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

LESLIE URLAUB, MARK PELLEGRINI, and MARK FERRY, on behalf of themselves and all others similarly situated, *Plaintiffs,* v. CITGO PETROLEUM CORPORATION, et al., *Defendants.*	Case No. 1:21-cv-04133 Honorable Matthew F. Kennelly

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION AND SETTLEMENT ADMINISTRATION EXPENSES, AND SERVICE AWARDS

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INTRODUCTION

On the cusp of trial, Plaintiffs and their counsel ("Class Counsel") have obtained a favorable Settlement that will benefit the entire Class in this Action.[1] The Settlement is the result of several years of diligent litigation efforts by Plaintiffs and Class Counsel, including extensive discovery, multiple expert reports, denial of a hotly contested motion for summary judgment, certification of a class that includes retirees back to 1995 (which has never been done before), and preparation of Plaintiffs' final pre-trial order submission. Moreover, the outcome that was obtained for the Class is exceptional and indeed unprecedented among similar cases seeking to enforce "actuarial equivalence" requirements for spousal pensions.

As previously explained in Plaintiffs' motion for preliminary settlement approval (ECF 158-1), which was granted by the Court (ECF 160), Defendants have agreed to increase the pension benefits of Class members by $10 million. Class members who retired within six years of the filing of the Action will receive a ***net*** recovery of more than 87% of their losses as estimated by Plaintiffs' actuarial expert, and class members who retired more than six years before the filing of the Action will receive at least 20% of their estimated losses—an excellent outcome given that similar class settlements concerning ERISA's actuarial equivalence requirements did not even include retirees more than six years prior to the lawsuit. *See* ECF 158-1 at 1 & n.2.

As an added benefit under the Settlement, Defendants have agreed to separately pay all attorneys' fees, litigation and settlement administration expenses, and class representative service awards up to $4.75 million (combined). Consistent with the Settlement Agreement, Plaintiffs request a total award of $4.75 million here. This is reasonable in light of the excellent result obtained for the Class, which exceeds the recoveries obtained in similar class action settlements.

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[1] The Settlement Agreement is docketed at ECF 158-3. Unless otherwise indicated, all capitalized terms carry the same meaning they carry in the Settlement Agreement.

See ECF 158-1 at 1 & n.2. Moreover, the $4.75 million total award was negotiated by adversarial parties with the assistance of a neutral mediator on the cusp of trial, and therefore reflects the market value of Plaintiffs' claim for fees and costs. Importantly, these awards will ***not*** diminish the recoveries of Class Members, which are being paid from a separate escrow set up by CITGO to fund these awards, and no Class Member has objected to the requested awards to date. Finally, the net requested fee award (exclusive of expenses and class representative service awards) is ***less*** than the lodestar that Class Counsel have spent prosecuting this Action.

Accordingly, Plaintiffs and Class Counsel respectfully request that the Court approve the negotiated award of $4.75 million for: (1) attorneys' fees to Class Counsel; (2) litigation and settlement administration expenses (which total $308,091.95 to date); and (3) service awards of $25,000 to each of the Class Representatives ($75,000 total). The combined requested award of $4.75 million equals approximately 32.2% of the aggregate settlement value of $14.75 million, and the net requested fee award of $4,366,908.05 (exclusive of expenses and service awards) is approximately 29.6%.[2] Defendants do not oppose the relief requested in this motion.

BACKGROUND AND PROPOSED SETTLEMENT TERMS

Plaintiffs incorporate by reference the Factual and Procedural Background and Summary of Proposed Settlement Terms from their memorandum in support of preliminary settlement approval and accompanying attorney declaration. *See* ECF 158-1 at 2-8; ECF 158-2 ¶¶ 18-33. Relevant to this motion, the Settlement Agreement ("SA") provides that Class Counsel may move for an award of attorneys' fees, reimbursement of litigation and settlement administration expenses, and service awards for the Class Representatives. SA § IV.A. Pursuant to the Settlement

[2] $14.75 million (the aggregate settlement amount), not $10 million, is the proper settlement value for analyzing the requested fee award. *See Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014) ("The ratio that is relevant to assessing the reasonableness of the attorneys' fee that the parties agreed to is the ratio of (1) the fee to (2) the fee plus what the class members received.").

Agreement, CITGO has paid $4.75 million into an escrow account to fund any such awards that are granted by the Court after deciding this motion. *Id*. Any amounts not awarded by the Court will be returned to CITGO. *Id*.

The negotiated attorneys' fees, expenses, and service awards will not diminish or offset in any manner the $10 million in increased pension benefits provided to Class Members under the Settlement; rather, they are fully funded by CITGO pursuant to Section IV.A of the Settlement. The court-approved Notice of Settlement explained that Class Members had a right to object to the attorneys' fees, expenses, and service awards sought in this motion. Declaration of Michelle Yau ("Yau Decl.") Ex. 1 at 4-5. To date, no objections have been received. *Id*. ¶ 38.

ARGUMENT

A. The Requested Fee Reflects the Market's Assessment of a Reasonable Fee

Parties to a class action properly may negotiate not only the settlement of the action itself, but also the payment of attorneys' fees. *Evans v. Jeff D.*, 475 U.S. 717, 734-35, 738 n.30 (1986). In cases where the attorneys' fee award was negotiated separately and will not reduce the benefit conferred on the class, the Supreme Court has made clear that settlements of fee and expense awards should be encouraged and respected; it is only where parties fail to reach agreement on fees that the fee applicant bears a significant burden in establishing entitlement to an award:

> A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee. Where settlement is not possible, the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.

Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). Rule 23(h) expressly authorizes the Court to award "reasonable attorney's fees and nontaxable costs . . . by the parties' agreement." F.R.C.P. 23(h).

As Judge Posner observed in *In re Continental Illinois Securities Litig.*, the virtue in negotiation of attorneys' fees by the adversarial parties to the settlement is that the "markets know

market values better than judges do." 962 F.2d 566, 570 (7th Cir. 1992) (cleaned up). Thus, "a court can, in most instances, assume that the defendants closely scrutinized the plaintiffs' fee requests, and agreed to pay no more than was reasonable." *In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 582 (3d Cir. 1984) (cleaned up). This is particularly true where, as here, the negotiations were overseen and assisted by an experienced, neutral, third-party mediator (*see* ECF 158-1 at 5) and the fees will not diminish the recovery for class members.

B. The Requested Attorneys' Fee Is Reasonable Under All Relevant Factors

Under the common fund doctrine, Class Counsel are entitled to a reasonable attorneys' fee from the fund created for the benefit obtained in a class action settlement. *See Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980). Where the attorneys' fee is paid in addition to the amount to be paid to the class (instead of paid out of the class recovery), the combined value of both payments is aggregated for purposes of measuring the total benefit to the class. *See Redman*, 768 F.3d at 630.

In the Seventh Circuit, "attorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services." *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 957 (7th Cir. 2013). To determine a reasonable fee in a class action settlement, courts in this Circuit favor the percentage of the fund method, rather than lodestar method, because contingent, percentage-of-the-recovery fees mirror the market. *See George v. Kraft Foods Glob., Inc.*, 2012 WL 13089487, at *2 (N.D. Ill. June 26, 2012) (*citing Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (applying percentage of the fund method in awarding attorneys' fees in ERISA class action settlement); *see also In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (noting that market rate in consumer class actions is a fee based on a percentage of the recovery); *Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *2 (S.D. Ill. Nov. 22, 2010) (same). In fact, the percentage-of-recovery method has

"emerged as the favored method for calculating fees in common fund cases in [this District]." *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 844 (N.D. Ill. 2015).

"Ultimately, in the Seventh Circuit, the market controls. Thus, the Seventh Circuit is less concerned with the choice between the lodestar or percentage method than with approaching the determination through the lens of the market." *In re Trans Union Corp. Priv. Litig.*, 2009 WL 4799954, at *9 (N.D. Ill. Dec. 9, 2009), *order modified and remanded*, 629 F.3d 741 (7th Cir. 2011). Regardless of which method is applied here—the percentage of the fund or the lodestar method—the requested fee is reasonable.

1. The Requested Fee Award Is Consistent with, and Below, Fee Awards Approved in Similar ERISA Class Action Settlements

Seventh Circuit courts routinely award fees that are one-third of the common fund achieved in ERISA class action settlements. *See, e.g.*, *Godfrey v. GreatBanc Tr. Co.*, No. 1:18-cv-07918, ECF 324 at 4 (N.D. Ill. Oct. 4, 2022) (Kennelly, J.) (awarding one-third of $16.5 million ERISA class action settlement as attorneys' fees); *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *1, 3 (S.D. Ind. Sept. 4, 2019) (awarding one-third of $23 million common fund as attorneys' fees); *Spano v. Boeing Co.*, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016) (finding a one-third fee award to be consistent with ERISA class action settlements); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (awarding one-third of $62 million ERISA class action settlement); *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) ("A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law [ERISA]") (awarding $10 million in fees out of $30 million gross settlement fund in ERISA class action); *George*, 2012 WL 13089487, at *4 (awarding one-third of $9.5 million ERISA class action settlement).

Here, the requested attorneys' fee is consistent with—and slightly less than—the typical one-third attorneys' fee award in similar ERISA class action settlements, which underscores its reasonableness in relation to market rates. *See Spano*, 2016 WL 3791123, at *2-3 (noting, in ERISA cases, a "one-third [percentage based] fee is consistent with the market rate in settlements concerning this particularly complex area of law"). Further, the fact that the requested $4.75 million award is inclusive of expenses, and will not erode the recovery of Class Members (because it is being paid separately by CITGO), further weighs in favor of approving the requested award.

2. Several Market Factors Support the Requested Fee

In evaluating the reasonableness of a requested fee, the Seventh Circuit requires district courts to consider whether the fee is within the range of fees which would have been agreed to at the outset of the litigation, considering the risk of nonpayment and the market rate. *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 832 (7th Cir. 2018); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid I*"); *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007). Courts must "do their best to recreate the market by considering factors such as actual fee contracts that were privately negotiated for similar litigation [and] information from other cases." *Taubenfeld v. AON Corp*., 415 F.3d 597, 599 (7th Cir. 2005).

The market price for legal fees "depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case." *Sutton*, 504 F.3d at 693 (quoting *Synthroid I*, 264 F.3d at 721). Further, the actual agreement that each named Plaintiff entered into with Class Counsel is relevant to evaluating the market price for contingent representation.

i. Risk of Nonpayment

First, the risk of nonpayment to Class Counsel supports approval. "Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-

handed, the higher the award must be to attract competent and energetic counsel." *Silverman*, 739 F.3d at 958 (citation omitted); *see also Sutton*, 504 F.3d at 694 (finding abuse of discretion where court refused to account for the risk of loss and therefore "the possibility exists that Counsel ... was undercompensated"). Class Counsel undertook this case on a purely contingent-fee basis; had Plaintiffs lost the case, Class Counsel would have received neither fees nor reimbursement of their expenses. *See* Yau Decl. ¶ 18; Stris Decl. ¶ 15; Wasow Decl. ¶ 16. While Class Counsel was confident in Plaintiffs' claims, the outcome of the litigation was uncertain. Other cases involving other counsel have been dismissed, *see, e.g., Belknap v. Partners Healthcare Sys., Inc.*, 588 F. Supp. 3d 161 (D. Mass. 2022), or have not resulted in class certification, *see, e.g., Thorne v. U.S. Bancorp.*, 2021 WL 1977126 (D. Minn. May 18, 2021).

Facing these significant risks, Class Counsel devoted substantial attorney and paralegal time (worth over $4.38 million) to litigate this matter to a successful resolution. Yau Decl. ¶ 15; *see also id.* ¶ 11; Stris Decl. ¶ 6; Wasow Decl. ¶ 6. Not only have Class Counsel expended ***more*** attorneys' fees than they are requesting here, there was substantial risk that their work could go entirely uncompensated. This underscores that the requested fee is reasonable and does not represent a windfall for Class Counsel. Typically, class counsel receive a multiplier to compensate for such risks. *See Spano*, 2016 WL 3791123, at *3 ("In risky litigation such as this, lodestar multipliers can be reasonable in a range between 2 and 5.").

ii. *The Quality of Performance and Work Performed*

As courts in this Circuit have recognized, ERISA cases are "particularly complex." *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015); *see also Koerner v. Copenhaver*, 2014 WL 5544051, at *4 (C.D. Ill. Nov. 3, 2014) ("The facts giving rise to Plaintiffs' claims are complicated, require the elucidation of experts, and are far from certain."). Because of

the expertise required, "few lawyers or law firms are capable of handling, much less willing to handle, this type of national litigation." *Beesley*, 2014 WL 375432, at *3.

Here, Class Counsel dealt with difficult actuarial issues, navigated unsettled law, secured important wins, and negotiated a Settlement that provides exceptional—indeed unprecedented—value for the Class. Class Counsel obtained this extraordinary recovery after taking the case to the cusp of trial, and after extensive discovery, multiple expert reports, denial of a hotly contested motion for summary judgment, and certification of a Class that includes retirees going back to 1995. The requested fee is reasonable given the high quality of representation that Class Counsel provided to the Class, which required understanding and explaining the actuarial science behind the statutory requirement of "actuarial equivalence" and complex work with an actuarial expert. Success also required familiarity with the ERISA statutory framework and the applicable regulations at a time when the law concerning the meaning of "actuarial equivalence" was largely undeveloped. To date, there has been no circuit decision addressing Plaintiffs' theories and there has been only one similar class certified after a contested class motion. *See McAlister v. Metro. Life Ins. Co.*, 2023 WL 5769491 (S.D.N.Y. Sept. 7, 2023). No other class has been certified (on a contested motion or in a settlement context) that includes persons who retired more than six years prior to the commencement of the lawsuit. *See* ECF 158-1 at 1 & n.2. In short, the representation provided by Class Counsel was of the highest quality.

Class Counsel's exceptional representation of the Class is due in large part to the fact that the three law firms who litigated this case are recognized as national leaders in ERISA litigation. *See generally* ECFs 158-2, -5, -6. Cohen Milstein Sellers & Toll PLLC ("CMST") has had a dedicated group of ERISA class action specialists for over 20 years and has been named as one of the ten "Most Feared Plaintiffs Firms" by *Law360.* ECF 158-2 ¶ 5. *Law360* also named CMST's

ERISA practice the "Practice Group of the Year" in the benefits area for three of the last four years (2019, 2021, and 2022). *Id.* ¶ 6. Michelle Yau, who chairs the ERISA practice group has been named an MVP in the area of Employee Benefits/ERISA by *Law360*. ECF 95-5 at ¶ 12. Ms. Yau began her career as an Honors Attorney at the U.S. Department of Labor and has specialized in ERISA class actions since she left the government two decades ago. ECF 158-2 ¶ 4. Ms. Yau also worked as a financial analyst on Wall Street prior to her legal career, which provided unique quantitative skills which were invaluable in this case. *Id*.

Stris & Maher LLP ("Stris") is a boutique law firm with a nationally-recognized ERISA litigation practice. ECF 158-5 ¶ 9. The firm is one of only three law firms in America ranked by *Chambers USA* in Band 1 for "ERISA Litigation: Mainly Plaintiffs." *Id.* The firm is led by Peter Stris. Mr. Stris has been given *Chambers USA*'s top spot (Star Individual) on the "ERISA Litigation: Mainly Plaintiffs" table. *Id.* ¶ 3. Mr. Stris is also one of the few plaintiff-side ERISA lawyers elected as a fellow of the American College of Employee Benefits Counsel. *Id.*

Feinberg, Jackson, Worthman & Wasow LLP ("FJWW") is a law firm engaged in litigation and consulting work throughout the United States on behalf of participants, plans, employers, unions, trustees and other fiduciaries, and service providers. ECF 158-6 ¶ 3. The firm was formed in 2015 by attorneys who had worked at Lewis, Feinberg, Lee & Jackson, P.C. and its predecessors, which litigated cases under ERISA from 1976 to 2015. *Id.*

In sum, the Class enjoyed first-class representation, which provided credibility at the bargaining table and was instrumental in achieving the end result. This further supports the requested attorneys' fees.

iii. *The Stakes of the Case*

The stakes of the case also support Class Counsel's fee request. This case sought to remedy millions of dollars of alleged losses to the pension payments, past and future, of Class Members.

Given the risks and expense of ERISA litigation, it is highly unlikely that any individual Class Member would bring this case and pay an attorney on an hourly basis. Yau Decl. ¶ 33. Class Counsel's willingness to litigate this case on a contingent fee basis was critical to the financial wellbeing of 1,700+ Class Members. And Class Counsel represented retirees who had retired more than six years prior to the commencement of suit when no other law firms have done so.

iv. *The Contract Between Plaintiffs and Class Counsel*

Class Counsel's requested fee is consistent with representation agreements commonly entered into within this Circuit and District, including between Plaintiffs and Class Counsel here. Specifically, the customary contingency agreement in this Circuit is 33% to 40% of the total recovery. *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201 (N.D. Ill. 2018); *see also Kirchoff v. Flynn*, 786 F.2d 320, 323-24 & n.5 (7th Cir. 1986); *Retsky Fam. Ltd. P'ship v. Price Waterhouse, LLP*, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (recognizing that customary contingent fee is "between 33 1/3% and 40%," and awarding counsel one-third of the common fund).

Consistent with market rates, each Plaintiff entered into a contingent fee agreement with Class Counsel calling for a fee of up to 33 1/3% of any recovery, plus expenses. Yau Decl. ¶ 18. Class Counsel are requesting ***less*** than the one-third fee they are entitled to under their retainer. *See supra* at 2. Based on a review of "actual fee contracts that were privately negotiated for similar litigation [and] information from other cases," as well as Class Counsel's retainer agreement in this case, the fee request here is reasonable. *See Taubenfeld*, 415 F.3d at 599.

3. The Requested Fee Is Reasonable under a Lodestar Crosscheck

While not required, a lodestar crosscheck further underscores the reasonableness of the requested attorneys' fees. Here, Class Counsel's net requested fee award ($4,366,908.05, exclusive of expenses and service awards) is ***less*** than the value of the time they invested in prosecuting this Action. *See* Yau Decl. ¶¶ 15-17. As of the date of this filing, Class Counsel's total lodestar, net of

write offs, is $4,384,085.50. Yau Decl. ¶ 15; *see also id.* ¶ 11; Stris Decl. ¶ 6; Wasow Decl. ¶ 6. Moreover, Class Counsel will continue to invest time in the case responding to Class Member inquiries or objections, preparing for and participating in the Final Approval Hearing, and otherwise effectuating the Settlement. Yau Decl. ¶ 9.

Under the lodestar approach, reasonable hourly rates are multiplied by the hours reasonably expended by the attorneys, which may then be multiplied by a risk multiplier that is determined at the district court's discretion. *Cook v. Niedert*, 142 F.3d 1004, 1009 & 1013 (7th Cir. 1998). The Seventh Circuit has held that the hourly rates to be applied in calculating the lodestar are those normally charged for similar work by attorneys of comparable skill and experience in the community in which the attorney practices. *Synthroid I*, 264 F.3d at 718. In ERISA class actions, federal courts recognize that reasonable hourly rates are based on national, rather than local, rates. *See, e.g.*, *Beesley*, 2014 WL 375432, at *3; *see also Frommert v. Conkright*, 223 F. Supp. 3d 140, 151 (W.D.N.Y. 2016), *amended on other grounds*, 2017 WL 3867795 (W.D.N.Y. May 4, 2017).

Here, Class Counsel's reported hourly rates used to calculate their lodestar amounts reflect their customary hourly rates, and are consistent with the rates charged to each firm's hourly clients. Yau Decl. ¶ 12; Stris Decl. ¶ 7; Wasow Decl. ¶ 8. The hourly rates of these three law firms supported the fee request that this Court recently approved as reasonable in *Smith v. GreatBanc Tr. Co.,* No. 1:20-cv-02350, ECF 163 (N.D. Ill. August 23, 2023) (approving requested fee as reasonable based on hourly rates submitted by the same three firms: CMST, Stris, and FJWW), and also have supported fee requests approved as reasonable in other cases as well. *See, e.g., Ahrendsen v. Prudent Fiduciary Servs., LLC*, 2023 WL 4139151, at *7 (E.D. Pa. June 22, 2023) (approving CMST's fees as reasonable); *Becker v. Wells Fargo & Co.*, No. 0:20-cv-02016, ECF 285 (D. Minn. Sept. 1, 2022) (same); *Baird v. BlackRock Institutional Tr. Co., N.A.*, 2021 WL

5113030, at *7 (N.D. Cal. Nov. 3, 2021) (approving CMST's and FJWW's fees as reasonable); *Tom v. Com Dev USA, LLC*, No. 2:16-cv-01363, ECF 166 (C.D. Cal. Dec. 4, 2017) (approving Stris's fees as reasonable); *Dennard v. Transamerica Corp.*, No. 1:15-cv-00030, ECF 121 (N.D. Iowa Oct. 28, 2016) (same). Further, courts within this District have approved awards of attorneys' fees where the underlying lodestar contained similar hourly rates for ERISA class counsel. *See, e.g.*, *Godfrey*, No. 1:18-cv-07918, ECF 319-1, 324 (approving attorneys' fees where class counsel's hourly rates were between $370 to $975 for attorneys and up to $275 for paralegals); *Spano*, 2016 WL 3791123, at *3 (approving hourly rates between $460 and $998 for attorneys and up to $309 for paralegals). Market prices for legal services have only gone up since then.

In light of the complexity of this case, the risk of total non-payment, and the excellent result obtained for the Class Members, the requested attorneys' fees—which are less than the lodestar invested by Class Counsel—should be approved.

C. Class Counsel's Reasonably Incurred Litigation Expenses Should Be Reimbursed

In addition to the requested attorneys' fees, counsel who create a common fund are entitled to reimbursement of out-of-pocket litigation expenses. *Beesley*, 2014 WL 375432, at *3 (citing Fed. R. Civ. P. 23); *George*, 2012 WL 13089487, at *4; 29 U.S.C. § 1132(g)(1) (providing for recovery of "costs of action"). The Seventh Circuit has held that litigation expenses should be awarded based on the types of "expenses private clients in large class actions (auctions and otherwise) pay." *Synthroid I*, 264 F.3d at 722.

Here, Class Counsel have incurred $304,291.95 in out-of-pocket litigation expenses. Yau Decl. ¶ 24; *see also id.* ¶¶ 20-21; Stris Decl. ¶ 13; Wasow Decl. ¶ 14. These expenses were necessary to the prosecution of the case and the successful result achieved for the Class. Yau Decl. ¶ 23. Such expenses included, *inter alia*, court filing fees, process server fees, courier and postage

expenses, online legal research fees, mediation fees and costs, expert fees, transcript and related expenses for depositions, and travel expenses in connection with the litigation. Yau Decl. ¶ 22. These expenses are of the type routinely billed by attorneys to paying clients, and are recoverable. *See Koszyk v. Country Fin.*, 2016 WL 5109196, at *5 (N.D. Ill. Sept. 16, 2016) (approving out-of-pocket expenses for "case-related travel, electronic research, court fees, court reporters, postage and courier fees, working meals, photocopies, telephone calls, travel, and Plaintiffs' portion of mediator fees"); *Beesley*, 2014 WL 375432, at *3 (reasoning that reimbursement of litigation costs and expenses is "well established" in common fund settlements, which may include expert witness costs, computerized research, court reports, travel expenses, copy and facsimile expenses, and mediation); *George*, 2012 WL 13089487, at *4. Accordingly, Class Counsel request that the Court approve reimbursement of these expenses as part of the $4.75 million aggregate award.

D. The Requested Settlement Administration Expenses Are Reasonable

In addition to litigation expenses, Plaintiffs properly seek settlement administration expenses as part of the overall award. *See In re Ky. Grilled Chicken Coupon Mktg. & Sales Pracs. Litig.*, 2011 WL 13257072, at *4 (N.D. Ill. Nov. 30, 2011) (noting that "administrative costs of [a] settlement are necessary to achieve its overall success"). Here, these settlement administration expenses are modest because Defendants distributed the Notice of Settlement to Class Members and the CAFA Notice to government officials at their expense, and also will pay the costs of the escrow account and Independent Fiduciary. *See* Yau Decl. ¶ 27. The only settlement administration expenses that Plaintiffs seek to recover are the costs of the Settlement Administrator, Analytics Consulting LLC ("Analytics"), to (1) create and maintain the settlement website, telephone support line, and email inquiry address, (2) respond to inquiries from Class Members, and (3) communicate with counsel regarding the status of settlement administration. Yau Decl. ¶ 28. Analytics has extensive experience performing similar services, and has agreed to

perform these services for only $3,800. This is substantially below the settlement administration costs approved in other ERISA class settlements. *See, e.g., Hill v. Mercy Health Corp.*, 3:20-cv-50286, ECF 82 at 2 (N.D. Ill. May 6, 2022) ("Class Counsel's request for … settlement administration expenses in the amount of $64,176.00 is approved."); *Reetz v. Lowe's Cos., Inc.*, No. 5:18-cv-00075, ECF 263 at 2 (W.D.N.C. Oct. 12, 2021) (approving settlement administration costs of $203,045); *Becker,* No. 0:20-cv-02016, ECF 285 at 2 (awarding $400,000 to settlement administrator). Accordingly, the requested settlement administration expenses also should be approved as part of the overall award.

E. Service Awards of $25,000 Each for the Named Plaintiffs Are Appropriate

Finally, the Court should approve service awards of $25,000 to each Class Representative for their efforts on behalf of the Class. Such awards are routinely granted to compensate class representatives for their time spent prosecuting the claims, as well as to compensate them for the risks they incurred in stepping forward to vindicate the rights of others. *See Cook*, 142 F.3d at 1016 (recognizing in an ERISA class action that "because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit"); *Synthroid I*, 264 F.3d at 722 ("Incentive awards are justified when necessary to induce individuals to become named representatives."). In evaluating service awards, the district court evaluates "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Camp Drug Store*, 897 F.3d at 834.

Here, the Class Representatives actively participated in the litigation on behalf of the Class. They (i) reviewed the allegations in the Complaints bearing their names; (ii) provided information to counsel in connection with the lawsuit; (iii) responded to discovery requests, including interrogatories and requests for the production of documents; (iv) attended their depositions and

prepared for those depositions in advance; (v) communicated with counsel regarding the litigation and Settlement; and (vi) reviewed the Settlement Agreement. Yau Decl. ¶ 31; *see also* ECFs 95-2 through 95-4 ("Plaintiff Decls.") ¶ 5. They understood their responsibilities as class representatives and were committed to serving the best interests of the Class in all respects. Yau Decl. ¶ 32; Plaintiff Decls. ¶¶ 6-8. This active and continuous participation for the benefit of the Class, together with the positive result that was achieved, supports the requested service awards.

A service award of $25,000 for each Class Representative is comparable to other awards approved by courts within this Circuit. *See, e.g.*, *Nistra v. Reliance Tr. Co.*, No. 1:16-cv-04773, ECF 291 at 4-5 (N.D. Ill. June 19, 2020) (awarding $25,000 to named plaintiff in ERISA class action settlement); *Hale v. State Farm Mut. Auto Ins. Co.*, 2018 WL 6606079, at *15 (S.D. Ill. Dec 16, 2018) (awarding $25,000 for each of three named plaintiffs); *Beesley*, 2014 WL 375432, at *4 (approving $25,000 service awards to each of the six surviving named plaintiffs); *Cook*, 142 F.3d at 1016 (upholding award of $25,000 to class representative based on time expended and results obtained for the class); *Heekin v. Anthem, Inc.*, 2012 WL 5878032, at *1 (S.D. Ind. Nov. 20, 2012) (approving $25,000 award to class representative over objection). In total, the requested service awards constitute only one half of one percent of the total $14.75 million settlement value, which further demonstrates their reasonableness. *See Abbott*, 2015 WL 4398475, at *4 (awards of up to $25,000 individually that collectively are "less than one percent of the fund are well within the ranges that are typically awarded in comparable cases"); *Beesley*, 2014 WL 375432, at *4 (approving service awards that "represent[ed] just 0.55 percent of the total settlement fund"). !

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for attorneys' fees, litigation and settlement administration expenses, and service awards.

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Respectfully submitted,

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