

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

MARIA STAPLETON, et al.,)	
)	
Plaintiffs,)	
)	Civil Action No. 1:14-cv-01873
v.)	
)	Hon. Edmond E. Chang
ADVOCATE HEALTH CARE NETWORK AND)	
SUBSIDIARIES, et al.,)	
)	
Defendants.)	

PLAINTIFFS’ REPLY IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS AND UNOPPOSED MOTION FOR AWARD OF ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES, AND FOR INCENTIVE AWARDS TO NAMED PLAINTIFFS

Plaintiffs Maria Stapleton (now known as Maria Punda), Judith Lukas, Sharon Roberts, and Antwain¹ Fox (“Plaintiffs” or “Named Plaintiffs”), by and through their attorneys, respectfully submit this reply memorandum (“Reply”) in support of their Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class (“Final Approval Motion”), ECF No. 161, and their Unopposed Motion for Award of Attorneys’ Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs (“Fee Motion”), ECF No. 165 (together, the “Approval Motions”). Defendants do not oppose the relief sought in Plaintiffs’ Reply, but do not agree with all the averments stated herein.

I. INTRODUCTION

After a litigation journey that took the parties to the Supreme Court and back, this case has reached a final mediated resolution. The Approval Motions seek final approval of a Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”)² completely resolving

¹ Antwain Fox was inadvertently named in the Class Action Complaint, ECF No. 1, as “Antoine Fox.”
² A true copy of the Class Action Settlement Agreement dated February 16, 2018, is attached as Exhibit A to the Memorandum in Support of Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class (“Final Approval Brief”), ECF No. 169. Capitalized

this matter, and further seek approval of an award of attorneys' fees, reimbursement of expenses, and Incentive Awards to Named Plaintiffs that, pursuant to agreement with Defendants, will not affect the relief granted to the Settlement Class under the Settlement.³ For the reasons set forth in this Reply and its attachments, in the Approval Motions and their supporting memoranda, and in the Joint Declaration of Class Counsel,⁴ the Settlement is "fair, reasonable, and adequate" under Federal Rule of Civil Procedure 23(e), and the Court should now grant final approval. Further, the total award of \$1.25 million in attorneys' fees, reimbursement of expenses, and Incentive Awards in the amount of \$10,000 each for the Named Plaintiffs should be approved. No objection to the relief requested in the Approval Motions has been filed with the Court or received by Class Counsel.

II. THE APPROVAL MOTIONS SHOULD BE GRANTED

A. The Settlement Agreement Should Be Approved

The parties went to great lengths to notify the Settlement Class about the terms of the Settlement and to educate the Settlement Class about the effects of the Settlement on the Class. Plaintiffs and Class Counsel are pleased to report that these efforts were extremely successful, as evidenced by the fact that no objections to the Settlement were filed at all. This is a remarkable result given that 65,642 copies of the Notice of Proposed Settlement of Class Action, Final Approval Hearing and Motion for Attorneys' Fees and Reimbursement of Litigation Expenses ("Class Notice")⁵ were mailed to the Class members, providing them notice of the Settlement terms and their right to object.⁶ *See* Affidavit of Jennifer Mills ("Rust Aff.") ¶ 12, Final

terms not otherwise defined in this Reply shall have the same meaning ascribed to them in the Settlement Agreement.

³ *See* Final Approval Brief Exhibit A §§ 7.1.5, 7.1.6.

⁴ "Joint Declaration" refers to the Joint Declaration of Lynn Lincoln Sarko and Karen L. Handorf in Support of (1) Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class; and (3) Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs. A true copy of the Joint Declaration is attached as Exhibit C to the Final Approval Brief.

⁵ A true copy of the Class Notice as mailed out is attached as Exhibit H to the Final Approval Brief.

⁶ Plaintiffs are informed and believe that, in addition to service of the Class Notice, on or about April 9, 2018, Advocate sent out an internal memorandum to all employees with respect to the settlement and referred them to an FAQ posting on its intranet.

Approval Brief Exhibit B. Of the 65,642 notices sent, 3,925 were returned by the post office, but after tracing and re-mailing efforts, only 1,236—about 1.9%—were undeliverable, yielding a successful notice rate in the range of 98%. *See* Supplemental Affidavit of Jennifer Mills (“Supplemental Rust Aff.”) ¶ 4, attached hereto as Exhibit 1.

The Class Notice provided members of the Settlement Class with information on the Settlement; the date and location of the Fairness Hearing; their right to object and the May 30, 2018, deadline for filing objections; contact information for Class Counsel; a toll-free number and a dedicated email address for inquiries; and two websites for further information: www.kellersettlements.com and www.cohenmilstein.com/advocate-settlement. Final Approval Brief Exhibit H 2-4, 8, 9. The Class Notice also provided a mailing address and a toll-free information number maintained by Rust Consulting, Inc., the settlement administrator retained by Defendants (“Rust”). *Id.* at 2; Final Approval Brief Exhibit B ¶ 16.

Since mailing the Class Notice, Rust has received over 325 telephone calls to the toll-free number that was provided in the Class Notice. Exhibit 1 ¶ 7. Through June 8, 2018, Rust has received zero objections to the Settlement. *Id.* ¶ 6.

For their part, Class Counsel have received and responded to approximately 98 phone calls, 19 e-mails, one letter, and one fax inquiry from Settlement Class members. Declaration of Christopher Graver (“Graver Decl.”) ¶ 7, attached hereto as Exhibit 2. Most of these inquiries have been calls requesting information about the Settlement’s terms and relief. *Id.* ¶ 8.

Out of the more than 64,000 Settlement Class members who received the Class Notice, and the more than 444 people who contacted Class Counsel or Rust, not one has objected—there are no objections on the docket, and Class Counsel has received none. Exhibit 2 ¶ 10. Class Counsel did receive one letter dated April 4, 2018, from Ms. Deana Robinson that appeared to object to her participation in a class action concerning a 401(k) plan (Exhibit 2 ¶ 11); in subsequent correspondence with Class Counsel, she acknowledged that she had misunderstood what plan was involved. *Id.* Class Counsel attempted to contact Ms. Robinson by phone on several occasions to discuss the Settlement and communicated with her by e-mail until she no

longer responded. *Id.* Ms. Robinson has not filed an objection and Class Counsel believes that any concerns raised in her April 4, 2018, letter have been resolved. *Id.*

“The Seventh Circuit has instructed district courts to evaluate the amount of opposition to a settlement among affected parties in deciding whether to approve a class-action settlement.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (citation omitted). Where, as here, more than “99.9% of class members have neither opted out nor filed objections to the proposed settlement[, t]his acceptance rate is strong circumstantial evidence in favor of the settlement[.]” *In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000), *aff’d sub nom. In re Mexico Money Transfer Litig.*, 267 F.3d 743 (7th Cir. 2001); *Schulte*, 805 F. Supp. 2d at 586 (citing *Mexico Money Transfer Litig.*). Out of over 64,000 Settlement Class members who received a notice, not one “submitted [a] document[] that could be considered [an] objection[.]” *Schulte*, 805 F. Supp. 2d at 586. This 100% acceptance rate should be construed as “strong circumstantial evidence in favor of the settlement[.]” *Id.*

As set forth more fully in the Final Approval Brief, the Settlement is “fair, reasonable, and adequate.” *See* Fed. R. Civ. P. 23(e)(2); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 634 (7th Cir. 2011); *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (citation omitted). This is confirmed by the overall lack of objection to the Settlement, which indicates class-wide support for the Settlement. *See also Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *5 (N.D. Ill. Oct. 10, 1995) (“a positive response to the Settlement by the Class is strong evidence that the settlement is fair, reasonable, and adequate and should be approved[.]”); *Swift v. Direct Buy, Inc.*, No. 2:11-CV-401-TLS, 2013 WL 5770633, at *6 (N.D. Ind. Oct. 24, 2013) (citing “limited opposition to the Settlement Agreement” in granting final approval). The Settlement should be fully and finally approved.

B. The Requested Attorneys’ Fees, Reimbursement of Expenses, and Incentive Awards for the Named Plaintiffs Should Be Approved

The fact that there have been no objections to Class Counsel’s motion for an award of attorneys’ fees, reimbursement of expenses, and Incentive Awards to Named Plaintiffs is also a

very strong indication that the request is fair and reasonable. As set forth in detail in the Final Approval Brief, the Class Notice informed Settlement Class members that Class Counsel would seek fees and expenses. In addition, the Fee Motion and its supporting memorandum, Memo. in Supp. of Pls.' Unopposed Mot. for Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs, ECF No. 166, explained why the request of \$1.25 million, separate and apart from the relief to the Settlement Class, is fair and reasonable and supported by, among other factors, the result achieved in the face of significant risks and the contingent nature of the litigation. The Fee Motion was supported by the Joint Declaration of Class Counsel, which includes a detailed explanation of fees and costs and the reasons they were incurred. Final Approval Brief Exhibit C. The Fee Motion is also supported by the four Named Plaintiffs, all of whom were active participants in this litigation, and all of whom participated in the settlement process by assessing and discussing with Class Counsel the strengths and weaknesses of further litigation. Equipped with this information, not one member of the Settlement Class objected to the fees, expenses, or Incentive Awards that Named Plaintiffs and Class Counsel seek.

Courts in this District have consistently found that the lack of objection to a request for attorneys' fees and expenses indicates that the request is fair and reasonable. *See, e.g., Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 WL 7781572, at *2 (N.D. Ill. Oct. 22, 2014) ("The absence of objections indicates that [a] fee is fair and reasonable and consistent with prevailing market rates."); *Wong v. Accretive Health, Inc.*, No. 1:12-CV-03102, 2014 WL 7717579, at *1 (N.D. Ill. Apr. 30, 2014) (noting that "the reaction of the Class to the fee request supports the fee awarded" where there was a single objection); *In re Lithotripsy Antitrust Litig.*, No. 98 C 8394, 2000 WL 765086, at *2 (N.D. Ill. June 12, 2000) (noting that the lack of objection to the attorneys' fee request was a factor considered in approving the request). Accordingly, the approval of Settlement Class members in this Action supports approval of the request for attorneys' fees, reimbursement of expenses, and Incentive Awards to Named Plaintiffs.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (a) grant final approval of the Settlement because it is a fair and reasonable result when viewed in the light of the governing standard; (b) grant final certification of the Settlement Class because it meets all the requirements of Federal Rule of Civil Procedure 23; (c) grant final approval of the requested attorneys' fees, reimbursement of expenses, and Incentive Awards to Named Plaintiffs; and (d) grant such other and further relief as the Court deems appropriate.

Dated: June 20, 2018

Respectfully submitted,

KELLER ROHRBACK L.L.P.

By: /s/ Christopher Graver

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Local Counsel

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2018, I electronically filed the above with the Clerk of the Court using the CM/ECF system, which in turn sent notice to all counsel of record.

Dated: June 20, 2018

By: /s/ Christopher Graver
Christopher Graver

EXHIBIT 1

Supplemental Affidavit of Jennifer Mills

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

MARIA STAPLETON, et al on behalf of)
themselves, individually, and on behalf of)
all others similarly situated, and on behalf of the)
Advocate Plan,)

Plaintiffs,)

v.)

ADVOCATE HEALTH CARE NETWORK AND)
SUBSIDIARIES, et al.)

Defendants.)

Civil Action No. 1:14-cv-01873

Hon. Edmond E. Chang

SUPPLEMENTAL AFFIDAVIT OF JENNIFER MILLS

I, JENNIFER MILLS, hereby declare as follows:

1. I am Program Manager at Rust Consulting. My business address is 625 Marquette Avenue, Suite 900, Minneapolis, Minnesota 55402. My telephone number is (612) 359-2025. I am over twenty-one years of age and am authorized to make this affidavit on behalf of Rust and myself.

2. I submit this Supplemental Affidavit in connection with the class action notice administration proceeding related to Maria Stapleton, et al. v. Advocate Health Care Network, et al., Case No. 14-cv-01873, pending in the United States District Court for the Northern District of Illinois (the "Action") at the request of Counsel for the Plaintiffs and Counsel for the Defendants (collectively the "Parties").

3. This Supplemental Affidavit is based on my personal knowledge and upon information provided by my associates and staff.

4. As of June 8, 2018, 3,925 Class Notices have been returned to Rust as undeliverable. Of the 3,925 Class Notices returned to Rust as undeliverable, Rust performed address traces on 3,925 of them. The address trace utilizes the Class Member's name and previous address for locating a current address. Of the 3,925 traces performed, 2,764 more current addresses were obtained, and Class Notices were promptly re-mailed to those Class Members via First Class mail. Of the 3,925 traces performed, Rust did not obtain updated addresses for 1,161 undeliverable Class Notices. Of the 2,764 Class Notices re-mailed to traced addresses, 75 have been returned to Rust as undeliverable a second time.

5. As of June 8, 2018, 585 Class Notices have been returned by the Post Office with forwarding addresses attached. Rust promptly re-mailed Class Notices to those Class Members via First Class mail.

6. As of June 8, 2018, Rust has received zero (0) objections.

7. As of June 8, 2018, Rust received approximately 325 calls to the case-specific toll-free telephone number.

8. I declare under penalty of perjury, under the laws of the United States of America, that the foregoing statements are true and correct to the best of my knowledge. Executed this 15th day of June 2018 in Minneapolis, Minnesota.



JENNIFER MILLS

EXHIBIT 2

Declaration of Christopher Graver

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

MARIA STAPLETON, et al.,)	
)	
Plaintiffs,)	
)	Civil Action No. 1:14-cv-01873
v.)	
)	Hon. Edmond E. Chang
ADVOCATE HEALTH CARE NETWORK AND)	
SUBSIDIARIES, et al.,)	
)	
Defendants.)	

**DECLARATION OF CHRISTOPHER GRAVER IN SUPPORT OF
PLAINTIFFS’ REPLY IN SUPPORT OF UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION
OF SETTLEMENT CLASS AND UNOPPOSED MOTION FOR AWARD OF
ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES,
AND FOR INCENTIVE AWARDS TO NAMED PLAINTIFFS**

Pursuant to 28 U.S.C. § 1746, Christopher Graver declares as follows:

1. I am an attorney and a partner with the law firm Keller Rohrback L.L.P. (“Keller Rohrback”), one of the two firms preliminarily approved as Class Counsel for Maria Stapleton (now known as Maria Punda), Judith Lukas, Sharon Roberts, and Antwain Fox (“Named Plaintiffs”) by the Court.¹ I have personal knowledge of the facts set forth below and, if called as a witness, I could and would testify competently thereto.

2. As required by the Preliminary Approval Order, a Class Notice² was disseminated to Settlement Class members in connection with the pending proposed Class Action Settlement

¹ Order Prelim. Approving Settlement, Certifying the Class, Approving Notice to the Class, and Scheduling Final Approval Hr’g (“Preliminary Approval Order” or “Prelim. Approval Order”) ¶¶ 1(G), 2, ECF No. 159.

² Notice of Proposed Settlement of Class Action, Final Approval Hearing, and Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses (“Class Notice”) is attached as Exhibit H to the Memorandum in Support of Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class (“Final Approval Brief”), ECF No. 169.

Agreement in this matter (“Settlement” or “Settlement Agreement”), Final Approval Brief Exhibit A.³ The Class Notice was mailed to Settlement Class members by Rust Consulting, Inc., the settlement administrator retained by Defendants (“Rust”), as described in the Affidavit of Jennifer Mills (“Rust Aff.”), Final Approval Brief Exhibit B, and the Supplemental Affidavit of Jennifer Mills (“Supplemental Rust Aff.”), Exhibit 1 to Plaintiffs’ Reply in Support of Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class and Unopposed Motion for Award of Attorneys’ Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs (“Reply”), filed concurrently herewith.

3. The Class Notice provided members of the Settlement Class with information on the settlement; the date and location of the Fairness Hearing; their right to object and the objection deadline of May 30, 2018; contact information for Class Counsel; a toll-free number and a dedicated email address for inquiries; and two websites for further information: www.kellersettlements.com and www.cohenmilstein.com/advocate-settlement. See Final Approval Brief Exhibit H.

4. The websites, toll-free number, and email address were all active and functioning by March 28, 2018, the deadline set by the Court in the Preliminary Approval Order.

5. On or before the March 28, 2018 deadline, Class Counsel posted the Settlement Agreement, the Class Notice, the preliminary approval motion and order, and other case documents on the websites identified in the Class Notice: www.kellersettlements.com and www.cohenmilstein.com/advocate-settlement.

6. The Class Notice also provided a mailing address and a toll-free number for Rust, which I am informed and believe set up an automated information line to provide additional

³ Capitalized terms not otherwise defined in this Declaration shall have the same meaning ascribed to them in the Settlement Agreement.

information to any callers. *See* Final Approval Brief Exhibit H; Final Approval Brief Exhibit B ¶ 16.

7. Keller Rohrback paraprofessionals and attorneys reviewed and responded to all inquiries received by Class Counsel, including approximately 98 phone calls, 19 e-mails, one letter, and one fax inquiry from Settlement Class members. Keller Rohrback maintained a log of all such calls and responses.

8. Most of the inquiries have requested information about the Settlement's terms and relief, including the 10-year guarantee that the Plan Trust will have sufficient funds to pay the level of accrued benefits stated in the Plan. Some of the calls and emails were inquiries from Settlement Class members who wanted more information about their individual benefits.

9. In addition, Rust Consulting reports that it received approximately 325 phone calls on its dedicated information line, and has received no objections. Reply Exhibit 1 ¶ 7.

10. Out of the more than 64,000 Settlement Class members who received the Class Notice and the more than 444 people with whom Rust and Class Counsel have communicated (¶ 7, above; Reply Exhibit 1 ¶ 7), not one has objected. There are no objections on the Court's docket and Class Counsel have received none.

11. While I do not believe it is properly characterized as an objection, on April 10, 2018, Class Counsel received a letter from a current Advocate employee, Ms. Deana Robinson, dated April 4, 2018, attached hereto as Attachment 1. The letter appeared to object to her participation in a class action concerning a 401(k) plan. In subsequent e-mail correspondence I directed Ms. Robinson to the Class Notice and the settlement websites, and she acknowledged that she had misunderstood about the plan that was involved. I attempted to contact Ms. Robinson by phone on April 11, 12, 13, and 17, 2018, and on April 23, 2018, I left a voicemail

and sent an e-mail explaining that I assumed from her silence that she no longer had any questions about the Settlement, and I invited her to contact me. I have had no further contact with Ms. Robinson since that time. Ms. Robinson has not filed an objection.

12. None of the Settlement Class members who contacted Class Counsel expressed a desire to file objections with the Court.

13. Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable, and in the best interests of the Settlement Class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of June, 2018, in Maricopa County, Arizona.

By: /s/ Christopher Graver

Christopher Graver

KELLER ROHRBACK L.L.P.

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Phoenix, AZ 85012

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cgraver@kellerrohrback.com

Attachment 1

4/4/2018

To whom this may concern,
I Deana Robinson would not like to be involved in this matter involving my 401k. I have no problems with my current employer. I am unaware of any fraud or misdealing with my 401k. Also the plaintiffs listed I do not know or have not heard of. For these reasons listed above please do not involve me in any lawsuits concerning my current employer Advocate Trinity Hospital. I thank you for your time and effort to correct this matter. If you have any questions please feel free to contact me per email at Deana337@hotmail.com. I am also send this letter to the other people you requested I send copies to.

Sincerely,

Deana Robinson