

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MATTIE HALLEY and LETICIA
MALAVÉ, On Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

-against-

PPG INDUSTRIES, INC.,

Defendant.

Civil Action No. 2:10-cv-3345
(ES)(JAD)

Document electronically filed.

**DECLARATION OF STEVEN J.
GERMAN IN SUPPORT OF CLASS
COUNSEL'S MOTION SEEKING
AN AWARD OF REASONABLE
COSTS, ATTORNEY FEES, AND
INCENTIVE AWARDS IN
CONNECTION WITH THE PPG
SETTLEMENT**

1. I am an attorney duly licensed and in good standing in the states of New York, New Jersey, and the District of Columbia. I am also admitted to the U.S. District Court for the District of New Jersey. I am a founding member of the law firm German Rubenstein LLP and am counsel for plaintiffs and the putative Settlement Class B Members in this case. I have personal knowledge of each of the facts set forth in this Declaration and can and would testify competently thereto.

2. This Declaration is made in support of the Motion Seeking an Award of Reasonable Costs, Attorney Fees, and Incentive Awards in connection with the Settlement of Claims against PPG Industries, Inc. ("PPG"), the sole remaining defendant in this case.

3. As the Court is aware, this Settlement of all Class B claims with PPG follows the Settlement of all Class A and C claims with defendant Honeywell International, Inc. (the "Honeywell Settlement"). D.E. 442. On May 10, 2016, this Court issued its Order and Final Judgment approving class-action settlement of all Class A and C claims against Honeywell. *Id.*

4. Attorneys' fees and costs in connection with the Honeywell Settlement were subsequently granted pursuant to the Third Circuit's holding in *Halley v. Honeywell Int'l, Inc.*, 861

F.3d 481, 501 (3d Cir. 2017) (hereafter “*Halley*”) and Professor Eric D. Green’s May 29, 2018 Memorandum and Report and Recommendation (D.E. 476) (hereafter “R&R”), as adopted (D.E. 477).

5. As detailed below, Class Counsel’s instant Motion Seeking an Award of Reasonable Costs, Attorneys’ Fees, and Incentive Awards adheres to the above precedent, including the re-distribution of costs requirement to Class A and C properties. D.E. 477 (“if the pending class action against Defendant PPG Industries, Inc, is resolved * * * a pro rata allocation shall be made in the form of a reimbursement to the Honeywell Class.”).

The PPG Settlement

6. The Settlement Agreement with PPG is the result of contested litigation and extensive negotiations on the part of Class Counsel and PPG, all of whom have substantial experience in litigating class actions involving environmental and toxic tort claims. The Settlement Agreement represents a significant accomplishment for counsel, the Court, and the Classes. After ten years of litigation, Class Counsel have secured a meaningful settlement on behalf of owners of Class 2 residential property located in Class Area B, resolving all remaining claims against the sole remaining defendant, PPG. This settlement fully resolves this hard-fought, decade-old litigation.

7. This Settlement was reached at arms’ length between PPG and Plaintiffs and is an outstanding result because it promptly and reasonably resolves trespass, nuisance, negligence, and other tort claims for alleged property damages.

Value of the Settlement / Benefits Provided to the Class

8. The Settlement establishes a \$5,000,000 fund that provides compensatory relief directly to the Class. The Settlement provides cash payments from a common fund to the owners of 1-4 family residential property in Class Area B who allege that PPG's generation, disposal, and failure to properly remediate chromate waste interfered with their use and enjoyment of property, and caused a diminution in their property value. D.E. 489-2. The settlement proceeds seamlessly with PPG's prior, court-ordered and administrative obligations to remediate the chromium waste sites in, and around, their former chromate plant in Disposal Area B. *Id.* The settlement does not resolve any personal injury or medical monitoring claims, or the claims of owners of property other than 1-4 family residential property. *Id.* The Settlement parallels the Honeywell Settlement, except to the extent that it establishes a proportionately larger fund that is distributed across three zones, as discussed below.

9. The PPG Settlement Class includes 1,487 eligible properties, based on public property records (D.E. 489-2, p.17), and is divided into three geographic sub-classes based on their distance from the PPG Facility; Zone 1, Zone 2, and Zone 3. *Id.* at p. 15.

10. Zone 1 properties will receive 2.5 shares; Zone 2 will receive 2 shares; and Zone 3 will receive 1 share of the Net Settlement funds. D.E. 489-2, p.15. Each share equals \$1,087.58. Thus, assuming full participation, the Net Settlement Fund of \$3,324,748.67 will result in payments of \$2,718.96 to each Zone 1 property; \$2,175.17 to each Zone 2 property; and \$1,087.58 to each Zone 3 property. By comparison, Plaintiffs projected that the Honeywell Net Settlement Fund of \$6,133,447.36 for 3,497 properties would result in payments of \$1,850 to each property. D.E. 415-1, n.5.

11. Plaintiffs anticipate that the cost of Notice and Administration will be approximately \$90,000, based on discussions and negotiations with the Claims Administrator, Epiq Class Action and Claims Solutions, Inc. (“Epiq”).

12. PPG has agreed to pay the Class B Members cash payments according to the terms of the Settlement Agreement. D.E. 489-2. The Class will receive fair compensation for its claimed damages under the circumstances of this case. The Settlement leaves unaltered PPG’s prior court-ordered and/or administrative obligations to remediate its chromium waste disposal sites in, and around, Disposal Area B. *Id.*

13. The Settlement Agreement received preliminary approval on September 16, 2020. D.E. 491.

14. If for any reason the Court rejects the Settlement, Class Counsel is ready, willing, and able to try the case on the merits and/or explore a different settlement.

Internal Case Management

15. As Lead Counsel, I have been personally and extensively involved in this case against PPG to ensure a high-quality and efficient prosecution, as well as a full and fair culmination of the litigation. I have personally or telephonically appeared to address all matters before this Court.

16. At all times, the efforts of Class Counsel were disciplined and coordinated to avoid waste and to maximize the best possible result for the Class.

17. Class Counsel were required to keep and submit contemporaneous time and expense records. Class Counsel worked efficiently and effectively. All time and expense records are available to the Court upon request.¹

Settlement Negotiations

18. I have litigated numerous environmental and toxic tort cases, including a major Jersey City chromium case through trial in this District and partially through an appeal in the Third Circuit. PPG's counsel – represented locally by K&L Gates (formerly LeClairRyan), and nationally by Thompson Hine LLP – was a formidable defense team headed by Joseph Lagrotteria, who has decades of experience representing PPG in chromium litigation in this District and before the New Jersey Department of Environmental Protection. Together with his lead national counsel, Timothy Coughlin of Thompson Hine LLP, Mr. Lagrotteria mounted an aggressive defense of plaintiffs' claims. As detailed below, prosecuting the claims against PPG was arduous. PPG aggressively defended the case at every juncture.

19. My focus in approaching settlement was on balancing the strength of a claim against the payment offered to resolve it, which is a key factor in assessing the adequacy of the proposed settlement (*e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150 (8th Cir. 1999)), but does not require the fact-finding of trial. *See Halley*, 861 F.3d at 493.² One purpose of a settlement is to avoid having to reach the merits of a case. Definitive statements on the merits should be

¹ The Court may rely on time summaries submitted by the attorneys and need not review actual billing records. *In re Rite Aid Corp. Securities Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005). Upon request, however, Class Counsel will provide the detail of each firm's time and expenses for *in camera* inspection. Each firm maintained its own time and expense records.

² A Rule 23 Evaluation should avoid findings on the underlying facts relevant to the claim and instead consider or estimate a range of possible outcomes, along with some estimation of the probabilities of each. *Reynolds v. Beneficial National Bank*, 288 F.3d 277 (7th Cir. 2002). Whatever method one uses to assess the strength of the case, that effort must not transform the Rule 23 fairness hearing into a trial on any of the merits or findings about them.

avoided as a settlement may fail and the case may come to trial. *Managing Class Action Litigation: A Pocket Guide for Judges* (2d ed.) Federal Judicial Center (2009), at 11.

20. Reaching a settlement was difficult. Plaintiffs and PPG participated in five separate rounds of settlement negotiations. The first settlement discussions began in 2011 and included all parties, including Honeywell and PPG. This attempt at an early resolution of the case was unsuccessful. In September 2015 plaintiffs and PPG engaged in an intense, but ultimately unsuccessful, mediation session with Professor Green. Additional unsuccessful settlement efforts were made in December 2017 and March 2018. In May 2019 Plaintiffs and PPG reached a settlement in principle, without the benefit of a mediator. On June 18, 2019, the settling parties advised the Court of their agreement. D.E. 484. On February 12, 2020, PPG and plaintiffs filed their Joint Motion for Preliminary Approval of Class Action Settlement. D.E. 489. On September 16, 2020, the Court issued an Order Certifying Settlement Class, Preliminarily Approving Class-Action Settlement and Approving Form and Manner of Notice. D.E. 491.

21. Pursuant to the Settlement Agreement, notice to the Classes will be mailed, published in the newspaper, and posted on a website beginning October 16, 2020. D.E. 489-2. The time for objecting, opting out and/or filing a claim shall expire in 60 days. *Id.*

Reaction of Class

22. We are aware of no objections from Class B members to the settlement, or from any other person. The objection period will expire in 60 days. *Id.*

Pre-Suit Investigation & Subsequent Litigation

23. The details of Class Counsel's pre-suit investigation are detailed in the Declaration of Steven J. German in Support of the Class Counsel's Motion Seeking an Award of Reasonable Costs, Attorney Fees, and Incentive Awards. D.E. 397-2, ¶¶23-24.

24. Class Counsel previously described the complex nature of this environmental case, the myriad legal, factual, and scientific challenges they encountered, and their efficient management of this litigation. D.E. 397-2, ¶¶25-40, 45.

25. Professor Green's R&R documents the protracted and hard-fought nature of this case in his detailed case history up until the time of the Honeywell Settlement, at which time Class Counsel focused their efforts on the claims solely against PPG. *See* D.E. 476, pp.4-10. Professor Green memorializes the tremendous effort Class Counsel undertook to prosecute the case against Honeywell and PPG jointly up until the Honeywell Settlement, and PPG alone thereafter. R&R, pp. 4-11.

26. This litigation involved substantial risks and difficulties. Environmental and toxic tort claims such as those brought here are routinely expert-driven, expensive, and specialized. This matter included highly technical claims associated with airborne contaminant migration and allegations of improper remediation impacting property values.

27. Prosecuting the claims against PPG was arduous. PPG aggressively defended the case at every juncture, tangling Plaintiffs up in prolonged discovery disputes over the permissible scope of discovery and depositions (*e.g.*, D.E. 331 (Motion to Quash)) and extensive privilege challenges (*e.g.*, D.E. 334). Class Counsel simultaneously worked with experts in air modeling of PPG facility emissions, forensic reconstruction of the PPG facility, standards of care, property damage, economics, and soil chemistry to develop our expert proofs.

28. Settlement Class Counsel remained committed to the PPG portion of this case even after the Honeywell Settlement. After a lengthy hiatus during administration of the Honeywell settlement, on April 25, 2019, the Court held a status conference (D.E. 479), resulting in an aggressive Case Management Order to advance the class phase of this case (D.E. 480). The parties

were ordered to reinstate and complete within 60 days all class phase discovery, including reciprocal paper discovery updates and supplementation, supplemental depositions of Plaintiffs, the 30(b)(6) deposition of PPG, as well as any remaining non-party depositions. *Id.* The parties were ordered to promptly, thereafter, exchange expert reports. *Id.* Throughout this time, Class counsel and PPG explored settlement opportunities.

29. After preparing for, and appearing at, the April 25, 2019 status conference, Settlement Class Counsel promptly resumed its day-to-day work on prosecuting PPG. We worked with PPG to formulate a discovery and deposition schedule; we worked directly with our clients to supplement discovery and prepare for supplemental plaintiff depositions; we recommenced our PPG document review and preparation for party and non-party depositions; and we re-engaged our scientific and technical experts and consultants to re-focus our expert case on PPG. Class Counsel simultaneously engaged in settlement negotiations off and on until the parties reached a preliminary agreement. Such dual-track case management is generally recognized as constituting best practices.

Experience of Class Counsel

30. This Court held that “there is little reason, if any, to doubt Settlement Class Counsel has the requisite skill and experience to litigate an action such as this.” D.E. 439, pp. 48-49. The experience and qualification of all class counsel are set forth at D.E. 397-2, ¶41.³

Request for Award of Reasonable Attorney Fees

³ Since this Court’s finding that Settlement Class Counsel possesses “the requisite skill and experience to litigate an action such as this” (D.E. 439, pp. 48-49), Settlement Class Counsel has played leadership roles in additional environmental class actions nationwide, including before Your Honor in *Duarte v. United States Metals Refining Co., et al.*, 17-cv-1624.

31. Class Counsel request an award of costs and attorney fees in connection with their work on the PPG Settlement in the amount of \$1,585,251.33, consisting of \$1,250,000 in attorneys' fees, \$315,251.33 in costs, and \$20,000 in incentive awards (\$10,000 each) for the two named Class B Representatives, Mattie Halley and Leticia Malave. In addition, pursuant to the Settlement Agreement (D.E. 489-2), and based on estimates provided by Epiq, administration expenses of approximately \$90,000 will be paid from the common fund.

32. PPG does not oppose this award. D.E. 489-2, p. 22.

a. Percentage of Recovery

33. All work was done on a contingency basis. Despite the significant investment of time and money expended by Class Counsel for the prosecution of the PPG case, Class Counsel's request of \$1,250,000 equates to only 27% of the \$5,000,000 common fund, *after* the deduction of costs, pursuant to *Halley*. 861 F.3d 501.

34. Under the circumstances presented by this case, an award of fees equating to 27% of the benefits achieved for the Settlement Class is well within the range of awards in similar cases. This Court previously found that "whether it be about 25% or about 28%, * * * the fee-request is satisfactory in light of the fees typically awarded in this Circuit and the fees typically awarded in environmental cases such as this one." D.E. 439, p.50. The Third Circuit affirmed this finding in *Halley*. 861 F3d. 499-500 (District Court "did not abuse its discretion in approving fees that represented 28% of the fund after deduction of costs.").

35. The Court also found that the requested percentage falls within the range of privately negotiated contingent fees, which also weighed in favor of the fee award. D.E. 439, p.50. Had Class Counsel been able to negotiate a fee contract with the members of the Class at the outset of litigation, Counsel would have recognized that the expenses could easily exceed \$1,000,000

with no guarantee of reimbursement and that thousands of hours could be expended with no recovery. As a result, Class Counsel likely would have requested at least a 27% fee after reimbursement of all litigation expenses.

a. Lodestar Cross-Check

i. Previously Submitted Joint Honeywell-PPG Time

36. As detailed below, the fee award yields a lodestar multiplier of 0.40 on the Joint Honeywell-PPG time, which is well within the accepted range in this Circuit.

37. As of the time of the Honeywell Fee Petition, Class Counsel had devoted greater than 27,000 hours to the joint prosecution of the case against Honeywell and PPG. D.E. 439, p.49. The Court therefore found that “[b]ased on the amount of time expended on this matter, this factor weighs in favor of approval.” *Id.*

38. As Class Counsel explained in the *Honeywell* Fee Petition, the *Honeywell* lodestar cross check

demonstrates that the \$2,504,250 fee sought * * * represents only 1/4 of the hours Class Counsel have dedicated to the prosecution of all plaintiffs’ claims in Classes A, B and C. Class Counsel therefore believe that it would be appropriate for the Court to exercise its discretion to consider a portion of Counsel’s total hours in determining the reasonableness of a fee if, and when, Counsel seek a fee award in connection with a recovery from PPG on the Class B claims.

D.E. 397-1, n.4. Allocating a mere 1/3, *i.e.*, 9,000 of these hours to the PPG case would result in a lodestar multiplier of 0.40, which is well within this Circuit’s acceptable range. *See, e.g., In re Prudential Ins.*, 148 F.3d 283, 341 (3rd Cir. 1998); *In re Schering-Plough Corp.*, Civ. No. 08-397, 2013 WL 5505744, at *34 (D.N.J. Oct. 1, 2013) (stating that “lodestar multipliers well above 1.3 and up to four are often used in common fund cases.”); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000) (2.7 multiplier). This calculation assumes the total number of

hours allocated from the joint prosecution of Honeywell and PPG cases is 9,000 (one-third of 27,000) and a blended billing rate of \$342.11 per hour. (*Id.*). This yields a lodestar of \$3,078,990. Settlement Class Counsel seeks \$1,250,000 in fees. (*Id.*). Dividing \$1,250,000 by \$3,078,990 yields a multiplier of 0.40.

ii. PPG-Exclusive Time

39. In addition to the 27,000-plus hours dedicated to the joint prosecution of the Honeywell and PPG claims, Class Counsel devoted an *additional* 774 hours to pursuing the claims against PPG exclusively (excluding the instant fee petition) after reaching settlement in principle with Honeywell. “Not surprisingly, at this point it appears that Plaintiffs’ primary focus shifted to PPG’s conduct, such that the majority of expenses incurred by Class Counsel after this point were primarily for the benefit of the PPG class and were thus allocated to PPG.” R&R, p.10, citing D.E. 456-1 at 6–9.

40. Class Counsel determined how many hours were reasonably expended in pursuing PPG after the Honeywell Settlement by carefully reviewing the contemporaneous time records that we maintained.

41. These additional hours were focused on complex discovery matters, experts and consultants, court conferences, and settlement, and thus were reasonably performed exclusively by attorneys with extensive experience (19+ years).

42. The highest billing rates of \$650 per hour were assigned to each of Messrs. German (NY/NJ/DC), Janet (MD), Miltenberg (DC), and Roisman (DC), seasoned lawyers with 20+ years of environmental, mass tort and class action experience. Mr. Rubenstein (NY/NJ) was assigned an hourly rate of \$600 for his 19 years of experience, including environmental, mass tort, and class

action. These hourly rates are supported by this Court's prior lodestar analysis. D.E. 439, pp.51-52, citing D.E. No. 430, ¶24.

43. Class Counsel multiplied their hours reasonably expended by the applicable billing rate which was determined based on the skill and experience of each attorney and the local market. Class Counsel calculated the blended rate by averaging the reasonable and customary hourly billing rates of these attorneys to arrive at a rate of \$640.00 per hour. *See* D.E. 439, p.52 (holding that "district courts *should* apply blended billing rates") (emphasis in original).

44. The resulting lodestar multiplier is 2.52 which, as demonstrated above, is well within this Circuit's acceptable range.

45. Class Counsel were disciplined and coordinated our work to avoid waste and to maximize the best possible result for the Class. We took great care to divide work in such a way that focused on each attorney's strengths and familiarity with the issues at hand, so as to resolve tasks efficiently and reduce duplication of effort.

46. Class Counsel submits that this fee request is fair and reasonable in light of (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by Class Counsel; and (7) the awards in similar cases. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000).

47. Class Counsel believes that this proposed Settlement is in the best interest of the Class based on the negotiations and a detailed knowledge of the issues present in this action.

Specifically, Class Counsel balanced the terms of the proposed Settlement against the possible and likely outcomes regarding liability, class certification, and the range of potential recovery at trial.

48. This action was filed on May 17, 2010. To properly handle and prosecute active class-action litigation such as this case, Class Counsel were often precluded from accepting or working on other potential fee-producing cases. This case was taken on a purely contingent basis, with Class Counsel advancing all costs, at considerable risk with the ultimate result open to question. Practicing in this area of law involves a great deal of risk as these cases may fail at the pleading stage, on class certification, on motions for summary judgment, at trial or on appeal. Routinely, defendants are represented by highly skilled and experienced local and national defense firms, as was the case here.

49. These cases require the constant engagement of Class Counsel from inception to resolution. Extensive work is required to obtain and distill data and documents associated with the environmental operations at issue and the progression of the administrative proceedings taking place with government agencies; to conduct independent investigations to locate and interview potential witnesses to establish common treatment to support class certification, to support liability, develop appropriate scientific evidence, to maintain contact with Class Representatives, other Class Members and regulators, and to effectively defend against defendants' efforts to minimize these claims. Substantial written and oral formal discovery and motion practice is also required, as well as the research, expertise and drafting requisite to obtain class certification and then to prepare for trial.

50. The risks in taking on a class-action case are enormous. Litigating a class action against a multi-billion-dollar corporation through class certification and trial often takes years and requires the investment of millions of dollars with no guarantee of recovery.

51. Class Counsel have not yet received any fees in connection with the PPG portion of this case and have advanced all costs. By contrast, Defendants' firms can bill their clients monthly and regularly receive payment.

Request for Award of Reasonable Costs

52. Class Counsel seek reimbursement of \$315,251.33 in reasonably and appropriately incurred costs in the prosecution of the case against PPG exclusively, including \$245,237.36 in isolated, non-commingled PPG costs, which were discussed in Professor Green's R&R (D.E. 476), and an additional \$70,014.07 in costs incurred since then. Details of these costs are provided to the Court for *in camera* review and itemized invoices will be furnished upon the Court's request. *See Halley*, 861 F.3d 501 ("we are not persuaded class counsel is required to provide itemized expense records * * *").

53. These costs include over \$269,000.00 in experts; \$17,000 in mediation; \$12,400.00 in travel; \$9,400.00 in discovery and depositions; \$3,500.00 in copies, postage, and shipping; \$520.00 in court fees and process service; and \$500.00 in legal research.

54. "Courts have permitted class counsel to be reimbursed for, *inter alia*, costs advanced for expert witness fees, travel costs, court costs, court reporter and transcript costs, costs for photocopying, telephone and facsimile, postage and shipping, mediation expenses, document management fees, and computer-assisted legal research." D.E. 476, p.14. These expenses were advanced by Class Counsel with no guarantee of reimbursement and were necessary to develop and prosecute these claims for the benefit of the PPG Settlement Class. These costs were isolated from other previously reimbursed commingled Honeywell-and-PPG costs and Honeywell exclusive costs. *See* D.E. 476, adopted D.E. 477. Class counsel isolated these expenses by carefully maintaining expense records and conducting a careful and detailed review of our complete

documentation of cases expenses and, to the extent necessary, the individual backup or receipts for expenses.

Redistribution of Joint Costs to Members of the Honeywell Classes

55. Class Counsel propose a pro rata reimbursement and distribution to each property in the Honeywell Class, based on the model detailed below.

56. This Court has Ordered that if the action against PPG is resolved with a recovery for such class, then “a pro rata allocation shall be made in the form of a reimbursement to the Honeywell Class and subsequently distributed to the Honeywell Class.” D.E. 477. As Professor Green explained in the context of the *Honeywell* Settlement:

I recommend that the Court grant Class Counsel’s Motion Seeking an Award of Reasonable Costs, and approve Class Counsel’s requested expenses in the amount of \$1,140,023.77 as adequately documented and reasonably and appropriately incurred * * *. These costs were advanced to pursue claims against both Defendants as alleged co-conspirators and as joint and several tortfeasors.

Class Counsel has allocated costs of \$245,237.36 to claims pursued against the non-settling Defendant, PPG, and those costs are not co-mingled with the costs sought as part of the Honeywell settlement. The costs for which Class Counsel seeks recovery from the Settlement Fund are not clearly and exclusively attributable to PPG, and the claims against PPG were not legally and factually independent from the claims against Honeywell. Thus, they are properly recoverable as part of the Class settlement with Honeywell. The Court should further order that if and when the PPG Class case is resolved with a recovery for the Class from which common expenses that benefited both the putative PPG Class and the Honeywell Class may be allocated, a fair, pro rata allocation back to the Honeywell Class of the PPG share of such expenses should be made and distributed.

57. \$1,085,869.58 of these costs were “advanced to pursue claims against both Defendants as alleged co-conspirators and as joint and several tortfeasors” (D.E. 455-1, p.6; D.E.

476, p.27), and each property in each of the Honeywell and PPG Settlement Classes enjoyed the benefits of Class Counsel advancing these costs on their behalf.⁴

58. Settlement Classes A, B, and C consist of 4,984 eligible properties in total (A+C=3,497; B=1,487). \$1,085,869.58 in commingled expenses divided by 4,984 eligible properties yield a *pro rata* commingled expense contribution of \$217.87 that each eligible property *should* pay. By having had these expenses already deducted from the Honeywell Settlement fund, each Honeywell property has *already* paid \$310.51 in such commingled costs (\$1,085,869.58 / 3,497). These Honeywell properties are now entitled to a redistribution of a portion of these costs. D.E. 477. By subtracting \$217.87 from \$310.51 the Court can arrive at a fair pro rata allocation back of \$92.64 to each Honeywell property, representing the PPG share of such expenses for distribution from the PPG fund.⁵

Incentive Awards

59. Class Counsel recommends an incentive award of \$10,000 for each of Mattie Halley and Leticia Malave. This Court previously approved a \$10,000 payment to each Honeywell

⁴\$54,154.19 (of \$1,140,023.77) in isolated Honeywell costs are not subject to redistribution. D.E. 455-1, p.6.

⁵This model and the resulting \$92.64 figure assume that all Class A, B, and C properties participate in the Settlement. The per property final redistribution will have to be adjusted pro rata by the Claims Administrator based on the number of participating properties and consistent with the above formula which can be generically stated as:

- Step 1. $\$1,085,869.58 / \text{total number of Class A, B, and C properties submitting a valid claim} = \text{amount each property } \textit{should} \text{ pay}$
- Step 2. $\$1,085,869.58 / \text{total number of Class A and C properties that have submitted a valid Claim} = \text{amount each Class A and C property submitting a valid Claim } \textit{did} \text{ pay}$
- Step 3. Amount each Class A and C property that submitted a valid Claim *did* pay - Amount each Class A and C property submitting a valid Claim *should* pay = amount of pro rata allocation and reimbursement of joint litigation expenses to each Class A and C property that has submitted a valid claim that Epiq shall distribute from the PPG Settlement Fund.

Class A and C representative. D.E. 439, pp. 55-6. As was true for the Honeywell representatives, each Class B PPG representative was subjected to invasive written discovery, electronic discovery, document productions, and depositions. Each spent considerable time communicating with counsel and other class members, and incurred other out-of-pocket expenses directly related to representation of the Class. These incentive awards are not conditioned on the individuals' support for the settlement, and thus, do not cause the interests of the named plaintiffs to diverge from those of unnamed plaintiffs, nor undermine the adequacy of the Class representation. See D.E. 439, p.56. Further, the incentive payments are not disproportionately large compared to the payments to individual class members. *Id.* Finally, to date nobody has objected to the incentive awards even though there was unequivocal notice about the awards being withdrawn from the common fund. *Id.*

Conclusion

I declare under penalty of perjury under the law of the State of New Jersey that the foregoing is true and correct.

Dated: October 16, 2020

/s/ Steven J. German
Steven J. German
German Rubenstein LLP
PPG Settlement Class Counsel