UNITED STATES COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CYNTHIA RUSSO, LISA BULLARD, RICARDO GONZALES, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 38 HEALTH AND WELFARE FUND, INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 295-295C WELFARE FUND, and STEAMFITTERS FUND LOCAL 439, On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. WALGREEN CO., Defendant.	Case No. 1:17-cv-02246 CLASS ACTION Judge Edmond E. Chang

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES, AND SERVICE AWARDS TO PLAINTIFFS

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INTRODUCTION

Plaintiffs Cynthia Russo, Lisa Bullard, Richard Gonzales (the "Individual Plaintiffs"), International Brotherhood of Electrical Workers Local 38 Health and Welfare Fund, International Union of Operating Engineers Local 295-295c Welfare Fund, and Steamfitters Fund Local 439 (the "Fund Plaintiffs," and with the Individual Plaintiffs, "Plaintiffs") respectfully submit this memorandum of law in support of Class Counsel's[1] Motion for an Award of Attorneys' Fees and Expenses to Plaintiffs' Counsel[2] and Service Awards to Plaintiffs.

Class Counsel vigorously litigated this case for over seven years and were able to secure a $100 million Settlement and important injunctive relief ending Walgreens challenged conduct here, which Class Counsel believes is an excellent result for the Settlement Class in this complex, high-risk class action. In awarding fees, courts consider several factors, the most important of which is the quality of work as reflected in the result obtained. The Settlement represents an outstanding recovery considering the Individual and Fund Plaintiffs' claims and the arguments Defendant Walgreens Co. ("Walgreens") has advanced concerning liability, damages, and the likelihood of certification of the Class. Moreover, this Settlement was secured after the completion of fact discovery, where the legal and factual issues were fully developed. Thus, at the time they entered into the Settlement, Plaintiffs and Class Counsel were fully cognizant of the strengths of Plaintiffs' claims, as well as the inherent risks of continuing the litigation through class certification, summary judgment, and ultimately trial. Moreover, the Settlement provides certainty

[1] Capitalized terms not defined herein have the same meanings as in the Stipulation of Settlement dated November 1, 2024 (ECF No. 681-1) ("Stipulation"). Citations are omitted and emphasis is added throughout unless otherwise noted.

[2] These firms are: Scott+Scott Attorneys at Law LLP ("Scott+Scott"), Robbins Geller Rudman and Dowd LLP ("Robbins Geller"), Halunen Law LLC, Levin Sedran & Berman LLP, Tusa P.C., Lemmon Law Firm LLC, The Cates Law Firm LLC, Milberg Coleman Bryson Phillips Grossman, PLLC and Robbins LLP. The work Plaintiffs' Counsel performed is summarized in each firm's respective declarations in support of this Motion.

and finality over the outcome and ensures that the Settlement Class can obtain a monetary recovery without further delay.

As compensation for their efforts, Class Counsel requests an award of attorneys' fees of $30 million, which, consistent with Notice provided to the Class, is 30% of the $100 million Settlement Amount, plus out of pocket expenses of $2457,229.92 plus interest earned for both amounts at the same rate and for the same period as that earned by the Settlement Fund.[3] In addition, Plaintiffs seek awards of $5,000 to each of the three Individual Plaintiffs and $15,000 to each of the three Fund Plaintiffs in connection with their representation of the Class. For the reasons set forth herein, the relief sought in this motion should be granted.

I. AWARD OF ATTORNEYS' FEES

A. The Percentage Method Should Be Used

Under the "equitable" or "common fund" doctrine established more than a century ago in *Internal Imp. Fund Trs. v. Greenough*, 105 U.S. 527, 528 (1881), attorneys who create a common fund for a class are entitled to an award of attorneys' fees and expenses from that fund as compensation for their work. *See Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007).

[3] Class Counsel is mindful of the Court's rulings, calculating attorney-fee awards in other class action litigation as a percentage of the settlement amount ***net*** of settlement administration costs and any plaintiff service awards granted. *See, e.g., Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201-02 (N.D. Ill. 2018). The net settlement amount here would be $98.74 million, after deduction for administrative expenses of $1.2 million and aggregate Class Plaintiff service awards of $60,000. *See* Declaration of Joseph G. Guglielmo and Arthur L. Shingler in Support of Motion for Award of Attorneys' Fees and Expenses, and Service Awards to Plaintiffs ("Joint Decl."), ¶18. Calculation of a fee award here, however, based solely on a net settlement amount would fail to accurately recognize the value of Class Counsel's efforts on behalf of the Class, including not only the cash recovery ***but obtaining important and valuable injunctive relief in that Walgreens agreed to and now has discontinued the challenged program and practices that were at issue in this Action***. *See* Stipulation, Section 2.3. Should the Court calculate the fee-award as a percentage of the net settlement amount, the Class requests that the Court increase that amount to the Noticed $30 million amount in recognition of the value of the injunctive relief obtained and the risk in undertaking the litigation as a whole. *See, e.g.*, Ex. A (*Vergara v. Uber Techs., Inc.*, 15-cv-6942, ECF No. 111 at 3–4 (N.D. Ill. Feb 26, 2018) (awarding 30% of first $10M of net fund, plus a 6% risk premium); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (awarding 30% of the net fund plus a 6% risk adjustment).

The "percentage" method for awarding fees (awarding a percentage of the settlement amount) incentivizes and rewards attorneys for obtaining the largest possible settlement for the class, which matters most to the clients. While the "lodestar" method (multiplying hours by rates) has also been used in awarding fees, the lodestar method can create perverse incentives to delay settlements and run up billable hours, thereby rewarding inefficient management and staffing of cases. *See, e.g., In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) (stating the lodestar approach creates the "incentive to run up the billable hours").[4] In contingency cases, like this one, clients typically agree to percentage fees, rather than pay based on hourly rates. *See Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee is the 'market rate.'"). Thus, "[t]he 'percentage of the fee' method is preferable" to the lodestar method "because it more closely replicates the contingency fee market rate for counsel's legal services." *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 816 (E.D. Wis. 2009).

Consistent with market practice and case law, "[i]n a common fund class action settlement, the Seventh Circuit Court of Appeals uses a percentage of the relief obtained rather than a lodestar or other basis." *Bell v. Pension Comm. of ATH Holding Co.*, 2019 WL 4193376, at *3, *5 (S.D. Ind. Sept. 4, 2019) (noting that while district courts have discretion to use lodestar "the use of a lodestar cross-check is no longer recommended in the Seventh Circuit"); *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (stating that "it is commonplace to award the lawyers for the class a percentage of the fund" and affirming award). Indeed, judges in this District routinely use the percentage method without regard to lodestar. *See, e.g., Wright v. Nationstar Mortg. LLC*, 2016

[4] *See also, e.g., Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive.").

WL 4505169, at *14 (N.D. Ill. Aug. 29, 2016) (citing *In re Capital One Telephone Consumer Protection Act Litigation*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (a percentage-of-recovery method is proper, because when considering the market rate for counsel's services in an ex ante position, "'the normal practice in consumer class actions'" is to "'negotiate[] a fee arrangement based on a percentage of the recovery.'") (alteration in original)[5]; *Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (stating it was unnecessary to consider lodestar), *aff'd sub nom. Silverman v. Motorola Sols., Inc.*, 739 F.3d 956 (7th Cir. 2013) (affirming without discussion of lodestar); *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 844, 849 (N.D. Ill. 2015) (finding the percentage method has "emerged as the favored method for calculating fees in common-fund cases in this district" and finding "no utility in considering" lodestar); *Flynn v. Exelon Corp.*, 2023 WL 8291661, at *1 (N.D. Ill. Sept. 8, 2023) (awarding fee from class settlement fund without discussion of lodestar); Ex. B (*Azar v. Grubhub, Inc.*, No. 1:19-cv-07665, ECF No. 118 at 1-2 (N.D. Ill. Jan. 12, 2023) (awarding 30% fee on $42 million settlement without discussion of lodestar). For these reasons, the percentage method should be used.

B. The Percentage Fee Requested Is Reasonable and Appropriate

It is well established that an attorney "who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). It is equally well known that corporate defendants retain large firms that recruit talented lawyers through very high compensation and are paid hourly rates without regard to risks of losing.[6] Fee awards to plaintiff's

[5] Unless otherwise indicated, citations are omitted and emphasis is added.

[6] Industry defense rates are often much higher than those of Plaintiffs' Counsel here. *See, e.g.*, Ex. C (Roy Strom, *Big Law Rates Topping $2,000 Leave Value 'In Eye of Beholder,'* BLOOMBERG LAW (June 9, 2022) (noting that partners at certain defense firms, including those who help clients "accused of fraud," were charging near or more than $2,000 per hour for their work).

counsel should serve to attract equally talented lawyers to take on the risks of contingent fee representation for plaintiffs in class action cases. *See, e.g.*, *Silverman*, 739 F.3d at 958 (stating that "[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel").

Here, the requested 30% fee appropriately compensates Plaintiffs' Counsel for the quality of services provided, as reflected in their work product, the substantial result obtained, and the risks of litigating for over seven years without any certainty that they would ever be compensated, and is consistent with fee awards in this District and courts in the Seventh Circuit. Here, the requested 30% of the Settlement Amount is consistent with the method of calculating the attorneys' fee award. *See Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014); *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014); *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201 (N.D. Ill 2018); *Wright*, 2016 WL 4505169, at *14. Class Counsel respectfully requests that the Court approve the requested $30 million fee for the reasons that follow.

1. The Request Is Consistent with Fees Awarded in This District

The Seventh Circuit has held that, in awarding fees in common fund cases, district courts should "'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'" *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005); *Silverman*, 739 F.3d at 957, 958 (holding fees should "approximate the market rate" and that "[c]ontingent fees compensate lawyers for the risk of nonpayment"). In terms of market rates, had this case been litigated on an individual rather than class basis, the customary fee would be 33%-40% of the recovery. *See Kirchoff*, 786 F.2d at 323 (observing that "40% is the customary fee in tort litigation" and noting contract providing for 33% fee if case settled before trial). Similarly, courts have recognized that in class action cases, "an award of 33.3% of the settlement fund is within the reasonable range." *Schulte v. Fifth Third Bank*,

805 F. Supp. 2d 560, 598 (N.D. Ill. 2011); *see, e.g., In re Broiler Chicken*, 2021 WL 5709250, at *4 (N.D. Ill. Dec. 1, 2021) (awarding a flat 33% of a $150 million common fund and stating "fee awards in antitrust cases in this circuit are almost always one-third"). Awards of one-third of the common fund are also commonly awarded in consumer protection litigation. *See, e.g., Charvat v. Valente*, 2019 WL 5576932, at *11 (N.D. Ill. Oct. 28, 2019) (collecting cases); *Furman v. At Home Stores, Inc.*, 2017 WL 1730995, at *4 (N.D. Ill. May 1, 2017) (the fact that "plaintiffs routinely agree to a one-third contingency fee arrangement[ ] reinforces that Plaintiff's Counsel are requesting the proper market rate").

Moreover, the quality of work and the reputation of defense counsel supports Class Counsel's fee request as well. Walgreens is represented by Reed Smith LLP, which is one of the leading healthcare and insurance law firms in the United States according to the legal industry researcher Chambers and Partners.[7] Courts in this District and elsewhere have recognized that the quality and work of opposing counsel is also a factor in determining the award of attorneys' fees. *See In re TikTok Inc. Consumer Privacy Litig.*, 617 F. Supp. 3d 904, 942 (N.D. Ill. 2022) (noting that quality of the work of defense counsel who were leading attorneys in their field weighed in favor of requested one-third fee); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 357–58 (S.D.N.Y. 2005) (fact that class counsel "fac[ed] formidable opposing counsel from some of the best defense firms in the country" supported reasonableness of fee request).

Class Counsel and additional Plaintiffs' Counsel who litigated this matter have vast experience in litigating high-stakes actions and have obtained some of the most significant outcomes for their clients. *See, e.g.*, Exhibit D to the Declaration of Daryl F. Scott and to the

[7] Fifteen Band 1 practice rankings for Reed Smith were concentrated in healthcare, insurance, bankruptcy/restructuring, corporate and dispute resolution fields. *Chambers USA rank 66 Reed Smith practices and 134 lawyers*, REEDSMITH (June 6, 2024), https://www.reedsmith.com/en/news/2024/06/chambers-usa-ranks-66-reed-smith-departments-and-132-lawyers.

Declaration of Arthur L. Shingler. For example, in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789-LGS (S.D.N.Y), Scott+Scott was co-lead counsel and obtained settlements against 16 of the largest financial institutions totaling in excess of $2.3 billion. In *In re European Government Bonds Antitrust Litigation*, No. 1:19-cv-02601-VM-SN (S.D.N.Y), Scott+Scott as co-lead counsel obtained settlements against 10 global financial institutions totaling $120 million. Recently, Scott+Scott served as trial counsel in *State of Connecticut v. Assured Rx LLC et al.*, Case No. HHD-CV18-6101282-S (Connecticut Superior Court, Harford District) and secured a landmark verdict of $39 million of the State of Connecticut arising out of a prescription drug kickback scheme.

Similarly, Robbins Geller has consistently obtained significant recoveries for classes of victims, including (among many others) in: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.) ($5.5 billion recovery); *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices & Antitrust Litigation*, No. 2:17-md-02785-DDC-TJJ (D. Kan.) ($609 million recovery); *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388 (D. Mass) ($590.5 million recovery); *Alaska Electrical Pension Fund v. Bank of America Corp.*, No. 14-cv-07126 (S.D.N.Y.) ($504 million recovery); *In re Currency Conversion Fee Antitrust Litig.*, MDL No. 1409 (S.D.N.Y.) ($336 million recovery), among others.

The 30% fee request is also consistent with fees awarded in this District to law firms, including Class Counsel here, in complex class actions. *See, e.g.*, *In re Groupon, Inc. Sec. Litig.*, 2016 WL 3896839, at *3-4 (N.D. Ill. July 13, 2016) (awarding 30% of $45 million settlement); *In re Household Int'l, Inc. ERISA Litig.*, 2004 WL 7329846, at *1 (N.D. Ill. Nov. 22, 2004) (awarding 30% of $46.5 million settlement); *Pierrelouis v. Gogo Inc.*, 2022 WL 7950362, at *1-2 (N.D. Ill. Oct. 13, 2022) (awarding 33.3% of $17.3 million settlement, finding amount "fair and reasonable

and consistent with fee awards approved in similarly complex cases within the Seventh Circuit"); *Bell*, 2019 WL 4193376, at *1 (approving fee award of 33.3% of $23.65 million settlement in ERISA class action); *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *1 (S.D. Ill. Jan. 31, 2014) (approving 33.3% fee award of $30 million settlement in ERISA class action).[8]

2. Lead Counsel Obtained an Exceptional Result

Clients care most about results, and in awarding fees, courts should consider the "quality of legal services rendered." *Taubenfeld*, 415 F.3d at 600; *see also Silverman*, 2012 WL 1597388, at *3 (noting that counsel's representation "was significant, both in terms of quality and quantity"). Here, the quality is reflected both in the work done and the result obtained.

Class Counsel undertook an over seven-year effort and expended substantial efforts in securing this result. From the outset, this case required a determined investigation and the skill to respond to a host of complex legal and factual defenses raised by Defendants in their motions. *See* Joint Decl., ¶¶7-9. The work performed by Class Counsel and additional Plaintiffs' Counsel included drafting detailed Complaints, preparing extensive briefs in opposition to and overcoming Defendant's motion to dismiss, conducting substantial discovery. Joint Decl., ¶¶10-12. Plaintiffs took or defended party and non-party depositions, including expert depositions, researched and drafted Plaintiffs' motion for class certification, conducted dozens of meet-and-confer sessions, engaged in extensive motion practice, argued at court hearings, and prepared for and participated

[8] That the requested fee award is appropriate in this Action, given the size of the recovery, and the substantial amount and quality of Plaintiffs' Counsel's work undertaken on the Class's behalf, is further buttressed by and stands in contrast to the Seventh Circuit's remand of a 25% fee award in a class action in *In re Stericycle Sec. Litig.*, 35 F.4th 555, 568 (7th Cir. 2022). *Stericycle* settled prior to a ruling on a motion to dismiss, leaving the Seventh Circuit "[un]convinced the settlement was a good outcome." *Id.* Further distinguishing that case from this Settlement, the *Stericycle* settlement followed the defendants' settlements there with other parties in related litigation and the plaintiff there apparently had negotiated a lower fee at the outset. *Id.* at 561-67. In contrast, this Action settled after the motion to dismiss, and after what was substantial party, non-party, and expert discovery. Moreover, this is an excellent result, there have been no other settlements at the outset of this case, and both the Individual and Fund Plaintiffs support the fee request.

in a lengthy in-person and multiple subsequent telephonic mediation sessions. Joint Decl., ¶¶10-16.

Further, Class Counsel was able to secure a resolution that benefits the Class and preserves judicial resources. Given the amount at stake, it is difficult to settle cases like this for a substantial recovery prior to a defendant exhausting all legal challenges through summary judgment, trial, or even appeals. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (class action filed in 2002, in which the class was represented by Robbins Geller, settled in 2016 after trial and appeal).

Thus, there can be no doubt that the $100 million Settlement reflects an excellent result given the significant risks of obtaining any recovery at trial, and the quality of legal services by Plaintiffs' Counsel.

3. The Requested Attorneys' Fees Are Fair and Reasonable in Light of the Contingent Nature of the Representation

"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; *see also Taubenfeld*, 415 F.3d at 600 (stating courts should consider the fact "[class] counsel was taking on a significant degree of risk of nonpayment"). Plaintiffs' Counsel undertook this Litigation on a contingent fee basis, assuming significant risk that defense counsel does not face.

Unlike counsel for defendants in the legal industry, who are generally paid an hourly rate and paid for their time and expenses on a regular (*e.g.*, monthly) basis, regardless of whether they win or lose, Plaintiffs' Counsel have no such guarantee that their time and expenses would ever be paid, and only knew that, at best, they would have to wait several years for any payment while incurring substantial out-of-pocket litigation expenses. While the outcome here is favorable, there

was no guarantee over the seven years of litigation that a resolution could be reached. In fact, given the well-known complexity and difficulty of meeting pleading standards, the rate of succeeding in certifying a class and overcoming summary judgement is rather low.[9]

Next, complex class actions continue to be risky even after surviving a motion to dismiss because they take so many years to resolve and are not infrequently dismissed even at later stages of the case.[10] Although Plaintiffs successfully opposed Defendant's motions to dismiss, Plaintiffs faced significant risks in certifying a class, defeating Defendant's motion for summary judgment, defeating inevitable *Daubert* challenges to Plaintiffs' experts, and prevailing at trial and on appeal. *See* Joint Decl., ¶¶23-27. Moreover, apart from proving liability, proving damages in class action cases like this is particularly complex and requires expert testimony to establish the amount – and indeed the existence – of actual damages. *Id.*

One of Walgreens' primary defenses is that PSC prices are not "cash prices" and thus are excluded when reporting or otherwise determining an accurate U&C price. Further, Walgreens argued that its contracts with prescription benefit managers ("PBMs") as well as PBM contracts with putative fund class members, did not require Walgreens to report PSC prices as its U&C prices. Joint Decl., ¶27.

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[9] For example, while there is little research encompassing all class actions in general, in the antitrust context, recent studies demonstrate that in the last roughly seventeen years, courts have granted over 50% of motions to dismiss. *See* Christine P. Bartholomew, *Antitrust Class Actions in the Wake of Procedural Reform*, 97 Ind. L.J. 1315, 1343 (2022). For those antitrust class actions that survive beyond the motion to dismiss stage, the odds of successfully certifying a class are similarly below 50% and can range as low as roughly 37%, depending on the circuit in which any given action is pending. *Id.* at 1348. Likewise, in the securities context, 60% of such class actions filed over the 2014-2023 timeframe had motions to dismiss granted, although some without prejudice. *See* Ex. D (Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review*, NERA ECONOMIC CONSULTING (Jan. 23, 2024), at 16, Fig. 14).

[10] *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009) (granting summary judgment to defendants after eight years of litigation), *aff'd*, 627 F.3d 376 (9th Cir. 2010); *In re JDS Uniphase Corp. Sec. Litig.*, 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants after lengthy trial).

Indeed, the concrete risks associated with litigation involving claims such as those here can be demonstrated by looking at two cases that pled similar claims. In *Washington v. CVS Pharmacy, Inc.*, 2022 WL 17430289, at *2 (9th Cir. Dec. 6, 2022) the plaintiffs challenged CVS's failure to include its savings club prices in determining the amount paid by consumers. The case proceeded to trial where the Ninth Circuit affirmed a defense verdict on the plaintiffs' claims. In *Stafford v. Rite Aid Corp.*, Lead Case No. 3:17-cv-01340-TWR-AHG (S.D. Cal.) the plaintiffs challenged Rite Aid's failure to include its savings club prices in determining the amount paid by consumers. After approximately six years of litigation, including appeals to the Ninth Circuit, Rite Aid filed for bankruptcy, which resulted in the termination of the action. *See* Ex. E, (Order, *Stafford v. Rite Aid Corp.*, 3:17-cv-01340-TWR-AHG, ECF No. 356 (S.D. Cal. Sept. 19, 2024)); *see* Joint Decl., ¶28.

Thus, the risks and contingent nature of class counsels' representation strongly favors approval of the requested fee. *See, e.g., Sutton*, 504 F.3d at 694 (reversing reduced fee award "[b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated").

4. The Stakes of the Litigation Support the Requested Award

The Court should also consider the "stakes of the case" in assessing a reasonable attorneys' fee. *Synthroid*, 264 F.3d at 721. As in other commercial class actions, the stakes here were high "given the size of the Class, the scale of the challenged activity, the complexity and costs of the legal proceedings, and the amount of money involved." *Schulte*, 805 F. Supp. 2d at 598. Complex class cases such as this are expensive to litigate, as they typically involve years of complicated litigation and require retention of multiple experts, thus, supporting the fee award here.

5. The Reaction of the Class Thus Far and Approval of the Individual and Fund Plaintiffs Further Support the Fee Request

Pursuant to this Court's November 18, 2024 Order Preliminary Approval Class Action Settlement (ECF No. 689), Settlement Class Members were informed in the Notice that Plaintiffs' Counsel would apply for attorneys' fees not to exceed 30% of the Settlement Amount, plus expenses in an amount not to exceed $3 million, plus interest earned on both amounts. Class Members were also advised of their right to object to Plaintiffs' Counsel's fee and expense request. While the deadline to file objections – March 18, 2025 – has not yet passed, to date, only one objection to the proposed attorneys' fees has been received. *See* ECF No. 695. Class Counsel will address this and any other objection to this Motion or the Settlement when they file their reply in further support of this Motion on August 6, 2025. *See* ECF No. 689.

Moreover, Plaintiffs, both the Individual Plaintiffs and the Fund Plaintiffs, who worked with counsel throughout the Litigation, agreed that Class Counsel could seek a fee of up to 30% of the Settlement Amount. *See* Stipulation of Settlement, ¶6.1 (ECF No. 683-1). The support of Plaintiffs, combined with the relatively insignificant number of objections to date by any other Class Member, including any sophisticated institutional Class member, weighs significantly in favor of the fee request's reasonableness. *See Macovski v. Groupon, Inc.*, 2022 WL 17256417, at *2 (N.D. Ill. Oct. 28, 2022) ("The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Lead Plaintiff, who oversaw the prosecution and resolution of the Action.").

C. Plaintiffs' Counsel's Expenses Are Reasonable

Attorneys who create a common fund for the benefit of a class are also entitled to payment of reasonable litigation expenses from the fund. *See Synthroid*, 264 F.3d at 722; *see also In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992).

Plaintiffs' Counsel is requesting payment of expenses in the amount of $2,457,229.92. As

set forth in the accompanying declarations, these expenses were reasonably incurred in the prosecution of this Litigation and are adequately described. *See* Joint Decl., ¶¶33-35; Declaration of Daryl F. Scott, ¶5; Declaration of Arthur L. Shingler ¶5; Declaration of Susan M. Coler, ¶5; Declaration of Charles E. Schaffer, ¶5; Declaration of Joseph S. Tusa, ¶5; Declaration of Andrew A. Lemon, ¶5; Declaration of David I. Cates, ¶5; Declaration of Jeremy R. Williams, ¶5; and Declaration of George C. Aguilar, ¶5. *See also Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) ("It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reporters; travel expense[s]; copy, phone and facsimile expenses and mediation.").[11] Thus, Plaintiffs' Counsel respectfully request reimbursement of these out-of-pocket litigation expenses from the Settlement Amount.

II. CLASS PLAINTIFFS' SERVICE AWARDS ARE APPROPRIATE

Service awards in successful class actions serve to encourage individuals and entities to seek relief from courts not only on their own behalf but also on behalf of others similarly situated. "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." *Wright*, 2016 WL 4505169, at *17 (citing *Cont'l Ill.*, 962 F.2d at 571); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001). *See also TikTok*, 617 F. Supp. 3d at 949, (quoting *Synthroid I, 264 F.3d at 722*); *Spano v. Boeing*, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) ("'Incentive awards are justified when necessary to induce individuals to become named representatives.'"). Further, such

[11] Note that judges in this District have split on whether electronic legal research expenses should be awarded or should be considered part of the attorneys' fee award. *Compare Silverman*, 2012 WL 1597388, at *4 (declining to approve legal research expenses), *with George v. Kraft Foods Glob., Inc.*, 2012 WL 13089487, at *4 (N.D. Ill. June 26, 2012) (allowing recovery of such expenses); *Wong v. Accretive Health, Inc.*, 2014 WL 7717579 (N.D. Ill. Apr. 30, 2014) (awarding legal research expenses).

awards are appropriate in class actions to compensate those plaintiffs that step forward to protect the interests of a broader class, spending their own time to achieve benefits for a class as a whole. *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). "In deciding whether such an award is warranted, relevant factors include 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." *Id*.

The requested awards of $5,000 to each Individual Plaintiff and $15,000 to each Fund Plaintiff are reasonable, justified, and accord with common practice. *Wright*, 2016 WL 4505169, at *18 (awarding $5,000 service award to each class representative). Each of the Plaintiffs submits their declaration describing Plaintiffs' personal and professional activities and time directly related to representing the Class. *See* Joint Decl., ¶44; Declaration of Cynthia Russo, ¶¶3-5; Declaration of Lisa Bullard, ¶¶3-5; Declaration of Ricardo Gonzales, ¶¶3-5; Declaration of Ed Fox of International Brotherhood of Electrical Workers Local 38 Health and Welfare Fund, ¶¶3-5; Declaration of John Catalano of International Union of Operating Engineers Local 295-295c Welfare Fund, ¶¶3-5; Declaration of Charles Bailey, Jr. of Steamfitters Fund Local 439, ¶¶3-5.

No service award of any sort was promised to these Plaintiffs, and each of these Plaintiffs stepped forward and volunteered to expend their time and effort and take on the responsibilities, risks, and scrutiny of bringing this lawsuit, and contributing to the overall success and outcome that achieved the Settlement. Joint Decl., ¶45. Each Plaintiff was also willing to attach their name to this litigation, subjecting them to "scrutiny and attention" which is "certainly worth some remuneration." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601 (N.D. Ill. 2011). Each also engaged in discovery and was involved in the mediation process, authorizing the Settlement for the entire Class. The Class, therefore, is receiving a substantial benefit, because of Plaintiffs'

participation in this litigation.

Courts in this District have routinely granted service awards in excess of the amounts requested here. *See, e.g.*, *Spano*, 2016 WL 3791123, at *4 (approving incentive awards of $25,000 and $10,000 for class representatives); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *6 (N.D. Ill. Mar. 23, 2015) (approving an award of $25,000); *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, 2012 WL 651727 at 16 (N.D. Ill. Feb. 28, 2012) (awarding a $25,000 award to each of the seven plaintiffs). Furthermore, the total of all service awards if approved would be $60,000, which represents merely 0.06% of the $100 million Settlement Amount. As such, the requested Service Awards are reasonable and warranted in light of Plaintiffs' participation and contribution to obtaining the Settlement.

CONCLUSION

For all the reasons stated herein, and in the pleadings and papers before this Court, Class Counsel respectfully requests that the Court approve the Motion and award Class Counsel $30 million in attorneys' fees, out-of-pocket expenses of $2,457,229.92, plus interest earned for both amounts. Class Counsel also respectfully request that the Court award $5,000 to each of the Individual Plaintiffs and $15,000 to each of the Fund Plaintiffs as Service Awards.

DATED: March 4, 2025

Respectfully submitted,
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s/ Joseph P. Guglielmo

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically through the Court's Electronic Case Filing System, which will then send a notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

/s/ Joseph P. Guglielmo
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