UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KAREN POTEAT, *etc.* Plaintiff *v.* VISIONWORKS OF AMERICA, INC. Defendant	Case No. 1:15-cv-02306 Judge James S. Gwin
CHERYL LENART, *etc.* Plaintiff *v.* VISIONWORKS OF AMERICA, INC. Defendant	Case No. 1:16-cv-02505

PLAINTIFFS' MOTION FOR AWARD OF ATTORNEY'S FEES, REIMBURSEMENT OF LITIGATION EXPENSES AND COSTS OF CLAIMS ADMINISTRTION, AND APPROVAL OF SERVICE AWARDS

RELIEF REQUESTED

A. Background

On January 10, 2017, this Court (**a**) issued preliminary approval of a class action settlement between Plaintiffs Karen Poteat and Cheryl Lenart and Defendant Visionworks of America, Inc.; (**b**) certified for settlement purposes an Ohio Class and an Illinois Class of Visionworks customers who participated in a "Buy One, Get One Free" (BOGO) offer within defined class periods; (**c**) appointed Ms. Poteat as the representative of the Ohio Class and Ms. Lenart as the representative of the Illinois Class; (**d**) appointed Plaintiffs' counsel as Settlement Class Counsel; (**e**) approved the parties' form and plan for the dissemination of notice to class members of the settlement and their rights under it, including to make claims, object, or opt-out; (**f**) appointed KCC, LLC, as the Claims Administrator; (**g**) set a Final Approval Hearing for July 31, 2017, at 12:00 pm; and (**h**) directed Class Counsel to submit their request for attorney's fees, cost and expenses, and service awards prior to the closing of the objection period.[1]

B. Unopposed Fee Motion

Plaintiffs now request the following relief:

1. Approval of an attorney's fee of $1,260,095.37.

2. Reimbursement of litigation expenses of $14,638.35;

3. Reimbursement of settlement claims administration costs of $126,359.61; and

4. Service awards of $1,000.00 each to Ms. Poteat and Ms. Lenart.

Visionworks does not oppose this request, as the total amount of fees, expenses, costs, and awards requested does not exceed one-third of the Gross Settlement Amount of $4,209,280.00.[2]

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[1] *See* Doc. 60, Order of Preliminary Approval of Class Action Settlement. (Unless otherwise indicated, docket references are to the *Poteat* action, Case No. 1:15-cv-02306. The *Lenart* action, Case No. 1:16-cv-02505, was originally filed in Illinois and later transferred to this Court as a provision of the proposed global settlement. The Preliminary Approval Order appears on the *Lenart* docket as Doc. 57.)

[2] *See* Doc. 57-1, Settlement Agreement, p. 20.

C. Final Approval Hearing

This Fee Motion is set to be heard at the Final Approval Hearing with a Motion for Final Approval of the settlement (which will be filed shortly after the close of the claims period in a few weeks). The Final Approval Motion will be accompanied by a Proposed Order which will include provisions regarding the relief requested by this Fee Motion. Plaintiffs reserve the right to supplement this Fee Motion prior to or at the Final Approval Hearing.

STATEMENT OF THE CASE

A. Procedural History

This litigation began nearly three years ago in state court. The original complaint was filed on behalf of Mr. Elliott Graiser and sought injunctive relief only on behalf of a proposed class of Ohio consumers who had purchased eyeglasses under a BOGO promotions from Visionworks.[3] Visionworks removed the case to this Court and the parties undertook their disclosure and planning obligations under Rule 26 and attended a Case Management Conference.[4] The parties negotiated and submitted a protective order and exchanged initial discovery requests; however, an impasse in document production resulted in briefing on a motion to compel Visionworks' internal marketing materials and other documents potentially relevant to the case.[5]

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[3] *See Graiser v. Visionworks of America, Inc.*, Cuyahoga County Court of Common Pleas, Case No. CV-14-828880, June 24, 2014 Complaint. The state court proceedings are referred to in this motion as "*Graiser* State Case."

[4] *See Graiser v. Visionworks of America, Inc.*, No. 1:14-cv-01641, Doc. 1, Notice of Removal; Doc. 12, Report of Parties' Planning Meeting; Doc. 15, Case Management Conference Plan/Trial Order. The first proceedings on removal are referred to in this motion as "*Graiser* Prior Removal."

[5] *See Graiser* Prior Removal, Doc. 22, Minutes of States Conference; Doc. 24, Proposed Stipulated Protective Order; Doc. 28, Motion in Limine regarding Unproduced Documents; Doc. 29, Plaintiff's Motion to Compel; Doc. 30, Defendant's Opposition to Motion to Compel.

Visionworks also filed its first dispositive motion, which was fully briefed.[6] However, Plaintiff Graiser moved to remand the case to state court; that motion was fully briefed and ultimately granted.[7]

Upon remand, Visionworks filed its second dispositive motion, which was fully briefed and on which the state court held oral argument.[8] The state court granted Visionworks' motion to dispose of the injunctive relief claim, but granted Plaintiff Graiser leave to amend his complaint to state a claim for damages.[9]

In response to the amended complaint, Visionworks filed its third dispositive motion, which was fully briefed; the state court denied the motion as to the consumer-protection claim.[10] The parties then negotiated a case management schedule and commenced discovery, including the deposition of Plaintiff Graiser.[11]

Plaintiff's counsel moved to compel Visionworks to produce a class list so that counsel could send a court-approved letter to potential class members as part of counsel's efforts to gather evidence to support a class certification motion. That motion was fully briefed, orally argued, and granted; Visionworks moved to reconsider the decision, which the state court

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6 *See Graiser* Prior Removal, Doc. 23, Motion for Judgment on the Pleadings; Doc. 25, Plaintiff's Opposition to Motion for Judgment on the Pleadings; Doc. 27, Defendant's Reply in Further Support of Motion for Judgment on the Pleadings.

7 *See Graiser* Prior Removal, Doc. 16, Motion to Remand; Doc. 21, Opposition to Motion to Remand; Doc. 32, Opinion and Order granting Motion to Remand.

8 *See Graiser* State Case, Feb. 23, 2015 Motion for Judgment on the Pleadings; Feb. 24, 2015 Plaintiff's Opposition to Motion for Judgment on the Pleadings; March 3, 2015 Defendant's Reply in Further Support of Motion for Judgment on the Pleadings; March 19, 2015 Notice of Hearing on Motion.

9 *See Graiser* State Case, April 10, 2015 Opinion and Journal Entry; April 23, 2015 First Amended Complaint.

10 *See Graiser* State Case, May 21, 2015 Motion to Dismiss; June 5, 2015 Plaintiff's Opposition to Motion to Dismiss; June 9, 2015 Journal Entry.

11 *See Graiser* State Case, June 23, 2015 Case Management Conference; July 21, 2015 Notice of Deposition.

denied; and Visionworks lodged objections to the proposed letter, which the state court overruled.[12]

During the first removal to this Court and during the state court proceedings, Plaintiff's counsel conducted substantial discovery: the preparation and defense of Mr. Graiser' deposition; the review and analysis of over 36,000 pages of electronically-stored information Visionworks produced regarding its BOGO marketing and promotions; and the preparation and taking of the deposition of Visionworks through its Rule 30(b)(6) designee, Vice President of Marketing Emily White-Keating, at corporate headquarters in Austin, Texas.[13] Plaintiff's counsel also retained an expert economist, John Burke, Ph.D., to analyze the pricing of the BOGO program and to render opinions on class-wide damages.[14] Armed with these materials, Plaintiff Graiser filed a motion for class certification before the state court.[15]

Shortly after the certification motion was filed, and on the eve of the Plaintiff's court-approved letter being sent to potential class members, Visionworks removed the case to this Court a second time and immediately filed an "emergency motion" to prevent the class letter from being sent. That motion was fully briefed and denied.[16] The responses to the letter resulted

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12 *See Graiser* State Case, Aug. 7, 2015 Motion to Compel; Aug. 14, 2015 Defendant's Opposition to Motion to Compel; Aug. 18, 2015 Plaintiff's Reply in Further Support of Motion to Compel; Aug. 25, 2015 Journal Entry; Aug. 25, 2015 Motion to Approve Letter; Sept. 1, 2015 Defendant's Objection to Letter; Sept. 2, 2015, Plaintiff's Revision of Letter; Sept. 11, 2015 Defendant's Motion to Reconsider; Sept. 14, 2015 Journal Entry granting Motion to Compel, approving Plaintiff's Letter, and denying Motion to Reconsider.

13 *See* Doc. 69-5, Declaration of Drew Legando, ¶4.

14 *See* Doc. 40-8, Dr. Burke's Declaration and Report.

15 *See Graiser* State Case, Nov. 6, 2015 Motion for Class Certification.

16 *See* Doc. 1, Notice of Removal; Doc. 2, Emergency Motion for Order of Prohibition; Doc. 11, Plaintiff's Opposition to Emergency Motion; Doc. 8, Opinion and Order denying Emergency Motion.

in Plaintiff's counsel gathering numerous declarations that they intended to use to support class certification.[17]

Plaintiff moved to remand the matter back to state court on the grounds that the removal statute only conferred Visionworks one opportunity to remove the case on diversity grounds, and such removal had already taken place. That motion was fully briefed and granted, but Visionworks appealed the remand order to the Sixth Circuit Court of Appeals, where the matter was fully briefed; the Court of Appeals overruled (in effect, if not in word) a prior decision and held that a second removal was, in fact, appropriate.[18]

When the Court of Appeals issued its ruling, Ms. Lenart contacted Plaintiff's counsel because she had had concerns about Visionworks' BOGO practices in the state of Illinois and was interested to learn that a case had been filed in Ohio.[19] In June 2016, Ms. Lenart filed her complaint in the Northern District of Illinois.[20]

Meanwhile, after resolution of the *Graiser* appeal, Visionworks filed its third dispositive motion, which (after the Court resolved a dispute about whether such motion or its exhibits could be filed under seal) was fully briefed and denied on Mr. Graiser's individual claim.[21] In sum, the

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17 *See* Exhibit 1, Declaration of Drew Legando, ¶3.

18 *See* Doc. 6, Motion to Remand; Doc. 11, Defendant's Opposition to Motion to Remand; Doc. 12, Plaintiff's Reply in Further Support of Motion to Remand; Doc. 13, Opinion and Order granting Motion to Remand; Doc. 17, Appeal Order granting Visionworks' Petition to Appeal; Doc. 20, Mandate from the Sixth Circuit; *see also Graiser v. Visionworks of America, Inc.,* 819 F.3d 277 (6th Cir. 2016).

19 *See* Ex. 1, Legando Decl. at ¶4.

20 *See Lenart*, Doc. 1, Complaint.

21 *See* Docs. 31-33, Sealed Motion for Summary Judgment and Appendix; Doc. 35, Motion to Maintain Seal; Doc. 36, Plaintiff's Opposition to Maintain Seal; Doc. 37, Reply in Further Support of Motion to Maintain Seal; Doc. 38, Order and Opinion denying Motion to Maintain Seal; Doc. 39, Motion for Summary Judgment; Doc. 40, Plaintiff's Opposition to Motion for Summary Judgment; Doc. 41, Defendant's Reply in Further Support of Summary Judgment; Doc. 42, Opinion and Order granting in part and denying in part Motion for Summary Judgment.

Court found that Graiser had not made a BOGO promotion, but had opted into an alternative discount promotion that was not a part of the BOGO, and that Graiser could not pursue a claim on behalf of a BOGO class.

Within four days of the Court's order, Plaintiff's counsel moved to amend the complaint to substitute a new class representative, Karen Poteat. Ms. Poteat had participated in the BOGO promotion and asserted that she was prepared to serve as the class representative in Mr. Graiser's place. The motion to substitute was fully briefed and granted, and Plaintiff Poteat filed a second amended complaint to preserve the class claims (Mr. Graiser voluntarily dismissed his individual claim).[22]

As of September 2016, Visionworks was preparing to file a fourth dispositive motion to seek summary judgment on Ms. Poteat's claims. And, at the same time, in the *Lenart* action, Visionworks had filed a dispositive motion, which had been fully briefed and was awaiting decision.[23] Starting in mid-September, with this Court's assistance, the parties negotiated a resolution of both BOGO cases, and agreed to transfer the *Lenart* action to this Court for consolidated approval hearings of the proposed settlement.

B. History of Settlement Negotiations

The parties mediated this matter three times. First, the parties participated in a day-long mediation with an experienced and well-respected mediator, James McMonagle, Esq., on December 16, 2014.[24] The parties did not reach an agreement on essential terms of a settlement, and, as such, there was no discussion of attorney's fees.

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[22] *See* Doc. 43, Motion to Substitute; Doc. 49, Defendant's Opposition to Motion to Substitute; Doc. 50, Opinion and Order granting Motion to Substitute; Doc. 51, Second Amended Complaint.

[23] *See Lenart,* Doc. 31, Motion to Dismiss; Doc. 35, Plaintiff's Opposition to Motion to Dismiss.

[24] *See* Doc. 69-5, Legando Decl. at ¶6.

Nearly a year later, and after substantial litigation, including the bulk of discovery and several dispositive motions and the resolution of other important issues, the parties attempted a second day-long mediation with Mr. McMonagle on October 29, 2015.[25] Once again, the parties did not reach an agreement on essential terms of a settlement, and attorney's fees were not discussed.

Another year later, and after substantial additional litigation in two different district courts, including additional dispositive motions, the parties appeared before this Court for a conference on September 15, 2016. With the Court's assistance, the parties reached the essential terms of a class-wide settlement of both the *Poteat* and *Lenart* actions. Only after the essential terms of the Settlement were agreed upon did the parties then turned to discussing the attorney's fees to be paid in this action. This court then assisted the parties in reaching an agreement which recognized class counsel's entitlement to a "reasonable fee"[26] to which Visionworks agreed it would not object. The specific amount of the fee application could not be determined at that time, as the amount of the fee would be based upon a determination of the total number of BOGO transactions undertaken in both Ohio and Illinois, which would determine the total number of class members entitled to recover and in turn, the Gross Settlement Amount made available to pay class members' claims.

Over the course of the next six weeks, the parties conducted numerous, substantive, and extensive conferrals in an effort to memorialize the essential terms of the settlement, reach an agreement on the details therefor, as well as on the form and plan for claims and notice, the solicitation and acceptance of bids for claims administration services, and other related matters. The parties also engaged in arms-length negotiations regarding the amount attorney's fees, and ultimately agreed that Visionworks would not oppose a fee petition so long as the petition did not

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25 *Id.*

26 *See* Doc. 54, Order; *see also* Doc. 56, Transcript of Settlement.

exceed one-third of the Gross Settlement Amount, *i.e.*, the benefits made available to class members.[27]

C. Settlement Benefits to Class Members

Visionworks has agreed to pay a Gross Settlement of $4,209,280 to pay claims submitted by class members. The Gross Settlement Amount is comprised of two components: a maximum payment to Ohio claimants of $1,155,280; and a maximum payment to Illinois claimants of $3,054,000. Each claimant is entitled to receive $100 cash (or, if a claimant paid a purchase price of less than $100, she will receive a cash payment equal to the purchase price).[28] A significant number of individual class members made multiple BOGO purchases within the class period and are entitled to submit a claim for each such purchase, and receive a separate cash payment for each purchase.

D. Reactions to the Settlement to Date

The parties submitted their written Settlement Agreement, which included the form and plan for notice, and all pertinent details of the settlement to the Court for preliminary approval on January 10, 2017, and this Court entered a Preliminary Approval Order (*see supra*, p. 1).

Visionworks provided the Claims Administrator a verified settlement class list, which included 87,274 individual class members, to whom notice of the settlement was sent. As of today's date—and there are still two weeks left in the claims period—there have been 12,418 claims forms filed, which is a claims rate of 14.23%. There are only 45 opt-outs. And there are 0 objections.[29]

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[27] *See* Ex. 1, Legando Decl. at ¶5.

[28] *See* Doc. 69-1, Settlement Agreement. Although there is a provision to pro-rate the payments to claimants if the total number of claims, combined with the relief requested in this Fee Motion, exceed the Gross Settlement Amount, such proration is not implicated in this instance.

[29] *See* Ex. 1, Legando Decl. at ¶6.

The claims participation in this case is ***double*** that in the *In re Whirlpool* settlement, and well in excess of the benchmarks at which other courts have found a "favorable class reaction" in a consumer case. *See In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, MDL 2001, Case No. 1:09-WP-65000, Doc. 656, Memorandum and Order, p. 24; *see also Shames v. Hertz Corp.*, 2012 WL 5392159, at *14 (S.D. Cal. Nov. 5, 2012) (collecting cases in which claims participation ranged from 2% to 9%).

ARGUMENT

A. Approval of Attorney's Fees

There are "two methods for calculating attorney's fees: the lodestar method and the percentage-of-the-fund method." *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 Fed. Appx. 496, 498 (6th Cir. 2011). Class Counsel seek a fee of $1,260,095.37. This fee is reasonable under either method of calculation: Class Counsel's requested fee is 29.9% of the Gross Settlement Amount, and they carry a substantial lodestar (at the time of this filing, $496,903). *See In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 380 (S.D. Ohio 2006) (collecting over a dozen cases from within the Sixth Circuit, particularly in Ohio, awarding between 20 and 50% of the common fund).

In *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479-81 (1980), the Supreme Court recognized that the amount of funds made available to the class was the measure of benefit to the class. *See also Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2nd Cir. 2007) (district court abused discretion by calculating fees on amounts claimed rather than amount made available); *Williams v. MGM-Pathe Communs. Co.*, 129 F.3d 1026 (9th Cir. 1997). Here, the total funds made available to the class are $4,209,280. Under the parties' Settlement Agreement, Class Counsel are entitled to request one-third of this amount, which would be $1,403,093. Class Counsel agreed, however, to include within this limit their request for reimbursement of expenses, the costs of administering the settlement, and the service awards to the class

representatives. As such, the amount of pure fee requested by Class Counsel is less than 30% of the Gross Settlement Amount.

To assist in determining whether a fee is reasonable, the Sixth Circuit has identified the following factors: (**1**) the value of the benefit rendered to the plaintiff class; (**2**) the value of the services on an hourly basis; (**3**) whether the services were undertaken on a contingent-fee basis; (**4**) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (**5**) the complexity of the litigation; and (**6**) the professional skill land standing of counsel involved on both sides. *Bowling v. Pfizer*, 102 F.3d 777, 780 (6th Cir. 1996); *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974). Each of these factors weighs strongly in favor of the reasonableness of the fee sought by Class Counsel in this instance.

1. Value of the Benefit Provided

The average price of eyeglasses purchased by class members under the BOGO was about $400; therefore, each claimant will receive the equivalent of a 25% refund. Plaintiffs' damage model sought to recover (on their best day at trial) the equivalent of a 40% refund. Thus, on average, claimants are recovering through this settlement 62.5% of the maximum damages Plaintiffs would have sought at trial—and all without the delay associated with additional litigation, trial, and likely appeals, and without the risk associated with such continued developments.

Courts have held that a settlement figure that is 18% of claimed damages is "impressive" and the result achieved here—which is ***three-and-a-half times*** as beneficial—is well beyond the benchmarks set by other courts. *See In re Polyurethane Foam Antitrust Litig.*, 2015 WL 1639269, at *5 (N.D. Ohio Feb. 26, 2015) ("A settlement figure that equates to roughly 18% of the best-case-scenario classwide overcharges is an impressive result in view of these possible trial outcomes."); *see also In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *4 (E.D. Pa. June 2, 2004) (collecting cases with recoveries of 5.35% to 28% of damages).

2. Value of the Services Rendered

Class Counsel committed three years to the litigation of this matter, consisting of over 1100 hours of attorney and staff time. As set forth in greater detail in Exhibit A to this motion, Class Counsel's lodestar is approximately $496,903 as of today's date, and will increase during the conclusion of the claims administration and final approval and distribution process. Class Counsel reasonably estimates that the final lodestar will be approximately $570,000.00.

Thus, the fee request represents approximately "multiplier" of the base lodestar calculation. Such a multiplier is appropriate in this case given the exceptional success of the Gross Settlement Amount made available to class members, as well as the novelty and difficulty of the consumer-protection, damages, and jurisdictional issues involved in this fiercely litigated case, which required skill, foresight, and diligence on the part of Class Counsel to survive multiple dispositive motions, re-cast the case as one for damages, and substitute Mr. Graiser when his class claim failed. *See Barnes v. Cincinnati*, 401 F.3d 729, 745 (6th Cir. 2005) (affirming 1.75-times multiplier), *citing Blum v. Stenson,* 465 U.S. 886, 895 (1984). Thus, even when a court applies the lodestar method (without reference to the percentage-of-the-recovery method), and even when the use of such a multiplier would nearly double the fees, where the results are exceptional given the challenges the case faced, the fee is reasonable. *Barnes* at 746.

Given that this is a common-fund case, the percentage-of-the-recovery method is more appropriate for determining Class Counsel's fee, but the lodestar "cross-check" reveals that the amount of time and effort invested in the case were substantial and further support the reasonableness of the 29.9% fee request.

3. Fee Arrangement

Class Counsel undertook the representation on a purely contingent basis. Thus, for more than three years, Counsel has borne all of the risk that accompanies contingent-fee representation, including the prospect—very real in this case, considering the dispositive motion practice in this case and the uncertainty that a class would be certified—that the investment of substantial attorney and staff time and resources would be lost.

4. Societal Interest

"Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling … small claimants to pool their claims and resources." *In re Telectronics Pacing Sys., Inc.,* 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001). Moreover, this consumer-protection case sought to vindicate state regulations of advertising to the general public and the transparency of the retail market for eyeglasses. This is precisely why the consumer-protection statutes "deputize" consumers and their counsel to "private[ly] prosecut[ ] civil cases which further important public policy goals." *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *5 (E.D. Tenn. May 17, 2013).

5. Case Complexity and Risk

The docket in this case demonstrates that this was a complex case involving an unusual regulation involving buy-one-get-one-free offers, and it included a novel jurisdictional issue that was ultimately decided on interlocutory appeal by the Sixth Circuit. The case also began as by seeking solely an injunction, which Counsel had to convert to an action seeking damages. Indeed, from the outset, the case faced substantial risk given that Mr. Graiser (the original plaintiff) had consummated a sale alternative to the BOGO that was truly at issue. Indeed, this Court ultimately found that Mr. Graiser could not pursue the BOGO claim on behalf of the class. It was only the foresight and resourcefulness of Class Counsel—in obtaining the class list (via a motion to compel), sending a letter to class members asking for information about their own experiences (over the repeated objections of Visionworks), and obtaining declarations from class members (including those who were willing to serve as substitute class representatives should Mr. Graiser fail), that this case survived an otherwise-fatal decision.

Moreover, there was a split among state and federal courts regarding whether consumers are entitled to a benefit-of-the-bargain measure of damages in a buy-one-get-one-free claim, or whether, because they willingly paid the price offered, regardless of whether it was inflated, there are no actual damages. *Compare Hinojos v. Kohl's Corp.,* 718 F.3d 1098, 1108 (9th Cir. 2013), *with Camasta v. Jos A. Bank Clothier's, Inc.,* 761 F.3d 732, 740 (7th Cir. 2014); *Johnson*

v. Jos. A. Bank Clothiers, Inc., 2014 WL 64318, at *9 (S.D. Ohio Jan. 8, 2014). This uncertainty was acute in this instance because *Lenart* was an Illinois case and thus bound by *Camasta*, and *Poteat* was an Ohio case and thus *Johnson* was at least persuasive. Thus, Class Counsel were fighting uphill battles on whether there was injury-in-fact and recoverable damages *at all* in both cases—and were facing dispositive motions in each. Despite these substantial risks, Class Counsel successfully secured over $4.2 million in gross settlement funds available to compensate class members.

6. Skill and Reputation of Class and Defense Counsel

In its Preliminary Approval Order, this Court previously found that Class Counsel are experienced and skilled in consumer class actions. Defense counsel in this case, partners and litigators at the well-respected law firms of Taft and Skadden Arps, are of high caliber and good reputation. The numerous pleadings, motions, and briefs in this litigation amply demonstrate the high level of legal acumen employed by counsel on both sides of this matter.

B. Reimbursement of Expenses

Class Counsel incurred $14,638.35 in costs and expenses necessarily incurred in the ordinary course of litigation.[30] They respectfully request reimbursement of these expenses, which are "of the type routinely charged to … hourly fee-paying clients." *See In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D. Mich. 2003). The expenses by category are as follows, and a more detailed itemization, invoices, or receipts can be produced upon request:

Expense Category	**Total**
Expert	$3,500.00
Mediation Fee	$5,000.00
Travel	$1,001.95
Legal Research	$21.00
Court Costs	$467.95

[30] *See* Ex. 1, Legando Decl. at ¶8.

Settlement Transcript	$8.40
Deposition Transcript	$1,418.55
Midwest Direct Class Mailing	$2,567.75
Print and Copy Charges	$ 98.40
Postage	$547.08
Phone	$7.27
Total Expenses	$14,638.35

C. Reimbursement of Administration Costs

The Claims Administrator has incurred $52,301.25 in costs to date, which consist of, among other things, preparing and sending notice and claims forms, establishing and maintaining the settlement website (www.EyeglassesSettlement.com), and processing claims by class members. The Claims Administrator estimates that the total costs will be $126,359.61 to complete all of the tasks of administration mandated by the parties' Settlement Agreement and the order of this Court adopting the same, including the preparation, sending, and tracking of the distribution of checks to class members who submit claims.[31]

D. Class Representative Service Awards

Plaintiffs seek two $1,000 service awards be made, one to Ms. Lenart for representing the Illinois class, and one to Ms. Poteat for representing the Ohio class. Without Ms. Lenart's initiative in following legal developments and her diligence in pursuing an inquiry regarding Visionworks, the Illinois class would never have come to be. And without Ms. Poteat's speedy responsiveness to the rejection of Mr. Graiser as class representative, the Ohio class would have faltered. "Numerous courts have authorized incentive awards [as] efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class." *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). And the requested incentive awards are but a fraction of those awarded in other cases, and are

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[31] *Id.* at ¶7.

proportional to the Plaintiffs' participation in the litigation. *Cf. Polyurethane Foam,* 135 F. Supp. 3d at 694 (awarding $35,000 incentive awards).

CONCLUSION

Class Counsel should be awarded a reasonable attorney's fee of $1,260.095.37, reimbursement of their litigation expenses of $14,638.35, and reimbursement of the claims administration costs of $126,359.61. Plaintiffs Poteat and Lenart should each be awarded a service payment of $1,000.00.

Respectfully submitted,

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PROOF OF SERVICE

This document was filed on the Court's ECF System and served on counsel of record thereby on March 31, 2017, pursuant to Fed. R. Civ. P. 5(b)(2)(E).

Certified by,

s/ Drew Legando

Drew Legando (0084209)