IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LOUISE LIVINGSTON, MELISSA RAINEY, DAVID SMITH, RAYMOND SABBATINE, PETER GOLDIS, and BILL COLBERT, on behalf of themselves and all others similarly situated, Plaintiffs, v. TRANE U.S. INC., Defendant.	Civ. A. No. 2:17-cv-06480-ES-MAH The Honorable Esther Salas, U.S.D.J. The Honorable Michael A. Hammer, U.S.M.J. Return Date: August 12, 2020 (pursuant to Order, Dkt. No. 104) **CLASS ACTION**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND PLAINTIFFS' INCENTIVE AWARDS

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INTRODUCTION

Plaintiffs Louise Livingston, Melissa Rainey, David Smith, Raymond Sabbatine, Peter Goldis, and Bill Colbert (collectively "Plaintiffs") respectfully submit this memorandum of law in support of their motion for award of attorneys' fees and expenses totaling $1,800,000 and Plaintiffs' incentive awards of $5,000 for each Plaintiff.

After three years of contentious litigation against Trane U.S. Inc. ("Trane") (collectively with Plaintiffs, the "Parties"), Plaintiffs and Class Counsel have achieved a nationwide class action settlement that provides substantial relief to all current and former owners of Trane and American Standard air conditioners[1] that were allegedly manufactured with a defective chemical rust inhibitor known to cause sticky debris to form on thermostatic expansion valves ("TXVs"), which are central to the performance and operation of air conditioning systems.

The benefits under the settlement, which are also discussed in Plaintiffs' contemporaneously filed Memorandum of Law in support of the Joint Motion for Final Approval and Entry of Final Order and Judgment ("Final Approval Brief"), are robust and include: (1) reimbursement for past out-of-pocket repairs; (2) a free "lite" additive, shown to safely prevent future clogs, plus a labor allowance of $50

[1] For ease of reference, throughout this brief term air conditioners includes heat pumps, which are simply air conditioners that can also run in reverse to generate heat. The settlement covers both.

to inject it; (3) extended and enhanced compressor warranty coverage for all units in which a full-strength additive was previously injected; and (4) an extensive notice program, including direct mail notice, publication notice, updated service bulletins, and a large-scale digital notice campaign. Certain of the relief is available to Class members without any need to submit a claim, and to the extent a claim form is required, the claims process is simple and straightforward. Especially given the risks that the class faced in every phase of this litigation—which, absent a settlement, would have involved a lengthy trial and likely appeals—the Settlement is very favorable to the Class. In addition to and without reducing all of the other benefits of the settlement, Trane has also agreed to pay $1,800,000 for Plaintiffs' attorneys' fees and expenses plus incentive awards of $5,000 to each of the Plaintiffs. Attorneys' fees and Plaintiffs' incentive awards were negotiated with the assistance of the Hon. Diane M. Welsh (Ret.) only after all other material terms of the settlement were agreed.

Achieving this outstanding settlement required skillful and dogged effort by Plaintiffs and their counsel. Among other things, Plaintiffs' counsel: invested significant resources investigating and developing their legal and factual theories long before filing the lawsuit; largely defeated Trane's motion to dismiss and filed an amended complaint that Plaintiffs believe would have successfully revived several dismissed claims; completed substantial discovery of Trane and nonparties;

engaged in numerous discovery disputes with Trane; consulted with two experts, including an engineering expert who substantially completed his report prior to the Parties' agreement to participate in mediation; engaged in lengthy and complex settlement negotiations over nine months, including four mediations with the Hon. Diane M. Welsh (Ret.); and had primary responsibility for drafting the settlement agreement and virtually all of the exhibits thereto.

For the reasons stated herein, Plaintiffs respectfully request that the Court grant their motion for an award of $1,800,000 in attorneys' fees and expenses and incentive awards of $5,000 to each Plaintiff for their service and diligence in litigating this case. Class Counsel expended over 2,648 hours litigating this action, accruing a lodestar of $1,395,606.58[2] through May 31, 2020, and spent $74,339.25 in expenses on a purely contingent basis. Class Counsel requests $1,725,660.75 in attorneys' fees and $74,339.25 in litigation expenses for a total award of $1,800,000. Thus, Class Counsel's fee request represents a modest 1.24 lodestar multiple, which

[2] As discussed below, this figure includes an allocation of $108,143.58 in lodestar recorded by Class Counsel in a "TXV General" category. The TXV General time primarily consisted of time spent on initial review of certain third-party document productions. Plaintiffs recorded this time in the TXV General category knowing that it would provide a benefit to the plaintiffs in several related actions against three different manufacturers arising out of the same alleged defect, including the action against Trane here. Excluding this one-third TXV General allocation, Class Counsel's lodestar is $1,287,463.00, and the requested fee represents a 1.34 multiple. Thus, whether TXV General time is included or not, the requested fee is reasonable.

is on the low end of the range commonly granted in this Circuit. And the substantial relief that Class Counsel negotiated for the class, which addresses every harm alleged, weighs heavily in favor of approval. Further, Class Counsel will continue to expend additional time monitoring and overseeing the claims administration process, including performing an audit to ensure claims have been properly handled as contemplated by the settlement.

I. SUMMARY OF WORK PERFORMED

A. Factual Background

As discussed more fully in Plaintiffs' Final Approval Brief, this action arises from an alleged defect impacting an identifiable population of Trane and American Standard air conditioners. These units were manufactured with an unapproved rust inhibitor in the compressor that can cause sticky debris to form on the TXV, thereby negatively impacting performance and sometimes causing an acute failure.

The rust inhibitor was applied by Trane's compressor supplier, Emerson Climate Technologies ("Emerson"), which sold defective compressors to many major U.S. air conditioner manufacturers, including Trane, ClimateMaster, and Carrier Corporation. (First Am. Compl. ["FAC"], ECF No. 60, at ¶ 28.) By the summer of 2014, many air conditioner manufacturers began to notice high rates of failure in recently installed systems due to clogged TXVs. (*Id.*, at ¶ 30.) The manufacturers determined that these TXV failures were due to the rust inhibitor,

which causes a sticky debris to form on the TXV. (*Id.*, at ¶¶ 32-33.) Almost 450,000 Trane air conditioners contain, or likely contain, the rust inhibitor. (*See* ECF No. 93-13.)

Plaintiffs allege that Trane wrongfully sold these air conditioners without disclosing the defect. (FAC, at ¶ 3.) Further, when TXV failures occurred, Trane instructed service personnel to inject an additive to dissolve the debris, rather than replace the TXV, and Plaintiffs allege that the additive is highly acidic and causes premature wear to the compressor. (*Id.*, at ¶ 5.)

Trane's warranty covers parts only, not labor or materials. Many consumers paid out of pocket to replace stuck TXVs. (*See, e.g.*, *id.*, at ¶¶ 67, 70.) Similarly, although some consumers received free injections of the additive, others were forced to pay out of pocket for that as well. (*See, e.g.*, *id.*, at ¶¶ 36-60, 67.) As discussed more fully Plaintiffs' Final Approval Brief, the settlement benefits are tailored to all of the harms alleged.

B. Plaintiffs' Success On The Pleadings

Class Counsel spent considerable time investigating the facts of this highly technical case, filing their complaint, largely defeating Trane's first motion to dismiss, and filing an Amended Complaint in 2019.

Plaintiffs initially began investigating claims on behalf of Trane purchasers as early as 2015. Plaintiffs served a pre-suit demand letter on behalf of Trane

consumers in June 2017. (FAC, at ¶ 86.) Thereafter, they filed their initial complaint in this action on August 28, 2017. (ECF No. 1.) The complaint alleged twenty-two claims under the laws of six states for breach of express and implied warranties, violations of the Magnusson-Moss Warranty Act ("MMWA"), as well as violations of their respective state's consumer protection statutes and common law.

On January 31, 2019, the Court denied Trane's motion to dismiss most of Plaintiffs' breach of warranty counts, including all of Plaintiffs' express warranty claims and the implied warranty claims under Massachusetts, North Carolina, and Pennsylvania law. (ECF Nos. 48-49.) The Court, however, granted Trane's motion to dismiss Plaintiffs' fraud-based claims on the grounds that Plaintiffs had not alleged sufficient facts establishing when or how Trane had knowledge of the defect, but the Court afforded Plaintiffs an opportunity to amend. (*Id.*)

With the benefit of, *inter alia*, a year's worth of discovery, Plaintiffs filed their First Amended Complaint on March 1, 2019, which endeavored to address the shortcomings identified in the Court's opinion. (ECF No. 60.)

Trane filed a motion to dismiss the First Amended Complaint on April 1, 2019. (ECF Nos. 66-67.) Shortly thereafter, the Parties agreed to engage in mediation. As a result, the Court denied Trane's pending motion to dismiss without prejudice and stayed the litigation to afford the Parties time to mediate. (ECF No. 80.)

C. Class Counsel's Vigorous Prosecution Of Class Claims Through Discovery

Prior to agreeing to stay the litigation pending mediation, Plaintiffs conducted substantial discovery of Trane and numerous nonparties, including Emerson (the compressor manufacturer), Shrieve Chemical Products, Inc. (the manufacturer of MJ-X and MJ-X Lite), Danfoss Refrigeration & Air Conditioning Division (a TXV manufacturer), and Parker Hannifin Corporation, Sporlan Division (another TXV manufacturer).

1. Trane Discovery And Extensive Disputes

Obtaining discovery from Trane required significant tenacity on the part of Class Counsel. By way of example, Plaintiffs believed that Trane's initial disclosures did not include the information required under Rule 26(a). Class Counsel ultimately sought the Court's assistance, which resulted in Trane supplementing its disclosures. During the course of discovery, the Parties engaged numerous additional discovery disputes regarding the nature and scope of Trane's production.

Plaintiffs served forty-four document requests on Trane. Trane eventually produced over 10,250 pages of documents, including many voluminous spreadsheets. During their review of Trane's documents, however, Class Counsel determined that gaps were present in Trane's production. This led to additional discovery disputes, meet and confer efforts, and numerous discovery letters exchanged between the Parties. Class Counsel also deposed a Trane designee on its

document production. The Parties filed nine motion to compel letters, oppositions, replies, and joint reports with the Court regarding disputes over production-related issues. (*See* ECF Nos. 51, 52, 54, 55, 58, 61, 65, 68, 69, 71-75.) These discovery disputes were under submission with the Court and scheduled for hearings when the case was stayed pending mediation. (*See* ECF No. 80.)

Trane, for its part, served sixty-seven document requests on each of the six Plaintiffs (i.e., 402 total requests). Plaintiffs assisted Class Counsel in drafting objections and responses and collectively produced over 430 pages of documents.

2. Class Counsel Leveraged Knowledge And Discovery Of The Industry-Wide Defect From Prior Similar Cases

Class Counsel began their investigation of this class-wide defect beginning as early as 2014 and have taken discovery in actions on behalf of consumers against two other manufacturers, including an action against ClimateMaster, Inc., which was filed in April 2015 and resolved in October 2017, *Emmert v. ClimateMaster, Inc.*, No. 5:15-458 (W.D. Okla.) ["*ClimateMaster*"], and two related actions against Carrier Corporation, the earliest of which was filed in November 2015, that are currently pending in the Central District of California, *Oddo v. Arcoaire Air Conditioning & Heating*, No. 8:15-cv-01985-CAS (C.D. Cal.) and *Cormier v. Carrier Corp.*, No. 2:18-cv-07030 (C.D. Cal.) [together, "*Carrier*"].

Class Counsel first obtained discovery from Emerson and other nonparties in *ClimateMaster*, but Class Counsel knew that certain of that work would benefit

related cases that had been filed or would be filed in the future. For discovery work that they knew would likely benefit more than one case (e.g., initial review of Emerson's document productions that were not specific to any one air conditioner manufacturer), Class Counsel recorded time in a "TXV General" time category. (Decl. of Timothy N. Mathews filed herewith, at ¶ 8 ["Mathews Decl."]). After removing any time that did not provide a benefit in the Trane action, Class Counsel determined that $324,430.75 in "TXV General" lodestar benefitted this action, *ClimateMaster*, and *Carrier*, and, therefore, Class Counsel believe it is appropriate to allocate one-third of that time ($108,143.58) to this lawsuit. (*Id.*) This amount has not been reimbursed in any other case. The vast majority of this time was spent performing initial review of documents produced by nonparties, like Emerson. Accordingly, there was no duplicative billing for the TXV General time, and it is fairly apportioned to each case where it provided a benefit. (*Id.*) As discussed below, however, Class Counsel's fee request is easily supported under relevant standards regardless of whether this TXV General time is considered.

Because Class Counsel had already obtained document discovery in *Climatemaster* and/or *Carrier* from several relevant nonparties, when discovery commenced in this action Class Counsel issued subpoenas that simply requested production of the same documents that had already been produced in *ClimateMaster* and/or *Carrier*. After negotiating the transfer of confidentiality designations, the

nonparties agreed to deem the same documents produced in this case.

Class Counsel also made requests for additional Trane-specific documents and information from certain of the nonparties and performed Trane-specific review of the documents in these productions by, for example, targeted word searches. After reviewing Trane's documents, Class Counsel issued three more subpoenas that were targeted at information concerning Trane's interaction and joint investigations with these nonparty industry participants, including to Emerson, Danfoss, and Shrieve (the manufacturer of MJ-X and MJ-X Lite). Collectively, Class Counsel issued eight subpoenas in this case, and nonparties produced and counsel analyzed over 24,000 pages of documents, many of which were highly technical.

Class Counsel also obtained production in this case of the deposition transcripts of Emerson's designee in the *Carrier* and *ClimateMaster* actions, which Class Counsel had previously taken in those actions.[3] Thus, the record in this case was efficiently developed from an early stage.

D. Expert Discovery

In connection with complying with the discovery schedule, Plaintiffs spent considerable time working with experts to prepare for class certification motion

[3] None of the time spent preparing for or taking depositions was allocated to the TXV General category but, rather, was recorded in the specific case in which the deposition was taken. As noted above, the TXV General time was primarily time spent performing first-level review of nonparty documents concerning the defect.

practice. To that end, Plaintiffs retained an engineering expert, whose report was essentially complete when the court entered the stay on April 15, 2019. (*See* ECF Nos. 48, 80.) In addition to incurring expenses to retain the expert, the report required substantial effort from Class Counsel. For example, given their extensive experience with the defect and the discovery material, Class Counsel assisted the engineering expert in compiling the significant documentary and testimonial evidence necessary for the report as well as conferring with the expert about the litigation and the report. Plaintiffs were nearly prepared to serve their report prior to the stay.[4]

E. Mediation Sessions And Protracted Settlement Negotiations Regarding Details Of Settlement

Counsel for the Parties attended three all-day mediation sessions before Judge Welsh in Philadelphia on July 9, September 5, and November 6, 2019, and a shorter telephonic session on February 20, 2020. Before and between sessions, from May 2019 to February 2020, the Parties exchanged eight settlement negotiation letters. Excluding Plaintiffs' initial letter, which was sent prior to but in expectation of the first mediation session, Judge Welsh was copied on all settlement letters. Plaintiffs also drafted two mediation briefs during the course of the mediation process, plus a mediation letter to Judge Welsh seeking resolution of a claims process dispute that

[4] Class Counsel also spent time consulting with a survey expert, who they expected to provide evidence and testimony on consumer behavior issues.

the Parties were unable to resolve.

All material terms of the Settlement were negotiated and agreed before the Parties began discussion of attorneys' fees and Plaintiffs' incentive awards, which were resolved at the final in-person mediation with Judge Welsh.

Since reaching agreement on November 6, 2019, the Parties drafted the formal settlement agreement with attachments, including details of notice and administration. Of note, the Parties also agreed on a detailed "Claims Handling Guideline" (Exhibit J) with the intent to provide, to the greatest extent possible, clear instructions to the Settlement Administrator on how to handle claims in virtually every conceivable set of possible circumstances. (ECF No. 93-14.) Class Counsel was primarily responsible for drafting the Settlement and virtually all of its exhibits.

Because of the intense negotiations, counsel for the Parties sought two extensions to file their preliminary approval motion. (ECF Nos. 90, 92.) The first extension related to the Parties' effort to establish claims-review criteria, which ultimately led to the development of the Claims Handling Guideline. Because of the wide variety of possible claims and types of evidence available, the Parties sought to create clear instructions for the Settlement Administrator to follow in reviewing claims. Class Counsel used receipts and invoices in their possession from Plaintiffs and others to assist in developing the criteria based on the documentation that a typical class member may have.

The second extension was required to resolve a disagreement on a minute, but important, detail regarding information required on the Claim Form, which was resolved by Judge Welsh during a telephonic session after receiving written position statements and hearing argument from the Parties. A few days later, the Parties finalized, executed, and filed the Settlement Agreement on February 21, 2020.

On April 9, 2020, the Court held a hearing and preliminarily approved the Settlement as likely to be fair, reasonable, and adequate, including Class Counsel's requested fee, and ordered that notice should be issued to the class.

II. RELIEF UNDER THE SETTLEMENT

By any measure, the relief Plaintiffs and Class Counsel recovered on behalf of the nationwide Settlement Class of current and former owners of about 450,000 Class Air Conditioners is outstanding. In addition, Trane has and will pay all costs of notice and administration, attorneys' fees and expenses, and Plaintiffs' incentive awards—none of which will decrease the relief available to the Class.

A. The Settlement Affords Substantial Relief Addressing Each Harm Alleged

As described more fully in the Final Approval Brief, Plaintiffs and Class Counsel negotiated relief that corresponds to each of the harms they alleged. Plaintiffs alleged that: (1) Trane sold defective units knowing that they were at increased risk of TXV clogs and failures; (2) Trane's proffered remedy of injecting full-strength MJ-X on a fix-on-fail basis left a substantial number of units at risk of

a future failure; (3) Trane's proffered remedy of injecting failed units with full-strength MJ-X, which Plaintiffs allege is highly acidic, created a risk of long-term harm to the compressor. Accordingly, Plaintiffs and Class Counsel negotiated three primary categories of benefits that provide relief to current and former owners of about 450,000 Class Air Conditioners.

1. Cash Reimbursements For Out-of-Pocket Repair Expenses

Trane will: (a) reimburse class members for diagnosis and repair expenses for TXV (or evaporator coil) replacements up to $575 per Settlement Class Air Conditioner incurred prior to the Effective Date; and (b) reimburse class members for out-of-pocket expenses for an injection of an Additive, including MJ-X, Zerol Ice, and A/C Re-New, received prior to the Effective Date, up to $250 per Settlement Class Air Conditioner. Eligible class members who had both a TXV replacement and an MJ-X injection can claim up to $825. Although each claim is capped, there is no cap in the aggregate. (ECF No. 93-4, at § IV.A.)

2. Preventative Injection Program

For Class Air Conditioners that have not received a prior MJ-X injection, Trane will provide: (a) free bottles of MJ-X Lite, which has low-acidity and has been shown to be effective at preventing TXV clogs due to the rust inhibitor; and (b) a labor allowance up to $50 for preventative injections to class members during any routine maintenance or other service visit for a period of 12 months following the

Effective Date. (*Id.*, at § IV.B.)

3. Enhanced Compressor Warranty Coverage For Units Injected With Full-Strength MJ-X

For class members whose units were injected with full-strength MJ-X, or similar Additive, prior to September 30, 2018:

- For class members who did not register their warranty and, therefore, are subject to the Base Limited Warranty of five years from the date of installation, Trane will extend their warranty on the compressor to ten years from the date of installation. In other words, this will provide a free replacement compressor for ten years from the date of installation. (*Id.*, at ¶ 62.a.)

- For class members who experience a compressor failure within ten years of installation—in addition to a free replacement compressor under the warranty—Trane will also provide a warranty concession of up to four hours of labor coverage and a refrigerant allowance of $8 per lb. up to the nameplate charge. Since Trane's warranties ordinarily provide *no* coverage for labor or materials, this is a significant enhancement. (*Id.*, at ¶ 62.b.)

- For class members who experience a compressor failure between ten and twelve years, which is after the expiration of Trane's Registered Limited Warranty, Trane will provide a $600 credit toward the purchase of a new Trane or American Standard HVAC unit. (*Id.*, at ¶ 62.c.)

These categories of relief are nonexclusive, and Class members can claim benefits from each category for which they qualify.

B. <u>Trane Has And Will Pay All Costs Of Notice And Administration</u>

Class Counsel negotiated and Trane agreed to pay all costs of notice and administration, which Heffler Claims Group ("Heffler") is administering. The notice program includes first-class mail to 245,717 class members whose addresses

appeared in Trane's records, an extensive digital media campaign producing over 70,000,000 impressions, print publication in a trade magazine, and a national press release. (Decl. of David Kaufman in Support of Joint Motion for Final Approval and Entry of Final Order and Judgment, at ¶¶ 7-8 ["Kaufman Decl."].) Trane will also pay all costs of administration, such as development and maintenance of the settlement website, reviewing claims, and mailing checks. Heffler estimates the total cost of these notice and administration services is around $470,000. (*Id.*, at ¶ 12.) None of this expense reduces the benefits to the class.

C. Trane Will Pay All Attorneys' Fees And Expenses, And Plaintiffs' Incentive Awards

At the final mediation session—only after all other terms were agreed and with Judge Welsh's assistance—Trane agreed to pay up to $1,800,000 in attorneys' fees and litigation expenses, as awarded by the Court. (ECF No. 93-4, at ¶ 88.) In addition, subject to Court approval, Trane agreed to pay each Plaintiff a $5,000 incentive award ($30,000 total) for their service in representing the class. (*Id.*, at ¶ 90.) Notably, the attorneys' fees and expenses and incentive awards are being paid separately by Trane and, thus, will not diminish the benefits available to the class.

III. ARGUMENT

Class Counsel requests that the Court award $1,800,000 in attorneys' fees and litigation expenses under Rule 23(h) of the Federal Rules of Civil Procedure. Specifically, Class Counsel requests that the Court approve $1,725,660.75 in

attorneys' fees and $74,339.25 in expenses. Plaintiffs also seek incentive awards of $5,000 for each Plaintiff.

In class actions, the Supreme Court has recognized a preference that the settling parties privately negotiate fees. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). And the fee "request should not result in a second major litigation." *Id.*

Nevertheless, where the parties have privately negotiated and agreed upon a fee amount, the Court must still review the fee petition and ensure there was no collusion between defendant and class counsel. *See In re NFL Players' Concussion Injury Litig.*, 821 F.3d 410, 447 (3d Cir. 2016). This concern, however, is nullified where, like here, the fee is negotiated with the assistance of a neutral, third-party mediator, only after all material terms of the settlement were agreed, and the fee payment will not diminish recovery to the class. *See id.* ("The District Court here found the clear sailing provision unobjectionable. It emphasized that the issue of fees was not discussed until after the principal terms of the settlement were agreed to [and] the fee award will not diminish class recovery . . . ."); *Shapiro v. Alliance MMA, Inc.*, 2018 U.S. Dist. LEXIS 108132, at *6 (D.N.J. June 28, 2018) (citation omitted) ("The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties.").

At its core, the Court's focus in evaluating a fee request is ensuring that it is

reasonable. *See, e.g.*, *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). Class Counsel respectfully submit that the $1,725,660.75 fee request here is reasonable under the lodestar method and confirmed with a percentage-of-the-recovery cross check.

A. The Fee Request Is Presumptively Reasonable And Warranted Under The Lodestar Method

1. The Lodestar Method Applies

Courts evaluate the reasonableness of a fee request under the percentage-of-recovery method or the lodestar-plus-multiplier method. *Id.* "[E]ach method has distinct advantages for certain kinds of actions, which will make one of the methods more appropriate as a primary basis for determining the fee." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995). The Court has wide latitude in determining what kind of settlement is before it and which fee-evaluation method correspond to that type of settlement. *See, e.g.*, *Granillo v. FCA US LLC*, 2019 U.S. Dist. LEXIS 146086, at *7 (D.N.J. Aug. 27, 2019) (quoting *GMC Pick-Up*, 55 F.3d at 821).

The Third Circuit 'require[s] district courts to clearly set forth their reasoning for fee awards so that [the Circuit Court] will have a sufficient basis to review for abuse of discretion.'" *In re Rite Aid Corp.*, 396 F.3d at 301. "To that end, the Third Circuit has encouraged district courts to perform a 'cross-check' of a fee award using an alternative fee calculation method." *Granillo*, 2019 U.S. Dist. LEXIS 146086, at

*21 (citing *GMC Pick-Up*, 55 F.3d at 820).

Here, the lodestar method is most appropriate. The lodestar method is "preferable" in cases, like this one, where there is no traditional common fund, and "the nature of the settlement evades the precise evaluation needed for the percentage of recovery method." *Saini v. BMW of N. Am., LLC*, 2015 U.S. Dist. LEXIS 66242, at *33 (D.N.J. May 21, 2015) (quoting *GMC Pick-Up*, 55 F.3d at 821); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 U.S. Dist. LEXIS 46291, at *42 (D.N.J. Mar. 22, 2013) (applying the lodestar method where relief was a "combination of reimbursements and software upgrades"). The Court should also then approximate the potential value of the settlement and conduct a percentage-of-recovery cross check.

2. Class Counsel's Lodestar Is Reasonable

"The lodestar award is calculated by multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys." *In re Rite Aid Corp.*, 396 F.3d at 305. "There is a strong presumption that the [resulting] 'lodestar' amount is reasonable." *Eichenlaub v. Twp. of Indiana*, 214 F. App'x 218, 222 (3d Cir. 2007). Excluding their "TXV General" time, Class Counsel expended 2,439 hours prosecuting this litigation for a total lodestar of $1,287,463 through May 31, 2020. (Mathews Decl.,

at ¶ 6; Decl. of James C. Shah filed herewith, at ¶ 7 ["Shah Decl."].) With TXV General time included, their lodestar is $1,395,606.58. (*See* Mathews Decl., at ¶¶ 6, 8.)

The first step in the lodestar analysis is establishing the appropriate hourly rate, which is based on the usual billing rate of the attorney and the "prevailing market rates" in the District of New Jersey for similar work. *Saini*, 2015 U.S. Dist. LEXIS 66242, at *34. In similar complex class actions, the District of New Jersey has approved rates ranging from $500 to $855 for partners and $265 to $445 for associates. *See, e.g.*, *In re Merck & Co. Vytorin ERISA Litig.*, 2010 U.S. Dist. LEXIS 12344, at *45 (D.N.J. Feb. 9, 2010) (approving rates between $250-835); *In re Mercedes-Benz Tele Aid Contract Litig.*, 2011 U.S. Dist. LEXIS 101995, at *19 (D.N.J. Sept. 9, 2011) (approving rates up to $855).

The hourly rates of the Chimicles Schwartz Kriner & Donaldson-Smith ("CSK&D") and Shepherd Finkelman Miller & Shah ("SFM&S") attorneys prosecuting this action are well within the range of reasonableness for this District and have been approved in this District as well as in many other districts. (*See* Mathews Decl., at ¶ 7; Shah Decl. ¶ 8.) The hourly rates for CSK&D attorneys primarily responsible prosecuting this action ranged between $400 and $725 per hour. (Mathews Decl., at ¶ 6 & Ex. A.) And the rates for SFM&S attorneys ranged between $325 and $850. (Shah Decl., at ¶ 7 & Ex. A.) "These rates reflect the

experience and skill of the lawyers involved and are comparable to rates the courts have approved in similar cases in other metropolitan areas." *In re Mercedes-Benz Tele Aid Contract Litig.*, 2011 U.S. Dist. LEXIS 101995, at *19; *see* Mathews Decl., at ¶ 7; Shah Decl., at ¶ 8.

Indeed, courts in this District have previously approved similar rates for CSK&D and SFM&S attorneys. *See, e.g.*, *In re Elk Cross Timbers Decking Mktg., Sales Practices & Prods. Liab. Litig.*, 2017 U.S. Dist. LEXIS 223038, at *20 (D.N.J. Feb. 27, 2017) (approving CSK&D rates); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 U.S. Dist. LEXIS 46291, at *45 (D.N.J. Mar. 22, 2013) (approving rates of CSK&D and SFM&S as "consistent with hourly rates routinely approved by this Court in complex class action litigation"); *see also In re Cigna-American Specialty Health Admin. Fee Litig.*, 2019 U.S. Dist. LEXIS 146899, at *39 (E.D. Pa. Aug. 29, 2019) (approving CSK&D rates up to $950); Mathews Decl., at ¶ 7; Shah Decl., at ¶ 8.

Second, the hours Class Counsel expended in prosecuting this action were reasonable. "The time expended by counsel is 'reasonable' if it is attributable to 'work that is useful and of a type ordinarily necessary in pursuing the litigation.'" *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *12 (quoting *Pub. Interest Research Grp. v. Windall*, 51 F.3d 1179 (3d Cir. 1995)). Class Counsel expended 2,439 hours prosecuting this action through May 31, and 2,648.5 hours including TXV General

time attributable to this case. (*See* Mathews Decl., at ¶¶ 6, 8; Shah Decl., at ¶ 7.) All attorneys kept contemporaneous time records in standard six-minute increments. As discussed above, the time was expended in pre-filing investigation, drafting the initial and amended complaint, discovery and discovery disputes, motion practice, expert discovery, four mediation sessions, negotiations, and drafting and extensively negotiating the settlement details and papers. This does not include the substantial time after May 31, 2020, that Class Counsel will expend in drafting any reply briefs, attending and arguing the final approval hearing, communicating with class members about the settlement, and supervising the claims administration process. *See In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *47 (D.N.J. May 14, 2012) (recognizing that time submitted in connection with a fee petition filed before final approval "does not include the fees and expenses . . . expended after [that date] on tasks such as preparing for and appearing at the fairness hearing").

Class Counsel's lodestar of $1,395,606.58 is reasonable, and the Court should approve it with the requested modest 1.24 multiplier. Even ignoring TXV General lodestar, the requested fee is a modest 1.34 multiple of Class Counsel's Trane-only lodestar of $1,287,463.

3. The Court Should Award A Modest Multiplier

After determining the lodestar amount, "courts routinely find in complex class action cases that a lodestar multiplier between one and four is fair and reasonable."

Saini, 2015 U.S. Dist. LEXIS 66242, at *36; *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) (citation omitted) (noting that "multipliers ranging from one to four are frequently awarded"). Indeed, the Third Circuit has "approved a multiplier of 2.99 in a relatively simple case." *Milliron v. T-Mobile USA Inc.*, 423 Fed. App'x 131, 135 (3d Cir. 2011) (citing *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 742 (3d Cir. 2001)). "The multiplier is a device that attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorneys' work." *In re Rite Aid Corp.*, 396 F.3d at 305-06.

Here, the requested fee amount of $1,725,660 represents a 1.34 multiple on Class Counsel's reasonable lodestar *excluding* their TXV General lodestar, and a 1.24 multiple including TXV General lodestar. The multiplier, therefore, is on the low-end of the common range. *See Prudential*, 148 F.3d at 341. Given the outstanding results obtained, which correspond to every harm alleged, and the significant contingent risks that Class Counsel faced, the multiplier represents a modest award for an excellent result. *See infra* Section III.B.3-7 (discussing applicable considerations such as Class Counsel's displayed skill, the complexity, risks, and comparable cases).

B. A Percentage-Of-Recovery Cross Check Confirms The Fee Request Is Reasonable

As noted above, in order to verify that the fee request is reasonable, the Third

Circuit encourages the use of a percentage-of-the-recovery cross check on the lodestar-based fee. *See In re Rite Aid Corp.*, 396 F.3d at 300 (citing *Prudential*, 148 F.3d at 333).

In analyzing the percentage of recovery, the Court should evaluate ten factors—seven enumerated in *Gunter* (1-7) and three enumerated in *Prudential* (8-10):

(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 plaintiffs' counsel;
(7) the awards in similar cases;
(8) whether the entire value of benefits to the class is attributable to the efforts of class counsel;
(9) whether the percentage-of-recovery request reflects the fee that would result from private negotiations; and
(10) whether there are any particularly innovative terms in the settlement.

In re Diet Drugs, 582 F.3d 524, 541 (3d Cir. 2009) (citing *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000); *Prudential*, 148 F.3d at 338-40)). These factors need not be applied in a formulaic way, and the importance of each factor will vary depending on the facts of each case. *Id.* Here, each factor weighs in favor of awarding the requested fee.

1. The Size Of The Fund And The Number Of Persons Benefitted Weighs In Favor Of Approval

"The first *Gunter* factor considers the size of the settlement fund created and the number of class members benefitted." *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *22. This settlement makes substantial monetary and nonmonetary relief available to current and former owners of approximately 450,000 class units nationwide, and they may claim each and every category of relief for which they qualify. Although the settlement does not create a traditional common fund, the value of the Settlement is substantial by any measure.

Settlements in the Third Circuit are valued based on the "benefit to the class and not the cost to the defendant." *O'Keefe v. Mercedes-Benz U.S., LLC*, 214 F.R.D. 266, 304 (E.D. Pa. 2003). As a court in this District recently held, the "relevant measure is the value of benefits made available to the class as a whole, not the portion of benefits ultimately claimed by class members." *Gray v. BMW of N. Am., LLC*, 2017 U.S. Dist. LEXIS 135593, at *12 (D.N.J. Aug. 24, 2017) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

The total value of the settlement benefits here is not susceptible to precise quantification. However, it is clear that the value of the settlement benefits is substantial and easily supports the modest fee requested. Class Counsel's fee request of $1,725,660 is only a small fraction of the total potential benefit to the class, including all categories of relief and notice and administration expenses. To be sure,

however, the Court's cross-check calculation "need entail neither mathematical precision nor bean-counting." *In re Rite Aid Corp.*, 396 F.3d at 306.

i. Cash Reimbursement

Any current or former owner of a Class Air Conditioner who incurred out-of-pocket expenses to repair a stuck TXV is eligible to claim up to: (1) $575 for a replaced TXV; (2) $250 for an Additive injection; or (3) $825 for both.

For cash reimbursement programs, courts typically examine the value of the cash amounts made available to the class regardless of claims made. *See, e.g.*, *Gray*, 2017 U.S. Dist. LEXIS 135593, at *12. Here, while the total cash reimbursement amount per class unit is capped at $825, there is no aggregate cap on the amount of cash reimbursement the class may receive in total. *See, e.g.*, *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *22-24 (holding, without placing precise value on monetary benefits, that the settlement conferred a "substantial benefit on the settling class members").

ii. Preventative Injection Program

The preventative injection program is available to all class members whose class units were not previously injected with MJ-X. Trane's records indicate that, of the 450,000 class units, about 42,269 have already received an MJ-X injection and, therefore, are not eligible for the preventative injection program. (*See* Kaufman Decl., at ¶ 6.) Therefore, of the 450,000 class units, up to 408,000 may be eligible

for the preventative injection program, which provides for a free bottle of MJ-X Lite (a roughly $30 value) and a labor allowance up to $50.

iii. Enhanced Compressor Warranty Coverage

When valuing warranty coverage, the value of nonmonetary relief is typically estimated by reference to the market value of similar relief as if the class member were to buy it at retail. *See O'Keefe*, 214 F.R.D. at 304; *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *23 (collecting cases). For example, warranties, much like insurance, have value—even if not claimed—because they insure against future losses. *See O'Keefe*, 214 F.R.D. at 305 ("[T]he benefit[s] to the class are most accurately measured by making an estimation of the Extended Coverage Program's market price. . . . A warranty is simply the *ex-ante* market price of insuring against a foreseeable risk."); *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *22 (citing *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 169 (D. Mass. 2015)). That is why this District determines the potential value of settlements that include warranty relief by multiplying the number of eligible class members by the retail value of comparable warranties. *See, e.g.*, *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *22.

Here, for eligible units that did not register their warranty, Trane will extend the warranty (for parts) on the compressor to ten years from the date of installation. (ECF No. 93-4, at ¶ 62.a.) In addition, for eligible class members who experience a

compressor failure within ten years of installation, Trane will provide a warranty concession of four hours of labor and a refrigerant allowance. (*Id.*, at ¶ 62.b.) Finally, for class members who experience a compressor failure between ten and twelve years, which is after the expiration of Trane's Registered Limited Warranty, Trane will provide a $600 credit toward the purchase of a new Trane or American Standard HVAC unit. (*Id.*, at ¶ 62.c.)

To Plaintiffs' knowledge there is no precise analog to this negotiated warranty coverage available on the market from which a market value can be derived. Publicly available documents show that Carrier, a Trane competitor, sold compressor-only, parts-only warranty coverage, for years five through ten, for $68 in 2012. (ECF No. 93-15, at 6 of 6.) Using a consumer price index inflation calculator, this would be $76 today. Here, however, the warranty benefit for qualifying units includes both parts *and labor* coverage for ten years—plus an additional "tail" benefit for years ten through twelve. The market cost of an extended labor warranty through year ten typically costs $1,000 or more. (*See id.*, at 2-5.) Here, however, the enhanced coverage is limited to the compressor. Thus, a market value for the enhanced warranty coverage here likely falls somewhere between $76 and $1,000. It is also not possible, however, to precisely quantify the number of class members eligible for the enhanced warranty coverage. Trane's records show that at least 42,269 class units received Additive injections qualifying them for the enhanced warranty

coverage, but only a fraction of the total injections appear in Trane's records, meaning many more class members are entitled to the enhanced warranty coverage but will need to provide evidence of their qualifying Additive injection. (*See* Kaufman Decl., at ¶ 6.) In any event, these metrics demonstrate that this component of the Settlement provides significant potential value to the Class and justifies Class Counsel's modest fee request, which is based on their reasonable lodestar.

iv. Value Of Notice And Administration

In a common fund case, the value of notice and administration is also part of the benefit obtained for the class. *See, e.g.*, *In re Royal Dutch/Shell Transp. Sec. Litig.*, 2008 U.S. Dist. LEXIS 124269, at *73 (D.N.J. Dec. 8, 2008); *Demmick v. Cellco P'ship*, 2015 U.S. Dist. LEXIS 192723, at *62 (D.N.J. Apr. 30, 2015); Especially because Trane is paying notice and administration costs separately such that they will not reduce the benefits to the class, the estimated value of notice and administration of $470,000 is a substantial benefit to the class. (Kaufman Decl., at ¶ 12.)

v. Valuation Summary And Percentage Of The "Fund"

While it is not possible to precisely quantify the benefits of the Settlement, the total potential value of the benefits is substantial. *See O'Keefe*, 214 F.R.D. at 304 ("The settlement fund should be based on the benefit to the class and not the cost to the defendant."); *Gray*, 2017 U.S. Dist. LEXIS 135593, at *12 ("[T]he relevant

measure is the value of benefits made available to the class as a whole, not the portion of benefits ultimately claimed by class members.").

The Third Circuit has recognized that percentage-of-recovery awards commonly range from 19% to 45% of the fund. *See, e.g.*, *Granillo*, at *24 (citing *GMC Pick-Up*, 55 F.3d at 822). Class Counsel's fee request of $1,725,660 is easily approvable even if the total potential value of the benefits were only $5 million or less. This factor weighs in favor of granting the fee request.

2. The Absence Of Substantial Objections To The Settlement Terms And Fees Weigh In Favor Of Approval

While notice only issued shortly prior to this filing, to date, no class members have objected to the Settlement, and none have objected to the fee request. Considering there are about 450,000 Class Air Conditioners, even a few dozen objectors would comprise only a tiny fraction of the class. *See, e.g.*, *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at *35 (D.N.J. Nov. 9, 2005) (citing *Stoetzner v. United States Steel Corp.*, 897 F.2d 115, 11-19 (3d Cir. 1990)) ("[E]ven when 29 members of a 281-person class (i.e. 10% of the class) objected, the response of the class as a whole 'strongly favors [the] settlement.'"); *Granillo*, 2019 U.S. Dist. LEXIS 146086 at *24-25 (nineteen objections, 0.02% of the class, weighed in favor of approving fee request). If necessary, Plaintiffs will address any objections in their reply papers.

3. Class Counsel Prosecuted This Action With Skill And Efficiency

Class Counsel have been described as "among the most capable and experienced lawyers in the country" in consumer class action litigation. *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016). Class Counsel used their experience to efficiently and effectively achieve an excellent result for the class. Across two years of litigation, counsel largely defeated Trane's motion to dismiss, amended their complaint, tenaciously engaged in highly contentious discovery, retained and worked with an engineering expert, and only then—at Trane's request—did they enter settlement negotiations with the assistance of a renowned mediator. *See, e.g.*, *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *25. The most important consideration, however, is the results achieved, which in this case address each of the harms Plaintiffs alleged. *See id.* at *27 ("The success of the settlement itself speaks to the skill and efficiency of Class Counsel.").

"Moreover, the quality and vigor of opposing counsel is also important in evaluating the services rendered by Class Counsel." *Id.* at *26. Here, Trane was represented by a team of highly-qualified attorneys from two of the largest law firms in the United States—BakerHostetler and Reed Smith.[5] The contentious discovery

[5] Law360 recently ranked Reed Smith at the 15th largest firm in the country and BakerHostetler at 24th. Amanda James, *Law360 Reveals 400 Largest US Firms*, LAW360 (May 12, 2019), https://www.law360.com/articles/1158713/law360-reveals-400-largest-us-firms.

process with Reed Smith, which necessitated numerous submissions to the Court, and the protracted settlement negotiations, which Baker Hostetler led for Trane, epitomize the vigor with which this case was litigated. The skill of Class Counsel in litigating against these opposing counsel weighs heavily in favor of approval.

4. Complexity And Duration Of Litigation

"This factor is intended to capture the probable costs, in both time and money, of continued litigation." *GMC Pick-Up*, 55 F.3d at 812 (citation omitted). As the Court recognized at the preliminary approval hearing, a trial would have been years away. This largely would have been a result of the highly technical facts and complex claims at issue in this case arising under the laws of six states and the federal MMWA, all of which spun a "complex web of state and federal warranty, tort, and consumer protection claims." *Id.* In short, this complex class action has already lasted nearly three years and "required extensive work by class counsel (including motion practice, discovery, and multiple mediation sessions) to result in a successful conclusion." *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *27. It, therefore, weighs heavily in favor of approval.

5. Class Counsel Undertook The Risk Of Nonpayment

"Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees." *Saini*, 2015 U.S. Dist. LEXIS 66242, at *41. Class Counsel expended 2,439 hours to date prosecuting this action. (Mathews Decl., at ¶ 6; Shah

Decl., at ¶ 7.) They advanced all attorney time, expert fees, court costs, and mediation expenses without any assurance that they would be paid. To recoup their fees and expenses, Plaintiffs would have had to prevail on class certification, survive summary judgment, win at trial, and defend any appeals. Although Class Counsel believe Plaintiffs' case to be strong, they recognize it was not without real risk. "The uncertainty of this action—including the risk of losing class certification—presents a high contingent risk for Class Counsel, justifying the fee award." *Granillo*, 2019 U.S. Dist. LEXIS 146086, at *27.

6. Class Counsel Devoted Significant Time To This Case

Here, this *Gunter* factor is subsumed by the lodestar analysis. The time Class Counsel expended was "devoted to work that was necessary to ultimately settle this matter," including pre-suit investigation, drafting and amending complaints, motion practice, discovery, discovery disputes, mediation, and negotiating the details of the settlement and administration. *See, e.g.*, *id.*, at * 28.

7. The Fee Request Is Comparable To Similar Cases

Class Counsel's fee request here is modest compared to similar cases, especially considering the results achieved for the class. In similar consumer product defect class actions, where relief included a combination of out-of-pocket reimbursements and warranty relief, several courts have awarded fees similar to the range here. *See, e.g.*, *id.* at *29 (awarding $1.2 million, which was a 1.11 lodestar

multiplier); *Skeen*, 2016 U.S. Dist. LEXIS 97188, at *8-9, 83 (awarding $2.1 million in fees, which was a 1.14 lodestar multiplier, where defendant agreed to an extended warranty and to out-of-pocket reimbursements); *Henderson*, 2013 U.S. Dist. LEXIS 46291 at *3-6, 40, 47 (awarding $3 million in fees, which was a 1.13 multiplier, where, after three years of litigation, defendant agreed to double the length of its warranty and reimburse a percentage of out-of-pocket costs); *O'Keefe*, 214 F.R.D. at 311 (approving $4.9 million in fees, which was *at least* a 2.95 multiplier, where, after about a year of litigation, defendant agreed to provide an extended warranty and vouchers for an oil change). Here, Class Counsel's fee request of roughly $1.7 million is within the range of awards in similar cases—especially when considering the substantial relief negotiated for the class—and weighs in favor of approval.

8. All Of The Benefits To The Class Are Attributable To The Efforts Of Class Counsel

This was not a case "where government prosecutions [laid] the groundwork for private litigation." *In re Diet Drugs*, 582 F.3d at 544. Because there was no government action here, the benefits obtained were solely derived from the efforts of Plaintiffs and Class Counsel. *See id.*

9. The Percentage-Of-Recovery Request Reflects A Fee That Would Result From Private Negotiations

In private litigation, 33% is a common contingency fee arrangement. *See, e.g.*, *Yedlowski v. Roka Bioscience, Inc.*, 2016 U.S. Dist. LEXIS 155951, at *68 (D.N.J.

Nov. 10, 2016) (citations omitted) ("If this were an individual action, the customary contingent fee would likely range between 30 and 40 percent of the recovery."). And as discussed above, Class Counsel used standard hourly rates that are commonly approved in this District for comparable cases. *See, e.g.*, *Saini*, 2015 U.S. Dist. LEXIS 66242, at *44. Here, even if the settlement was only valued at $5 million or less, Class Counsel's request is well within the common range. This factor, therefore, weighs in favor of approving the fee.

10. There Are Two Innovative Settlement Terms

First, Class Counsel developed the novel Claims Handling Guidelines to assist the Administrator in reviewing claims in this highly technical case, for which documentation may vary. (ECF No. 93-14.) Second, regarding the preventative injection program, Class Counsel negotiated a labor component in the expectation that it would encourage field technicians to provide the injections during routine maintenance. (*See* ECF No. 93-4, at ¶ 57.) This factor weighs in favor of approving the fee request. *See In re NFL Players' Concussion Injury Litig.*, 2018 U.S. Dist. LEXIS 57798, at *19 (E.D. Pa. Apr. 5, 2018).

Thus, all of the *Gunter* and *Prudential* factors weigh in favor of approving the $1,725,660.75 fee request.

C. <u>The Litigation Expense Request Is Reasonable</u>

Under Rule 23(h), "[i]n a certified class action, the court may award

reasonable . . . nontaxable costs that are authorized by . . . the parties' agreement." Here, the Parties' agreement provides that the $1,800,000 request would include Class Counsel's reasonable expenses in prosecuting this case. (ECF No. 93-4, at ¶ 88.) Class Counsel incurred $74,339.25 in unreimbursed litigation expenses. (Mathews Decl., at ¶ 9; Shah Decl., at ¶ 9.) These expenses were incurred for purposes of litigating this action, including expert fees, mediation fees, travel expenses for hearings and mediation, electronic discovery costs, transcription costs for hearings and depositions, printing and mailing expenses. (Mathews Decl., at ¶ 9; Shah Decl., at ¶ 9.) Class Counsel is "entitled to reimbursement" of these expenses that are "adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 125 (D.N.J. 2012) (citation omitted).

D. The Requested Incentive Awards Are Reasonable

"The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation, and to reward the public service of contributing to the enforcement of mandatory laws." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) (citation and quotations omitted). In this District, incentive awards between $1,000 and $10,000 are common, and $5,000 awards are typical. *See, e.g.*, *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *40 (approving, in a car case, $6,000 and $5,000

awards); *Fitzgerald v. Gann Law Books*, 2014 U.S. Dist. LEXIS 174567, at *15-16 (D.N.J. Dec. 7, 2014) (approving $5,000 award in a TCPA case and noting plaintiffs' duties with respect to this case were not "particularly onerous").

Here, Plaintiffs request a modest incentive award of $5,000 to each of the six Class Representatives ($30,000 total) for their role in prosecuting this case. Like the attorneys' fees, the incentive awards were negotiated with the assistance of Judge Welsh only after the Parties agreed on all material terms of the Settlement. And also like the fee request, the incentives are separate from and will not affect the class recovery. Plaintiffs assisted in drafting their allegations in the complaints, produced documents in response to Trane's requests, diligently communicated with counsel, and communicated with counsel throughout the settlement negotiations. The $5,000 incentives are well-deserved and should be awarded.

CONCLUSION

Plaintiffs respectfully request that, pursuant to the Parties' agreement, the Court grant their motion and award (1) attorneys' fees and expenses in the amount of $1,800,000, and (2) each of the class representatives a $5,000 incentive award.

DATED: June 4, 2020

Respectfully submitted,

s/ Timothy N. Mathews
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CERTIFICATE OF SERVICE

I, Timothy N. Mathews, certify that on this 4th day June 2020, I caused the foregoing *Plaintiffs' Memorandum Of Law In Support Of Motion For Award Of Attorneys' Fees And Expenses And Plaintiffs' Incentive Awards* to be filed using the Court's CM/ECF system, thereby causing it to be served upon all registered ECF users in this case.

s/ Timothy N. Mathews
Attorney for Plaintiffs