers (1.45 million x $35.00 = $50,750,000). Because the ratio of Settlement Class Members who still have their sprinklers (and thus are eligible for the $21.00 per-sprinkler benefit) and those who paid to replace their sprinklers already (and thus are eligible for the $35.00 per-sprinkler benefit) is not yet known, the total value to the class falls between the $30.45 million to $50.75 million range.

D. Class Counsel's Expenses Should Be Approved

"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*, 2013 WL 5506027, at *17). These costs include reasonable out-of-pocket expenses that are normally charged to fee-paying clients in connection with their legal services. *Id.*

To date, Class Counsel has incurred a total of $15,497.54 in properly documented expenses for the common benefit of the Settlement Class Members. The requested expenses will be paid from the total $2,950,000 fee and expense request. Class Counsel put forward these necessary out-of-pocket expenses without assurance they would ever be repaid. The requested amount is therefore reasonable and should be approved. *Boyd*, 299 F.R.D. at 468 ("Examples of costs that have been charged include necessary travel, depositions and transcripts, computer research, postage, court costs, and photocopying.") (citation omitted).

E. The Requested Service Awards Should Be Approved

The service provided by the Plaintiffs in this action should not go without financial recognition. While service as a representative plaintiff is not a profit-making position, the law recognizes that it is appropriate to make a modest payment in recognition of the services that such plaintiffs perform in successful class litigation. *Boyd*, 299 F.R.D. at 468-69 ("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.") (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

Here, the settlement provides for service awards in the amount of $3,000 to Plaintiff Gayl Jackson, $1,000 to Plaintiff Michelle Ebner, and $1,000 to Plaintiff Denise Turner. The Plaintiffs were the principal catalysts to achieving this result for the Class. They participated in numerous conferences and meetings with their attorneys, searched for and produced documents to their

attorneys that were relevant to their claims in the litigation, and stayed abreast of significant developments in the case. And like Plaintiffs' fee and expense request, these service awards will be paid separate from the consideration in the settlement agreement and will not reduce the recovery to any Settlement Class Member. *Boyd*, 299 F.R.D. at 469 (approving incentive awards where "each Named Plaintiff spent a considerable amount of time over the past two years contributing to the litigation and benefiting the class by reviewing the relevant documents; staying apprised of developments in the case and making themselves available to class counsel; providing class counsel extensive information and materials regarding their Plan investments; responding to Defendants' document requests; and reviewing and ultimately approving the terms of the settlement"); *Decohen*, 299 F.R.D. at 483 (approving incentive award where plaintiff "brought the case to the attention of counsel and was actively involved in all stages of the case").

Moreover, the requested service awards are well within the range of service awards in the Fourth Circuit. *Boyd*, 299 F.R.D. at 469 (approving $5,000 incentive awards); *Decohen*, 299 F.R.D. at 483 (approving $10,000 incentive award); *Singleton*, 976 F. Supp. 2d at 691 (approving $2,500 incentive awards); *In re Tyson Foods, Inc.*, No. 08-1982, 2010 WL 1924012, at *4 (D. Md. May 11, 2010) (approving $2,500 in incentive awards). As such, Plaintiffs respectfully request that the Court approve their modest service awards.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court award Plaintiff's counsel the payment of $2,950,000.00 in attorneys' fees and expenses, and approve the payment of $3,000 to Plaintiff Gayl Jackson, $1,000 to Plaintiff Michelle Ebner, and $1,000 to Plaintiff Denise Turner as service awards. A proposed order granting this requested relief is submitted herewith.

Dated: May 22, 2020

/s/ James P. Ulwick

James P. Ulwick (Fed. Bar. No. 00536)
Kramon & Graham, P.A.
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030 (telephone)
(410) 539-1269 (facsimile)
julwick@kg-law.com

Joseph G. Sauder (*pro hac vice*)
Matthew D. Schelkopf
Joseph B. Kenney
SAUDER SCHELKOPF LLC
1109 Lancaster Avenue
Berwyn, Pennsylvania 19312
(888) 711-9975 (telephone)
jgs@sstriallawyers.com
mds@sstriallawyers.com
jbk@sstriallawyers.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 2020, I caused the foregoing to be filed using the Court's CM/ECF system, and thereby electronically served it upon all registered ECF users in this case.

/s/ James P. Ulwick
James P. Ulwick