

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TAQUERIA EL PRIMO LLC, VICTOR
MANUEL DELGADO JIMENEZ, MITCHELLE
CHAVEZ SOLIS, EL CHINELO PRODUCE,
INC., VIRGINIA SANCHEZ-GOMEZ, and
BENJAMIN TARNOWSKI, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

FARMERS GROUP, INC., TRUCK
INSURANCE EXCHANGE, FARMERS
INSURANCE COMPANY, INC., FARMERS
INSURANCE EXCHANGE, ILLINOIS
FARMERS INSURANCE COMPANY, and
MID-CENTURY INSURANCE COMPANY,

Defendants.

Civil No. 19-3071 (JRT/ECW)

**ORDER GRANTING PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, LITIGATION
EXPENSES, AND SERVICE AWARDS**

The Court, having held a duly noticed hearing on September 2, 2025, and reviewed Class Plaintiffs' ("Plaintiffs") Motion for Payment of Attorneys' Fees, Litigation Expenses, and Service Awards (the "Motion") and the accompanying Memorandum of Law (the "Memorandum") and supporting documents, hereby finds that the payment of (a) attorneys' fees, (b) incurred and ongoing litigation expenses, and (c) service awards is appropriate under Rules 23(h) and 54(d)(2).

Attorneys' Fees

1. The Motion seeks an award of attorneys' fees in the amount of \$643,500.00, which represents 33% of the Settlement Fund the comprises the settlement payments paid into escrow by Defendants. The Court **GRANTS** this request because the amount is fair and reasonable under the percentage-of-the-fund method. This award is well within the range allowed by courts in this District.

2. The Court will award fees to counsel for the Plaintiffs using the percentage-of-the-fund approach. "A routine calculation of fees involves the common-fund doctrine, which is based on a percentage of the common fund recovered." *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)); *see also In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[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."). "In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common fund case is not only approved, but also 'well established.'" *In re Xcel*, 364 F. Supp. 2d at 991 (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *see also Khoday v. Symantec Corp.*, No. 11-180, 2016 WL 1637039, at *8-9 (D. Minn. April 5, 2016).

3. When determining whether a percentage of the common fund is reasonable, courts in this District "may consider several factors including the benefit

conferred on the settlement class; the risks to which plaintiffs' counsel were exposed; the novelty and difficulty of the issues; the time, labor and skill required; the reaction of the class; and the comparison between the requested percentage and percentages awarded in similar cases." *Cleveland v. Whirlpool Corp.*, No. 20-CV-1906, 2022 WL 2256353, at *9 (D. Minn. June 23, 2022); *see also*, *Griffin v. Jim Jamison*, 188 F.3d 996, 997 (8th Cir. 1999) ("[it is not] necessary for district courts to examine exhaustively and explicitly, in every case, all of the factors that are relevant to the amount of a fee award."); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010) ("not all of the individual factors will apply in every case, affording the Court wide discretion in the weight to assign each factor.") The Court finds that these factors indicate that Plaintiffs' fee requested is reasonable.

- a. Benefits to the Class. On March 6, 2025, Plaintiffs and Defendants entered a Settlement Agreement that provided for payment of \$1,950,000.00 and certain disclosures to the Minnesota Department of Commerce. The Court granted preliminary approval to this Settlement on March 31, 2025, preliminarily determining the Settlement "to be fair, reasonable, adequate, and in the best interests of the Settlement Class." (See ECF No. 783 at 2.) Moreover, it is the opinion of Class Counsel that the monetary benefit, combined with the agreed upon disclosures to the Minnesota Department of Commerce, provides the Settlement Class with significant value in the face of the risks to the Settlement

Class from continued litigation. Finally, these disclosures to the Minnesota Department of Commerce will provide a concrete benefit to all Minnesota consumers. The benefits received by the Class support Plaintiffs' request for attorneys' fees.

- b. Class Counsel's Exposure to Risk. Class Counsel assumed considerable risk by taking this litigation on a contingent basis, where they invested their effort, time, and resources in a case that included an issue of first impression under Minnesota law, and bringing it to a trial-state without guarantee of recovery. *See, e.g., Khoday*, 2016 WL 1637039, at *9 ("Plaintiffs' Counsel, in taking this case on a contingent fee basis, was exposed to significant risk, fronting the cost of litigation and bringing the case to a trial-ready state without any guarantee of eventually prevailing."). Additionally, "[c]ourts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorneys' fees." *In re Xcel*, 364 F. Supp. 2d at 994. The Defendants vigorously defended the claims and class action litigation is inherently expensive. Class Counsel's exposure to risk supports the requested fee award.
- c. Complexity of the Legal Issues. Class action lawsuits are inherently complex. *See, e.g., Cleveland*, 2022 WL 2256353, at *10 (citing *Marshall v. Green Giant Co.*, 942 F. 2d 539, 549 (8th Cir. 1991) ("It goes without saying that class actions are very complex[.]")). This case is no different. This litigation presents

challenging legal and factual issues, including an issue of first impression under Minnesota law. This factor also supports the fee requested.

- d. Quality of the Representation. Both counsel for the Plaintiffs and the Settling Defendants are sophisticated class action counsel. This factor also supports the requested fee. *See, e.g., Khoday*, 2016 WL 1637039, at *10; *In re Xcel*, 364 F. Supp. 2d at 995-96; *Yarrington*, 697 F. Supp. 2d at 1063.
- e. The Time and Labor Involved. Class Counsel invested thousands of hours litigating this case. The litigation has already lasted nearly six years and has required significant time and labor. This factor supports Plaintiffs' fee request.
- f. The Reaction of the Class. Notice was provided to the Class members via direct and published notice and a settlement web site that identified relevant documents and pleadings. The Court has considered the reaction of the Settlement Class members to this Motion and finds that this factor supports the requested fee.
- g. Comparison with Percentages Awarded in Similar Cases. Courts in this Circuit and District routinely approve attorneys' fees in class actions of at least one-third of the common fund created for the settlement class. *See Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (noting the Eighth Circuit frequently awards attorneys' fees between 25% and 36% of gross settlement funds); *Koenig v. U.S. Bank N.A. (In re U.S. Bancorp Litig.)*, 291 F.3d 1035, 1038 (8th Cir.

2002) (approving award of 36% of settlement fund); *Feldman v. Star Trib. Media Co. LLC*, No. 22-CV-1731, 2024 WL 3026556, at *7 (D. Minn. June 17, 2024) (awarding 32.6% of the settlement fund); *Khoday*, 2016 WL 1637039, at *12 (awarding attorney's fees in the amount of one-third of the settlement fund); *see also In re Xcel*, 364 F. Supp. 2d at 998 (collecting case awarding attorneys' fees of between 25-36% of common fund).

4. Therefore, an award of \$643,500.00 or 33% of the Settlement Fund as attorneys' fees is reasonable and warranted for the reasons set forth in the Memorandum, including the following: the benefit received by the class; Class Counsel's exposure to risk in prosecuting this case; the complexity of the legal issues in the litigation; the quality of work product and quantity of work performed by Class Counsel; the time and labor involved; the reaction of the Settlement Class; and the comparison with percentage awards in similar cases.

5. Although not required, courts may apply a lodestar "cross-check" on the reasonableness of the fee calculated as a percentage of the fund. *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017). A cross-check of the lodestar incurred by Class Counsel indicates that the fee requested constitutes fair and reasonable compensation for the risks assumed, the work done, and the benefits achieved for the members of the Settlement Class. The Court finds that Class Counsel's lodestar as of June 6, 2025, based on historical hourly rates, is reasonable. Plaintiffs' requested award of attorneys' fees in the amount

of \$643,500.00 represents a negative multiplier of approximately 11.16 based on their historical hourly rates through June 6, 2025.

6. Class Counsel are authorized to allocate the attorneys' fees awarded herein among counsel who performed work on behalf of the Plaintiffs in accordance with Class Counsel's assessment of each firm's contribution to the prosecution of this litigation.

Incurred and Ongoing Litigation Expense

7. In addition to risking time and effort, Class Counsel advanced substantial costs and expenses in connection with the prosecution of the litigation for the benefit of the Class with no ultimate guarantee of compensation. "It is well established that counsel who create a common fund like the one at issue are entitled to the reimbursement of litigation costs and expenses, which include such things as expert witness costs, mediation costs, computerized research, court reports, travel expenses, and copy, telephone, and facsimile expenses." *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015).

8. Through June 6, 2025, Plaintiffs have incurred expenses in the total amount of \$670,200.00, which have been reviewed and are now approved by the Court as reasonable and necessarily incurred in this litigation and reimbursable. *See, e.g.*, Fed. R. Civ. P. 23(h); *Khoday*, 2016 WL 1637039, at *12 ("Courts generally allow plaintiffs' counsel in a class action to be reimbursed for costs and expenses out of the settlement fund, so long as those costs and expenses are reasonable and relevant to the litigation."); *see also*

In re Zurn Pex Plumbing Prod. Liab. Litig., No. 08-1958, 2013 WL 716460, at *5 (D. Minn. Feb. 27, 2013) (holding that reasonable costs necessary to the prosecution of class action litigation are reimbursable); *Yarrington*, 697 F. Supp. 2d at 1067 (same). The Court **GRANTS** Plaintiffs' request to be reimbursed for incurred litigation expenses from the Settlement Fund.

9. The Court further **GRANTS** the Plaintiffs' request to establish a set aside fund from the Settlement Fund for ongoing litigation expenses related to class notice and settlement and claims administration in the amount of \$100,000.00. Allowing a portion of a class settlement to be used for ongoing litigation expenses is a well-accepted practice. *See, e.g., In re Pork Antitrust Litig.*, No. CV 18-1776, 2022 WL 18959155, at *1 (D. Minn. Oct. 19, 2022) (granting request to establish a fund for future litigation expenses in the amount of \$2.1 million and collecting cases establishing such future expense funds). At the Court's request, Class Counsel will provide the Court with an accounting of their payment of class notice and settlement administration expenses from this award.

10. As indicated in the Memorandum, the ongoing litigation expense funds will only be used for reasonable ongoing expenses related to class notice and settlement administration. If the ongoing litigation expense funds are not fully used, Class Counsel shall first consult with the Court before returning the unused funds for distribution to qualified Settlement Class members.

11. The litigation expenses incurred by Class Counsel in the prosecution of this case shall be reimbursed from the Settlement Fund. Additionally, the Court authorizes Class Counsel to pay ongoing class notice and settlement and claims administration expenses up to \$100,000.00 from the ongoing litigation expense set aside.

Service Awards

12. The Court also **GRANTS** Plaintiffs' request that the Court confer a service award of \$5,000.00 on each of the following individuals who are Named Plaintiffs and/or Class Representatives in this litigation: Benjamin Tarnowski, Michelle Chavez Solis, Victor Delgado Jimenez, and Virginia Sanchez-Gomez for a total of \$20,000.00. Courts routinely grant service awards for named plaintiffs. *See, e.g., Yarrington*, 697 F. Supp. 2d at 1068 (upholding service awards and recognizing that "unlike unnamed Class Members who will enjoy the benefits of the Settlement without taking on any significant role, the Named Plaintiffs [make] significant efforts on behalf of the Settlement Class and [participate] actively in the litigation"); *see also Zillhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009); *In re Xcel*, 364 F. Supp. 2d at 1000; *White v. Nat'l Football League*, 822 F. Supp. 1389, 1406 (D. Minn. 1993) (collecting cases).

13. Each of these Named Plaintiffs and Class Representatives has remained apprised of the status of the litigation, actively participated in discovery including searching for and producing documents, preparing for depositions, and responding to written discovery, and engaged in other efforts necessary to fulfill their duties. Moreover,

service awards also compensate representative plaintiffs who “participated and willingly took on the responsibility of prosecuting the case and publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from both the public and media.” *In re CenturyLink Sales Pracs. & Sec. Litig.*, No. CV 17-2832, 2020 WL 7133805, at *13 (D. Minn. Dec. 4, 2020). The efforts of these Named Plaintiffs and Class Representatives redounded to the benefit all Settlement Class members. The requested service awards are reasonable when compared to awards issued by courts in this District.

14. Class Counsel for the Plaintiffs are authorized to pay from the Settlement Fund \$5,000.00 to each of these Class Representatives Michelle Chavez Solis, Virginia Sanchez-Gomez, and Benjamin Tarnowski and Named Plaintiff Victor Delgado Jimenez.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

15. Upon consideration of the Motion and accompanying Memorandum, and based upon all matters of record in this action:

- a. Class Counsel are awarded attorneys’ fees of \$643,500.00, which represents 33% of Settlement Fund to be paid from the Settlement Fund.
- b. Class Counsel are awarded \$670,200.00 in incurred litigation expenses to be paid from the Settlement Fund.
- c. Class Counsel awarded up to \$100,000.00 in ongoing litigation expenses to be paid from the Settlement Fund.

d. The following Named Plaintiffs and Class Representatives shall each receive \$5,000.00 as service awards to be paid from the Settlement Fund: Benjamin Tarnowski, Michelle Chavez Solis, Victor Delgado Jimenez, and Virginia Sanchez-Gomez.

DATED: September 4, 2025
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge