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

CORINNE BUTLER and ANDREA FITZSIMMONS, *on behalf of themselves individually, and on behalf of all others similarly situated*	)	
Plaintiffs,	)	No. 16-CV-5907
v.	)	Judge Manish S. Shah
HOLY CROSS HOSPITAL, SINAI HEALTH SYSTEM, WAYNE LERNER, DIANE HOWARD, JOHN R. BALL, M.D, BARBARA FAHEY, SATYA AHUJA, M.D., CHIA HUANG, M.D., LARRY MARGOLIS, SIVARAMAPRASAD TUMMALA, M.D., HOWARD BERMAN, GARY J. NIEDERPRUEM, SHARON ROSSMARK, YOGI AHULUWALIA, M.D., JOHN BENEVIDES, CHARLES BROWN, DANIEL CANTRELL, ALAN H. CHANNING, JOHN DANAHER, M.D., LESLIE DAVIS, MARK J. FRISCH, AIDA GIACHELLO, NEAL GOLDSTEIN, ALBERT GRACE, JONATHAN JONAS, GARY KELLER, KENNETH A. LUCCIONI, ROBERT MARKIN, GLORIA MATERRE, BRET MAXWELL, WAYNE PIERCE, MAURICE SCHWARTZ, ROBERT SHAKNO, BEN SOLDINGER, ALAN SOLOW, ROBERT STEELE, STEVE TOPEL, TERRY WHEAT, and JOHN and JANE DOES, each an individual, 1-40,	)	
Defendants.		

PLAINTIFFS' UNOPPOSED MOTION
FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND
FOR INCENTIVE AWARDS TO NAMED PLAINTIFFS

Plaintiffs Corinne Butler and Andrea Fitzsimmons, by and through their attorneys, respectfully move the Court for an Order: (1) approving awards of attorneys' fees and expenses to their attorneys Cohen Milstein Sellers & Toll, PLLC, Keller Rohrback L.L.P., and DeBofsky, Sherman & Casciari, P.C. ("Class Counsel"); and (2) granting incentive awards to themselves, as class representatives.[1] Defendants do not oppose the relief sought herein. For the reasons set forth in the accompanying Memorandum, Plaintiffs ask that the Court grant Plaintiffs' Motion and award $627,785.81 in attorneys' fees and expenses to Class Counsel, and Incentive Awards of $10,000 to each of the Named Plaintiffs.

Dated: May 15, 2017

By: /s/ Mark D. DeBofsky
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[1] Plaintiffs file the instant Motion contemporaneously with their Unopposed Motion for Final Approval of Settlement Agreement and Certification of Settlement Class.

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on May 15, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Julia Horwitz

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Defendants.		

PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES AND FOR INCENTIVE AWARDS TO NAMED PLAINTIFFS

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiffs Corinne Butler and Andrea Fitzsimmons ("Named Plaintiffs"), by and through their attorneys, respectfully move the Court for an Order approving awards of attorneys' fees and expenses to their attorneys, Cohen Milstein Sellers & Toll PLLC, Keller Rohrback L.L.P., and DeBofsky, Sherman & Casciari, P.C. (collectively, "Class Counsel"), and Class Counsel seek approval of the proposed Incentive Awards for their contributions to the litigation.[1]

I. INTRODUCTION

After seven months of intensive negotiations, the Named Plaintiffs and Class Counsel achieved a recovery comprised of a $4 million cash payment and approximately $5.1 million in undistributed plan assets.[2] The Settlement is an excellent result for the Class, particularly in light of the substantial risks the Class would face if the litigation were to continue. Alongside Named Plaintiffs Andrea Fitzsimmons and Corinne Butler, Class Counsel have worked to achieve this Settlement without compensation of any kind, and their fees and reimbursement of expenses have been wholly contingent on the result achieved (if any). Plaintiffs now request that the Court approve their requests for attorneys' fees, expenses, and Named Plaintiff awards as a reasonable, market-set fee agreement. The requested fees of $600,000—or 15% of the $4 million cash payment—is eminently fair and reasonable, given Class Counsel's total lodestar of more than $898,138.50 (an amount that excludes work performed in seeking final approval of the Settlement), reflecting 1,379 hours of professional time, which amounts to a negative multiplier,

[1] Plaintiffs file the instant Motion contemporaneously with their Unopposed Motion for Final Approval of the Settlement. Defendants do not agree with all averments stated in this Memorandum, however, Defendants do not oppose the ultimate relief sought herein.

[2] Capitalized terms not otherwise defined in this Memorandum have the same meaning as ascribed to them in the Settlement Agreement, attached to the Unopposed Motion for Final Approval of the Settlement as Exhibit A.

or 66% of their lodestar in the case. Plaintiffs request a similarly modest award for Class Counsel's out-of-pocket expenses, consisting of $27,785.81, and for incentive fees to Plaintiffs Butler and Fitzsimmons in the amount of $10,000 each.

The requested attorneys' fees and expenses compensate Class Counsel—albeit at a discounted rate—for the significant time, effort, risk, and expenses they expended in the successful resolution of this action. They are fair and reasonable whether measured as a percentage of the common fund or with respect to Class Counsel's lodestar, and they are amply supported by the relevant case law. The requested fees also have the full support of the Named Plaintiffs. And, Defendants do not oppose Plaintiffs' application for the requested fees.

The incentive awards are similarly fair and reasonable in light of Named Plaintiffs' substantial contributions to helping develop claims in the litigation, guiding settlement negotiations, and the risks that they bore in agreeing to become the "face" of this litigation. The awards would compensate the Named Plaintiffs for their time, effort, and active participation in the litigation.

II. HISTORY AND BACKGROUND OF THE CASE

In order to avoid undue repetition, the Court is respectfully referred to the Declaration of Class Counsel ("Class Counsel Decl."), attached to the Unopposed Motion for Final Approval of the Settlement, for a detailed description of the factual and procedural history of the litigation. The Class Counsel Declaration includes a description of the claims asserted, the extensive investigation conducted, the substantial settlement discussions and negotiations, as well as the numerous risks and uncertainties presented in this litigation. Class Counsel Decl. ¶¶ 10-13, 21-28, 33.

III. THE COURT SHOULD APPROVE CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES.

A. Class Counsel Are Eligible to Recover a Reasonable Fee From the Settlement Fund.

"In a certified class action, the court may award reasonable attorney's fees…that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In this case, the parties agreed—and memorialized in the Settlement Agreement—that Class Counsel would seek no more than $600,000, or 15% of the $4 million cash payment, in attorneys' fees, and no more than $30,000 in costs, and that Defendants would not object to such application. Ex. A § 8.1.5.

It is well-established that attorneys are entitled to reasonable compensation for their efforts in creating a common fund for the benefit of a class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer 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"). A fee award taken from the settlement fund is "'based on the equitable notion that those who have benefited from litigation should share in its costs.'" *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007). This common fund principle is equally controlling in cases initiated under a statute, like ERISA[3], despite the fact that the statute contains a fee-shifting provision. *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 564 (7th Cir. 1994) ("common fund principles properly control a case which is initiated under a statute with a fee-shifting provision, but is settled with the creation of a common fund").

B. The Court Should Assess Class Counsel's Fee Request Using the "Percentage of the Fund" Method.

Next, this Court must determine whether Class Counsel's requested fees are reasonable.

[3] "ERISA" is the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq*.

Florin, 34 F.3d at 566. Courts in the Seventh Circuit have the discretion to choose between two predominant methods for calculating reasonable attorneys' fees in common fund cases: the lodestar method (in which a court considers the number of hours expended multiplied by the hourly rate), and the "percentage of the fund" method (where the Court determines whether the attorneys' requested fees are reasonable proportionate to the amount recovered for the class). *Id.* ("We…restate the law of this circuit that in common fund cases, the decision whether to use a percentage method or a lodestar method remains in the discretion of the district court.").

"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. Privacy Litig.*, No. 00 C 4729, 2009 WL 4799954, at *9 (N.D. Ill. Dec. 9, 2009), *order modified and remanded*, 629 F.3d 741 (7th Cir. 2011). Nevertheless, as between the lodestar method and the "percentage of the fund" method, the Seventh Circuit has strongly endorsed the percentage method to conduct the "market transaction" analysis, because it most closely approximates the manner in which attorneys are compensated in the marketplace for contingent work. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) ("When a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund … in recognition of the fact that most suits for damages in this country are handled on the plaintiff's side on a contingent-fee basis"); *see also In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to award a percentage "than it would be to hassle over every item or category of hours and expenses and what multiple to fix and so forth"). And, in fact, the percentage of recovery method has "emerged as the favored method for calculating fees in common fund cases in [the Northern District of Illinois]." *In re Dairy Farmers of Am., Inc.*, , 80

F. Supp. 3d 838, 844 (N.D. Ill. 2015). Here, Class Counsel respectfully seek a 15% recovery from the common fund established, which is well below the 25% to 33% fees that courts in this jurisdiction have applied using a common fund methodology in ERISA class action litigation, as set forth below. *Infra* n. 4.

C. Class Counsel Would Have Received The Requested Fee in an *Ex Ante* Market Transaction.

The Seventh Circuit has repeatedly held that, in assessing requested attorneys' fee awards in common fund settlement cases, district courts "must 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." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid I*"). Thus, the role of the district court is to "try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys." *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635 (7th Cir. 2011). *See also In re Cont'l Ill. Sec. Litig.*, 962 F.2d at 572 ("The object in awarding a reasonable attorney's fee…is to give the lawyer what he would have gotten in the way of a fee in arm's length negotiation, had one been feasible. In other words the object is to simulate the market where a direct market determination is infeasible").

In this Circuit, courts consider the following factors to determine a reasonable *ex ante* market rate: attorneys' fee awards in other class action settlements; any fee agreements between plaintiffs and their counsel; the risk of nonpayment counsel agreed to bear; the quality of Settlement Class Counsel's performance; the amount of work necessary to resolve the litigation; and the stakes of the case. *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 599 (7th Cir. 2005). *See also Synthroid I*, 264 F.3d at 721 ("The market rate 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.").

1. The Requested Fee Represents a Much Lower Percentage of the Settlement Fund Than Typical Attorneys' Fee Awards in Similar Cases in This Circuit.

The fee award requested here, amounting to 15% of the Plan Payment, is well below fee awards made by courts in this District in similar cases. "Courts routinely hold that one-third of a common fund is an appropriate attorneys' fees award in class action settlement." *Castillo v. Noodles & Co.*, No. 16-CV-03036, 2016 WL 7451626, at *5 (N.D. Ill. Dec. 23, 2016). Specifically, "the Seventh Circuit has recognized that the market rate for ERISA class actions is a contingency fee between 25% and 33% of the settlement (or award)." *Kaplan v. Houlihan Smith & Co.*, No. 12 C 5134, 2014 WL 2808801, at *3 (N.D. Ill. June 20, 2014) (citing *Williams*, 658 F.3d at 636).[4] As 15% falls well below the market rate for an ERISA class action suit, this factor supports Class Counsel's requested award.

[4] *See, e.g., Taubenfeld*, 415 F.3d at 598 (affirming award of 30% of $7.25 million); *Gaskill v. Gordon*, 160 F.3d 361, 362-63 (7th Cir. 1998) (affirming award of 38% of the settlement fund, or roughly $8 million); *Castillo*, 2016 WL 7451626, at *1 (33 1/3% of $3 million); *Briggs v. PNC Fin. Servs. Grp., Inc.*, No. 1:15-CV-10447, 2016 WL 7018566, at *3 (N.D. Ill. Nov. 29, 2016) (33 1/3% of $6 million); *Koszyk v. Country Fin. a/k/a CC Servs., Inc.*, No. 16 CIV. 3571, 2016 WL 5109196, at *4 (N.D. Ill. Sept. 16, 2016) (33 1/3% of settlement fund, or $941,666.67); *Wright v. Nationstar Mortage LLC*, No. 14 C 10457, 2016 WL 4505169, at *16 (N.D. Ill. Aug. 29, 2016), *appeal dismissed* (Oct. 24, 2016), *appeal dismissed sub nom. Connie Pentz v. Nationstar Mortgage LLC, et al.* No. 16-3537 (N.D. Ill. Sept. 27, 2016), *and appeal dismissed sub nom. Amy Jo Mitchell v. Nationstar Mortgage, LLC, et al.* No. 16-3538 (N.D. Ill. Sept. 27, 2016) (30% of net settlement fund, or approximately $3,075,000); *Abrams v. Van Kampen Funds, Inc.*, No. 01 C 7538, 2006 WL 163023, at *8 (N.D. Ill. Jan. 18, 2006) (25% of net settlement fund); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001) (33 1/3% of $14 million); *Long v. Trans World Airlines, Inc.*, No. 86-CV- 7521, 1993 U.S. Dist. LEXIS 5063, at *1 (N.D. Ill. Apr. 15, 1993) (32% of $4.075 million settlement or $1.3 million).

2. Named Plaintiffs Agreed *Ex Ante* That Class Counsel Would Seek No More Than One-Third of the Monies Recovered.

The Court should consider any actual agreement between class members and their attorneys when assessing a fee request. *Synthroid I,* 264 F.3d at 719-20. Here, the client representation agreement between Plaintiffs Butler and Fitzsimmons and Class Counsel states that "counsel may seek an award of up to 33 1/3 % of any recovery." Exhibit M. The Northern District of Illinois has found that an *ex ante* agreement between plaintiffs' counsel and named plaintiffs that counsel will not seek more than one-third of any future recovery constitutes evidence of "what private plaintiffs 'would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed),' because the Named Plaintiffs contracted for Plaintiffs' Counsel to be compensated with the amount Plaintiffs' Counsel now seek." *Koszyk v. Country Fin. a/k/a CC Servs., Inc.*, No. 16 CIV. 3571, 2016 WL 5109196, at *4 (N.D. Ill. Sept. 16, 2016) (quoting *Synthroid I*, 264 F.3d at 718 and citing *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d at 844-45). In this case, even though Class Counsel bargained *ex ante* to seek an award of up to one-third of Plaintiffs' recovery, Class Counsel now seeks an award of only 15% of the recovery. This factor therefore supports the reasonableness of Settlement Class Counsel's fee request.

3. Class Counsel Assumed Significant Risk in Bringing This Case, and the Stakes of this Litigation Are Significant for Plaintiffs.

From the outset, Class Counsel litigated this matter on a contingent basis and placed their own resources at risk to do so. As discussed in more detail in Plaintiffs' Memorandum in Support of Plaintiffs' Unopposed Motion for Final Approval of the Proposed Settlement (filed contemporaneously with this memorandum), absent this Settlement, Plaintiffs and the Settlement Class risked obtaining no recovery at all. Specifically, the Supreme Court is in the process of

considering the question central to this litigation: whether a hospital can claim ERISA's "church plan" exemption, just as Holy Cross did here. *See Saint Peter's Healthcare Sys. v. Kaplan*, 137 S. Ct. 546 (2016); *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 546 (2016); *Dignity Health v. Rollins*, 137 S. Ct. 547 (2016). Because that decision is still pending and the outcome uncertain, the stakes of this litigation are as high for Plaintiffs as they are for Class Counsel: it is possible that the Supreme Court will rule in favor of the hospitals, and Plaintiffs in this case would find themselves with diminished legal recourse in a few months' time. Class Counsel Decl. ¶ 64. Furthermore, during the course of the Parties' settlement discussions, Defendants presented a potential insolvency scenario if forced to satisfy a judgment in the amount Plaintiffs seek. Class Counsel Decl. ¶ 25. As a result, even if the Supreme Court were to decide that hospital pension plans may not claim the church plan exemption under ERISA and even if Plaintiffs were to succeed at trial in this case, there is a real possibility that Defendants would not be able to satisfy a judgment in favor of Plaintiffs. *Id.* The risk of not recovering anything at all weighs in favor of an award of fees where a recovery was achieved.

Similarly, the contingent nature of these cases favors the award of fees. *See Taubenfeld*, 415 F.3d at 600 ("the contingent nature of the case" and "that lead counsel was taking on a significant degree of risk of nonpayment with the case" should be considered in making a fee award decision); *In re Trans Union Corp. Priv. Litig.*, 629 F.3d 741, 746 (7th Cir. 2011) (stating that "within the set of colorable legal claims, a higher risk of loss does argue for a higher fee"); *Sutton v. Bernard*, 504 F.3d 688, 694 (7th Cir.2007) ("there is generally some degree of risk that attorneys will receive no fee (or at least not the fee that reflects their efforts) when representing a class because their fee is linked to the success of the suit"). Although the Seventh Circuit has held that "the district court ***must*** award a multiplier when attorney's fees are contingent upon the

outcome of the case (*i.e.*, there is the possibility that the attorney will not receive any fee)" and "that a multiplier of 2 may be a sensible ceiling," *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998) (emphasis added) (citations omitted), the award that Class Counsel seeks in this case actually results in a ***negative*** multiplier of 67%. This voluntary reduction further underscores the reasonableness of Class Counsel's requested fees.

4. Class Counsel's Quality of Performance and the Amount of Work Performed Support the Award of the Requested Fee.

Class Counsel are among the leading ERISA plaintiffs' firms and possess unparalleled expertise in the specific types of ERISA claims brought in this lawsuit. Exhibit J to Class Counsel Decl. (CMST Firm Resume). They include the only law firms in the country that commenced Church Plan litigation six years ago and have been vigorously litigating those claims ever since. As a result of their experience litigating the recent wave of Church Plan cases, they have a deep knowledge of the applicable law. These firms *alone* have pioneered all the recent positive developments in Church Plan law, including three appellate victories on the key threshold issue in all Church Plan cases—that only a church can establish a Church Plan. Further, Class Counsel are now actively involved in the consolidated Church Plan ERISA cases pending before the Supreme Court (including arguing before the Court March 27, 2017), providing them a more intimate knowledge of the applicable law.

Here, Class Counsel expended significant time and resources in the investigation and litigation of this case. Class Counsel Decl. ¶¶ 9, 28. For instance, Class Counsel reviewed and analyzed Plan documents, public disclosures, publicly-available financial statements, governmental filings, and information provided by Plaintiffs themselves regarding the Holy Cross/SHS merger, among other things, prior to filing the 56-page complaint. *Id.* ¶ 28. The Settlement negotiations were similarly extensive and took place over the course of seven months,

including two in-person mediation sessions in Los Angeles, California, as well as numerous calls and meetings. *Id.* ¶ 23. During the course of these negotiations, Class Counsel investigated the facts, circumstances, and legal issues associated with the allegations and defenses in this action. *Id.* ¶ 28. Class Counsel also consulted with bankruptcy and actuarial professionals who offered their opinions on the risks of a potential insolvency scenario should Plaintiffs be awarded a judgment. *Id.* ¶ 25. Following these consultations, Class Counsel and counsel for Defendants explored a number of ways to secure the settlement proceeds and to guard against the loss of settlement proceeds if Defendants were forced to initiate insolvency proceedings prior to the settlement being finally approved. *Id.* ¶ 26.

Because the Settlement is the culmination of Class Counsel's substantial factual and legal investigations, a thorough mediation process with an experienced mediator and sophisticated opposing counsel, and extensive negotiations, this factor weighs in favor of granting Class Counsel's request.

D. Although a Lodestar Cross-Check Is Unnecessary, It Would Support the Award of the Requested Fees

A lodestar cross-check compares counsel's request for fees to the actual hours and resultant fees spent on a case. A district court is under no obligation to cross-check the requested fees against the lodestar, *see Williams*, 658 F.3d at 636 ("consideration of a lodestar check is not an issue of required methodology"), and in fact, courts in this district have found that "[t]he use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive." *Kaufman v. Am. Express Travel Related Servs., Co.*, No. 07-CV-1707, 2016 WL 806546, at *13 n.9 (N.D. Ill. Mar. 2, 2016) (quoting *Will v. Gen. Dynamics Corp*., No. 06-698-GPM, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010)). Nevertheless, Class Counsel's requested fee is supported by a lodestar crosscheck here because it results in a negative

multiplier of 0.66, and is thus ***less*** than the actual lodestar incurred in pursuing the case.[5] *See, e.g., Will*, 2010 WL 4818174, at *3 (finding that the requested fee "easily withst[ood] such analysis" because it resulted in a multiplier that was less than one).

IV. THE COURT SHOULD AWARD THE REQUESTED EXPENSES

This Court may award reasonable expenses authorized by the parties' agreement. Fed. R. Civ. P. 23(h). Further, "[i]t 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 reports; travel expense; copy, phone and facsimile expenses and mediation." *Beesley v. Int'l Paper Co., 3:06–cv–703–DRH–CJP*, 2014 WL 375432, at *3 (S.D. Ill. Jan 31, 2014). Courts in this District regularly award reimbursement of the expenses that counsel incur in prosecuting litigation. *See, e.g., Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding various expenses incurred during litigation); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041 (N.D. Ill. 2011) (awarding expenses incurred during litigation). As a benchmark, the Northern District of Illinois has also "observe[d] a 2004 empirical study, which found that '[c]osts and expenses for the sample as a whole were, on average 4 percent of the relief for the class[.]'" *In re AT&T,* 792 F. Supp. 2d at 1041 (citing Theodore Eisenberg & Geoffrey P. Miller, ATTORNEY FEES IN CLASS ACTION SETTLEMENTS: AN EMPIRICAL STUDY, 1 J. Empirical Legal Stud. 27, 70 (2004)).

Here, Class Counsel requests reimbursement for common and routinely reimbursed litigation expenses in the amount of $27,785.81. Class Counsel Decl. ¶ 71, Exs. E, F, G

[5] Class Counsel's lodestar data are attached to the Class Counsel Declaration as Exhibits C, D, and E. The data show that, collectively, Class Counsel and their firms devoted 1,379.15 professional hours to this case. Class Counsel Decl. ¶ 49. Valued at the professionals' customary hourly rates, this time produces a base lodestar of $898,138.50. *Id.* ¶ 52.

(summaries of expenses). These expenses include filing fees; travel expenses, court appearances and mediation; copying, delivery and telecommunications charges; expert fees; transcript costs; mediator's charges; and similar litigation expenses. *Id.* These expenses are typically billed by attorneys to paying clients, and are calculated based on the actual expenses of these services in the markets in which they have been provided. *Spicer*, 844 F. Supp. at 1256 (finding costs such as those sought here necessary in class litigation). These fees were necessary for the litigation and resolution of this action, and Class Counsel have provided detailed bills of costs for the amount sought. Class Counsel Decl. ¶ 71, Exs. F, F, G (summaries of expenses).

Moreover, $27,785.81, the total amount Class Counsel seek in expenses, constitutes ***less than one percent*** of the $4 million cash payment that Class Counsel secured in relief for the class. This proportion of out-of-pocket expenses to total relief for the class is much lower than the 4% that the Northern District of Illinois has identified as the average. Thus, this request is reasonable and should be approved.

V. THE COURT SHOULD AWARD THE REQUESTED INCENTIVE AWARDS

Finally—and perhaps most importantly—Class Counsel respectfully request that the Court approve an award of $10,000 to each of the two named representative plaintiffs. It is well-recognized that "Plaintiffs in class and collective actions play a crucial role in bringing justice to those who would otherwise be hidden from judicial scrutiny." *Castillo*, 2016 WL 7451626, at *5. "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." *Cook*, 142 F.3d at 1016. As the Northern District of Illinois has observed, "[t]his is especially true in employment litigation," where "'the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers.'" *Castillo*, 2016

WL 7451626, at *2 (quoting *Velez v. Majik Cleaning Serv., Inc.*, No. 03 Civ. 8698, 2007 WL 7232783, at *7 (S.D.N.Y. June 25, 2007)). As a result, courts in this District consider three factors in their examination of the reasonableness of a requested service award: (1) the actions the plaintiffs have taken to protect the interests of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the plaintiffs expended in pursuing the litigation. *Castillo*, 2016 WL 7451626, at *2-3, citing *Cook*, 142 F.3d at 1016; *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 Civ. 2898, 2012 WL 651727, at *16 (N.D. Ill. Feb. 28, 2012).

Here, each of the Named Plaintiffs made substantial contributions to the litigation. Plaintiffs Butler and Fitzsimmons both identified the under-calculation of their lump sum payments in 2015, and took immediate action to try to correct the error administratively: Plaintiff Butler by contacting the Plan Administrator and formally requesting plan documents, and Plaintiff Fitzsimmons by researching discount rates for pension benefits and then contacting the U.S. Department of Labor. Butler Decl. ¶¶ 4-6; Fitzsimmons Decl. ¶¶ 5-6. Both Plaintiffs interviewed ERISA attorneys until they located counsel that they believed would best represent the interests of the class. Butler Decl. ¶ 7; Fitzsimmons Decl. ¶¶ 7-8. Throughout the course of the litigation, both Plaintiffs collected and produced documents; regularly supervised and directed Class Counsel's litigation decisions, including through phone calls that frequently lasted over an hour; reviewed and approved the Complaint; stayed abreast of the pleadings, motions, and settlement negotiations; and involved themselves in the mediation and settlement of this litigation. Butler Decl. ¶¶ 8-10, 12; Fitzsimmons Decl. ¶¶ 11-14.

As the Court no doubt appreciates, the activities of these Plaintiffs required a considerable investment of time. Butler Decl. ¶¶ 9,17. But even more importantly, this

responsibility demanded attention and anxiety that no other class members had to shoulder, particularly in light of the media attention to this action. Their involvement also provided great benefit to the members of the Settlement Class. Through Named Plaintiffs' careful research, diligent efforts, and willingness to publicly challenge Holy Cross' lump sum calculations, the Class was able to secure a recovery that nearly doubled the remaining Plan assets. *See* Butler Decl. ¶¶ 7, 17; Fitzsimmons Decl. ¶¶ 10-13.

Moreover, the requested $10,000 incentive award to each plaintiff is typical for ERISA church plan cases. *See, e.g., Griffith v. Providence Health & Servs.*, No. C14-1720-JCC, 2017 WL 1064392, at *2 (W.D. Wash. Mar. 21, 2017) ("Class Representatives are each awarded an incentive fee of $10,000.00"); *Overall v. Ascension Health*, No. 13-cv-11396-AC-LJM (E.D. Mich. Sep. 17, 2015), Dkt. #115 (awarding named plaintiff a $15,000 incentive award). It is also well within the range of incentive payments made by other courts in the Seventh Circuit. *See, e.g., In re Sw. Airlines Voucher Litig.*, No. 11-CV-8176, 2013 WL 4510197, at *11 (N.D. Ill. Aug. 26, 2013), *aff'd as modified*, 799 F.3d 701 (7th Cir. 2015) ("Awards of $15,000 for each plaintiff are well within the ranges that are typically awarded in comparable cases"); *Chesemore v. All. Holdings, Inc.*, No. 09-CV-413-WMC, 2014 WL 4415919, at *5 (W. D. Wis. Sept. 5, 2014), *aff'd sub nom. Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016); *Cook*, 142 F.3d at 1015 (affirming $25,000 incentive award where named plaintiff reasonably feared workplace retaliation); *Spicer*, 844 F. Supp. at 1267-68 ($10,000 awards where class representatives, *inter alia*, participated in discovery).

Accordingly, the requested incentive payments to Plaintiffs Butler and Fitzsimmons are reasonable, appropriate, and should be awarded.

VI. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant Plaintiffs' motion for an award of attorneys' fees, reimbursement of expenses, and incentive awards for Plaintiffs Corinne Butler and Andrea Fitzsimmons, together with such other and further relief as the Court may deem just and proper. A proposed order granting the relief sought herein is attached as Exhibit B to the Final Approval Motion.

Dated: May 15, 2017

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CERTIFICATE OF SERVICE

I certify that on May 15, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Julia Horwitz