**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

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| SKYLAR WILLIAMS, individually and on behalf of all others similarly situated,<br><br>*Plaintiff*,<br><br>*v.*<br><br>GALDERMA LABORATORIES, L.P.,<br><br>*Defendant*. | Case No. 24-cv-02222<br><br>Honorable Lindsay C. Jenkins |

**PLAINTIFF'S MOTION FOR AND MEMORANDUM OF LAW IN SUPPORT OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD**

# TABLE OF CONTENTS

**PAGE(S)**

# TABLE OF AUTHORITIES

**PAGE(S)**

**CASES**

**STATUTES**



**RULES**



**OTHER AUTHORITIES**

## I. INTRODUCTION

Plaintiff alleges that Differin BPO products sold in the United States contain harmful levels of benzene, and seeks compensation for economic losses allegedly sustained by U.S. consumers purchasing the products. The Parties reached a proposed Settlement that would resolve this action and provide significant relief to the Settlement Classes.[1] Specifically, the Settlement creates a settlement fund totaling $990,000.00 to resolve the claims of a Nationwide Settlement Class. Settlement Class Members who timely submit a Valid Claim with Proof of Purchase shall receive the purchase price for each Covered Product listed on the Proof of Purchase, inclusive of all taxes. Settlement Class Members who submit a Valid Claim without Proof of Purchase shall receive the average retail price—nine dollars ($9.00)—for up to three (3) Covered Products claimed per household.

This Settlement is the result of lengthy negotiations with the benefit of expert discovery. It was negotiated only after the parties litigated a Motion to Dismiss (ECF Nos. 21, 26, 27, 31), engaged numerous discovery disputes (ECF Nos. 40, 42, 46, 53, 60), completed intensive fact discovery (ECF Nos. 43, 60), and largely completed expert discovery (Declaration of Philip L. Fraietta ("Fraietta Decl.") ¶¶ 6-13). After weeks of continued back-and-forth discussions, the Parties ultimately reached agreement on a term sheet that evolved into the Settlement that this Court preliminarily approved. This is likely a better result as the Settlement Class could have hoped for at trial but it comes sooner and avoids the significant risks of the continued litigation of a complex class action. The Settlement is also in line with the relief provided by other settlements in this District, and elsewhere, involving alleged deception and product mislabeling.

[1] Capitalized terms used in this motion are defined in the Class Action Settlement Agreement (the "Settlement"), attached as Exhibit 1.

Based on the outstanding results for the Settlement Classes and the risks Class Counsel undertook to achieve them, Class Counsel respectfully moves the Court to award one-third or 33.3% of the total Settlement Fund as attorneys' fees and expenses for a collective fee award of $330,000.00. The lodestar method is appropriate to use to determine the reasonableness of the fee here. As required by the Seventh Circuit, the requested fee percentage accurately reflects the fee arrangement that Settlement Class Members would have entered into with Class Counsel had they made an *ex ante* bargain before heading into litigation, accounting for the risks of nonrecovery. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 719 (7th Cir. 2001).

Plaintiff's requested incentive award of $2,500 is similarly reasonable. Incentive awards in class action settlements frequently exceed $10,000. *See In re Akorn, Inc. Secs. Litig.*, No. 1:15-cv-01944, dkt. 182 (N.D. Ill. June 5, 2018) (Feinerman, J.) (awarding three $10,000 incentive awards); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1348 (2006) (finding that "[t]he average award per class representative was $15,992"). Plaintiff's requested award reflects her participation in this case, and is in line with, if not far less than what has been awarded in several cases in this District. *See, e.g.*, *Bedford v. Lifespace Communities, Inc.*, No. 20-cv-04574, dkt. 31 (N.D. Ill. May 12, 2021) (incentive award of $10,000).

As described below, Plaintiff's requested fees and incentive award are reasonable and warrant the Court's approval.

## II. BACKGROUND

### A. Litigation History and the Work Performed for the Settlement Classes.

This proposed class action arises from Defendant's alleged mislabeling and omissions regarding its Differin Daily Deep Cleanser (5% Benzoyl Peroxide ("BPO")), Differin Acne Spot

Treatment (10% BPO), and Differin Maximum Strength Acne Foaming Cleanser (10% BPO) (the "Covered Products"). *See generally* Complaint, ECF No. 1. More specifically, Plaintiff alleged that the Covered Products contained possible benzene contamination due to Defendant's failure to comply with the federal current Good Manufacturing Practices ("cGMP") regulations. *Id.* ¶¶ 48-66. Galderma denies that the labeling and advertising for the Products was misleading, denies that the Products were contaminated with benzene, and denies any wrongdoing or liability. Answer, ECF No. 34.

Plaintiff initially filed her Complaint on March 18, 2024, over two years ago. ECF No. 1. Since then, the case has been heavily litigated by the Parties. Defendant filed a Motion to Dismiss, arguing that Plaintiff's claims were preempted by the federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 379r(a), that Plaintiff's Illinois Consumer Fraud and Deceptive Trade Practices Act (the "ICFA") claims were precluded by the statutory safe harbor provision and were not adequately pled, and that Plaintiff failed to state a cause of action under her multi-state and unjust enrichment claims. *See* ECF No. 22. The Parties fully briefed the matter, and the Court denied in part and granted in part Defendant's Motion. *See* ECF No. 26, 27, 28. Plaintiff was permitted to proceed on her "theory that Galderma's failure to comply with cGMPs was an unfair practice under ICFA." ECF No. 28 at p. 14. Defendant answered the Complaint on October 1, 2024 and the parties initiated discovery. ECF No. 34, Fraietta Decl. ¶ 5.

Over the next year, the Parties engaged in intensive discovery. Fraietta Decl. ¶¶ 6-13. Plaintiff propounded twenty-three interrogatories, thirty-nine document requests, and took Defendant's deposition on fifteen different topics. *Id.* ¶ 13. This discovery examined Defendant's labeling, manufacturing, testing, regulatory compliance, and other quality control processes regarding the Covered Products. *Id.* Defendant issued numerous requests for production, requests

for admission, and interrogatories on Plaintiff regarding her claims. *Id.* Defendant also deposed Plaintiff regarding her claims. *Id.* In addition to exchanging discovery, the parties issued third-party subpoenas on a number of retailers of the Covered Products. *Id.* Fact discovery had been completed by the time of the Parties' settlement negotiations. *Id.* ¶ 12. Accordingly, the parties were fully aware of the underlying facts of the case.

Additionally, the Parties had largely completed expert discovery at the time of settlement. Indeed, expert discovery (and related product testing had become a hotly contested issue between the Parties. On June 26, 2025, Plaintiff filed a Motion to Compel and for Sanctions regarding Defendant's allegedly late disclosure of testing results, only one week before its 30(b)(6) deposition. *See* ECF No. 46. Specifically, Plaintiff sought access to the same retains that Defendant had tested, so that her expert could confirm their results. *Id.* On July 2, 2025, the Court held a hearing, granting Plaintiff's Motion to Compel but denying the Motion for Sanctions, and ordering the parties to complete expert discovery by February 20, 2026. *See* ECF No. 60.

Plaintiff then largely completed her expert discovery, which included testing of the retains for Benzene contamination and compared those results with Defendant's testing results of the same retains. Fraietta Decl. ¶ 12. Thus, Plaintiff and her counsel had largely completed discovery.

After all testing was completed, the parties started discussing the possibility of settlement. On November 3, 2025, only two weeks before Plaintiff's final expert disclosures were due, the parties agreed to stay their litigation efforts to facilitate direct settlement negotiations. *Id.* ¶ 14; ECF No. 65. Over the next month, the parties reached agreement on the material terms of a class settlement, executing a term sheet on December 4, 2025. Fraietta Decl. ¶ 15. Over the next two months, the Parties finalized the Settlement. *Id.* On February 17, 2026, Plaintiff filed her Motion for Preliminary Approval of Class Action Settlement. *See* ECF No. 73. This Court granted that

motion on February 19, 2026, preliminarily approving the Settlement. *See* ECF No. 76.

**B. The Settlement Secures Excellent Relief for the Settlement Class.**

Under the Settlement's terms, Defendant has agreed to provide substantial monetary relief to a Nationwide Class. Defendant has agreed to create a non-reversionary Settlement Fund of $990,000.00. *See* Settlement § 3.1. Settlement Class Members who timely submit a Valid Claim with Proof of Purchase shall receive the purchase price for each Covered Product listed on the Proof of Purchase, inclusive of all taxes. *Id.* § 3.4.1. Settlement Class Members who submit a Valid Claim without Proof of Purchase shall receive the average retail price—nine dollars ($9.00)—for up to three (3) Covered Products claimed per household. *Id.* § 3.4.2.

As discussed further below, this is an excellent result. The monetary relief the Settlement secures provides a complete refund for the Products at the heart of Plaintiff's and the Class's claims. Plaintiff achieved this result only after litigating for two years in the face of existential risks to the case. Class Counsel's fee award and Plaintiff's incentive award should be approved.

## III. THE REQUESTED ATTORNEYS' FEES AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Rule 23 allows courts to "award reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In common fund settlements like this one, the attorneys' fee award is typically made as a share of the fund. The "common fund doctrine" is "based on the notion that not one plaintiff, but all those who have benefitted from litigation should share its costs." *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 563 (7th Cir. 1994) (citation omitted). By awarding fees payable from the common fund created for the benefit of the entire class, the court spreads litigation costs proportionately among those who will benefit from that fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

Class Counsel took this case on a contingent basis despite the high risks of non-recovery

at the outset. Fraietta Decl. ¶ 28. Now that Class Counsel has achieved the results that they did, they respectfully request that they be awarded a reasonable attorneys' fee award of $330,000. The requested fee amount is inclusive of the $319,914.01 in costs fronted by Class Counsel—i.e., Class Counsel is not requesting costs separately. *See* Fraietta Decl. ¶ 30; Settlement §§ 5.1, 5.3. Essentially, Class Counsel is simply requesting a reimbursement on costs expended in the prosecution of this case, and retention of the modest remainder of $10,085.99.

The requested fee amount is well within the range of typical contingency fee arrangements approved by this Court. *See T.K. Through Leshore v. Bytedance Tech. Co.*, 2022 WL 888943, at *25 ("In the Seventh Circuit, and elsewhere, courts 'regularly award percentages of 33.33% or higher to counsel in class action litigation.'"), *see also Fischer, et al. v. Instant Checkmate LLC*, No. 19-cv-04892, dkt. 286 ¶ 17 (N.D. Ill. Feb. 15, 2024) (awarding 35% of state-specific settlement funds in class action settlement); *see also Krause v. RocketReach, LLC*, No. 21-cv-01938, dkt. 97 ¶ 14 (N.D. Ill. Sept. 12, 2023) (awarding 35% of common fund case); *Butler v. Whitepages Inc.*, No. 19-cv-04871, dkt. 277 ¶ 15 (N.D. Ill. Sept. 29, 2022) (awarding 35% of common funds). Consequently, it should be approved.

**A. The Lodestar Method Should Be Used to Determine Fees Here.**

In the Seventh Circuit, district courts may choose one of two methods for awarding attorneys' fees in common fund cases: (1) percentage-of-the-fund or (2) lodestar approach. *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500 (N.D. Ill. 2015). Under the percentage-of-the-fund approach, "plaintiffs' attorneys . . . petition the court to recover its fees" as a percentage of the total fund. *Florin,* 34 F.3d at 563. In contrast, the lodestar approach requires the court to first determine a "reasonable hourly rate allowable for each attorney . . . involved in the case." *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991). The court next multiplies "the hours reasonably

expended by the reasonable hourly rates" to produce the lodestar. *Id.* Finally, the court increases the lodestar by a multiplier that accounts for other relevant considerations, such as the attorneys' amount of risk in bringing the case or the complexity of the issues. *See id*. (holding that courts should consider from an *ex ante* perspective "what size risk the attorney assumed at the outset by taking this type of case").

While the Court has discretion over whether to use the percentage-of-the-fund or lodestar approach, courts typically begin with the lodestar figure, which represents "the number of hours reasonably expended on the litigation multiplied by the reasonable hourly rate." *See Estate of Enoch v. Tienor*, 570 F.3d 821, 823 (7th Cir. 2009) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)). The normal practice in consumer class actions "is to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery." *Id.* Here, the Parties agreed that Class Counsel may apply to the Court for an amount not to exceed one-third of the Settlement Fund ($330,000.00). Settlement ¶ 5.1.

**B. An Award of $330,000.00 Is Appropriate Here.**

In determining what a reasonable attorneys' fee award is, the Seventh Circuit has instructed that "the measure of what is reasonable is what an attorney would receive from a paying client in a similar case." *Montgomery v. Aetna Plywood, Inc.,* 231 F.3d 399, 408 (7th Cir. 2000). "[I]n consumer class actions . . . the presumption should . . . be that attorneys' fees awarded to class counsel should not exceed a third or at most a half of the total amount of money going to class members and their counsel." *Gehrich*, 316 F.R.D. at 235 (citing *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014)); *see also* 5 Willaim Rubenstein, NEWBERG ON CLASS ACTIONS § 15.83 (5th ed.) (noting that, generally, "50% of the fund is the upper limit on a reasonable fee award from any common fund"). Against that presumption, courts consider the benefit achieved for the

class, the fee awards made in similar cases, the risks that the case presented, the quality of the legal work provided, the anticipated work necessary to resolve the litigation, and the stakes of the case. *See Redman v. RadioShack Corp.*, 768 F.3d 622, 633 (7th Cir. 2014) ("[T]he central consideration is what class counsel achieved for the members of the class"); *Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) ("[A]ttorneys' fees from analogous class action settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court."); *see also In re Synthroid*, 264 F.3d at 721.

The appropriateness of the $330,000.00 fee award here is further justified by (1) the substantial risk that Class Counsel took on in accepting the case, (2) the excellent relief Class Counsel ultimately obtained for the Settlement Class, and (3) the fact that Class Counsel would only be receiving $10,085.99 in attorneys' fees after recouping costs.

**a. This case presented serious obstacles to recovery, and Class Counsel litigated the case mindful of the high possibility that the Settlement Class might recover nothing.**

This factor recognizes the risk of nonpayment in cases prosecuted on a contingency basis where claims are not successful, which can justify higher fees. *See*, *e.g.*, *Kujat v. Roundy's Supermarkets Inc.*, 2021 WL 4551198, at *4 (N.D. Ill. Aug. 11, 2021) ("A one third fee is also reasonable in light of the significant risks of nonpayment that Plaintiffs' counsel faced."); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) ("Contingent fees compensate lawyers for the risk of non-payment. The greater risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.").

This case presented a substantial risk of nonpayment for Class Counsel. For over two years, Class Counsel invested significant time, effort, and resources to this litigation without any compensation. Fraietta Decl. ¶¶ 19-22. Specifically, Class Counsel had to overcome a motion to

dismiss, which collectively eliminated several of Plaintiff's claims, including Plaintiff's failure to warn claims and inactive ingredient claims. *See* Opinion and Order (ECF No. 31).

Absent the Settlement, Defendant could present in opposition to class certification and at summary judgment or trial evidence that the Products did not contain the benzene exceeding the federal two parts per million guidance. Fraietta Decl. ¶ 25. Indeed, Plaintiff is aware that Defendant had conducted testing on its products to this effect. *Id.* ¶ 8. Defendant would present a vigorous defense to class certification, including likely moving for decertification or for appellate review under Fed. R. Civ. P. 23(f) if class certification were granted. Plaintiff would also risk having a nationwide class diminished to an Illinois Subclass, leaving consumers in 49 states without any relief. *See also In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992) (remanding for reconsideration of "the fee due class counsel" where "they could have lost everything"). Here, the Settlement includes Settlement Class Members located anywhere in the United States (*id.* ¶ 2.34), whereas Defendant would have argued at class certification that, at best, only Illinois consumers represented by Plaintiff could be included in a certified class. Fraietta Decl. ¶ 25. Thus, notwithstanding the substantial risks and uncertainty present in this case, the Settlement provides for Settlement Class Members as good a result on an individual basis as they could have hoped for at trial. *Chambers v. Together Credit Union*, 2021 WL 1948453, at *3 (S.D. Ill. May 14, 2021) ("Defendants' settlement offer is significant, estimated to be nearly 60% of the potential damages the Class would have obtained had they prevailed on every issue all the way through trial and appeal."). The fact Class Counsel undertook this representation, despite these significant risks, supports the requested fee award.

**b. Class Counsel achieved an excellent result for the Settlement Class.**

Given the uncertain legal landscape and the possibility that the Settlement Class would

recover nothing at all, the relief secured by Class Counsel is exceptionally strong. The Court should appropriately consider the actual result achieved—both as a function of the quality of Class Counsel's work, and because litigants often consider the ultimate degree of success in determining a fee schedule. *See Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014).

As highlighted above, the Settlement's $990,000.00 in overall monetary relief provides a substantial recovery to the Settlement Class. This significant relief comes against a backdrop of other benzoyl peroxide cases that have resulted in dismissals and no monetary relief at all. *See, e.g.*, *O'Dea v. RB Health (US) LLC*, 779 F. Supp. 3d 1135 (C.D. Cal. 2025); *see also Navarro v. Walgreens Boots All., Inc.*, 2025 WL 3485004 (E.D. Cal. Dec. 4, 2025). As such, this case stands out as great success for Plaintiff and the Settlement Class Members.

In addition, Class Counsel has been recognized by courts across the country for its expertise, including courts in this District. *See* Fraietta Decl. Ex. 2, Firm Resume of Bursor & Fisher, P.A.; *see also* Suciu Decl. Ex. 1, Firm Resume of Bryson PLLC. Class Counsel litigated this case efficiently, effectively, and civilly.

Ultimately, the monetary relief recovered on behalf of the Settlement Class warrants approving the requested one-third of the Settlement Fund.

**c. The Requested Attorneys' Fees Are Also Reasonable Under A Lodestar Cross-Check**

A lodestar cross-check further supports the requested fee. To calculate lodestar, counsel's reasonable hours expended on the litigation are multiplied by counsel's reasonable rates. *See Blum v. Stenson*, 465 U.S. 886, 897 (1984); *Summers*, 2005 WL 3159450, at *1. The resulting figure may be adjusted at the court's discretion by a multiplier, considering various equitable factors. *See United States ex rel. Perez v. Williams*, 2013 WL 1181487, at *1 (N.D. Ill. Mar. 19, 2013) ("The

lodestar figure may be adjusted to reflect factors such as the complexity of the legal issues involved, the degree of success obtained, and the public interest advanced by the litigation."). Where the lodestar is "used merely as a cross-check, the lodestar analysis can be 'abridged.'" *In re Trans Union Corp. Priv. Litig.*, 2009 WL 4799954, at *17 (N.D. Ill. Dec. 9, 2009).

Here, however, Class Counsel are not requesting an enhancement of their lodestar. On the contrary, the requested award of $330,000 results in only $10,085.99 in attorneys' fees after deducting Class Counsel's costs. This represents an approximately 0.017 *negative* multiplier of Class Counsel's lodestar. *See* Fraietta Decl. ¶ 33.[2] "When, as here, the requested fee represents a lodestar multiplier of less than one, it reveals that the fee request constitutes only a fraction of the work that the attorneys billed and thus favors approval." *Calhoun v. Invention Submission Corp.*, 2023 WL 2403917, at *6 (W.D. Pa. Mar. 8, 2023) (approving attorneys' fees representing a negative multiplier of 0.27 of counsel's lodestar); *see also Schiller v. David's Bridal, Inc.*, 2012 WL 2117001, at *23 (E.D. Cal. June 11, 2012) ("An implied negative multiplier [of 0.76] supports the reasonableness of the percentage fee request."); *Seguin v. County of Tulare*, 2018 WL 1919823, at *7 (E.D. Cal. Apr. 24, 2018) (same for "negative modifier" of 0.55); *In re NTL Inc. Sec. Litig.*, 2007 WL 1294377, at *8 (S.D.N.Y. May 2, 2007) (same for "negative lodestar multiplier of 0.42").

## IV. THE COURT SHOULD APPROVE THE REQUESTED INCENTIVE AWARD

The Settlement also provides for an incentive award to Plaintiff in recognition of her efforts as Class Representative. Specifically, the Settlement allows for an incentive award in the amount of $2,500, subject to this Court's approval. Settlement § 5.2. Incentive awards are appropriate in class actions to compensate individuals for stepping up to protect the interests of a broader class,

[2] Class Counsel also expended a reasonable number of hours on this litigation over two and a half years, and their blended hourly rate of approximately $664.17 is also reasonable. *See* Fraietta ¶ 29.

spending their own time to achieve benefits for the class as a whole. *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

Here, the Class Representative's participation was critical to the case's ultimate resolution, and she requests only a modest service award that reflect her contributions to the case.[3] Plaintiff expended significant time and effort helping Class Counsel investigate her claims, providing information to Class Counsel to prepare the complaint, reviewing the complaint before filing, participating in offensive and defensive discovery, sitting for a deposition, participating in the settlement negotiation process, reviewing and signing off on the Settlement, and otherwise assisting Class Counsel through the duration of this litigation. Fraietta Decl. ¶ 18. As a direct result of the Class Representative's participation, Class Counsel was able to secure substantial and readily available monetary relief for the Settlement Class. The Class Representative was also willing to attach her name to this high-profile litigation against Defendant, subjecting herself to "scrutiny and attention," which is "certainly worth some remuneration." *Schulte*, 805 F. Supp. 2d at 601.

From a monetary standpoint, the Class Representative's requested incentive award is eminently reasonable. The award requested here is much lower than incentive awards that are regularly approved by federal courts in Illinois. *See e.g.*, *Davis*, No. 1:19-cv-00680, dkt. 130 (N.D. Ill. Oct. 25, 2021) ($10,000 service award). Because Plaintiff's request is modest and reflects her efforts in representing the Settlement Class, it should be approved.

## V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an order (1)

[3] Neither Plaintiff's retention agreement nor her participation in this Action were in any way predicated on receiving any benefit based on her involvement. Plaintiff was not promised anything in exchange for her service as named plaintiff or putative class representative. Fraietta Decl. ¶ 18.

granting Class Counsel's requested fee award in the amount of $330,000.00; (2) awarding a $2,500 incentive award to Plaintiff Skylar Williams; and (3) providing such other and further relief as the Court deems reasonable and just.[4]

Dated: April 20, 2026

Respectfully Submitted,

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[4] In connection with her final approval motion and supporting papers, Plaintiff will submit a proposed final approval order that will allow for the Court to fill in any award of attorneys' fees and incentive award.

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