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

LESLEE R. CARVER, *et al.*, Plaintiffs, v. PRESENCE HEALTH NETWORK, *et al.*, Defendants.	Case No. 1:15-cv-02905 Judge Harry D. Leinenweber Magistrate Judge M. David Weisman

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

Plaintiffs Leslee R. Carver, Diane Eslinger, Lisa Jenkins, and Susan L. Phillips ("Plaintiffs" or "Named Plaintiffs"), by and through their attorneys, respectfully move the Court for an Order: (1) approving awards of attorneys' fees and expenses to their attorneys Keller Rohrback L.L.P. and Cohen Milstein Sellers & Toll PLLC ("Class Counsel"), as well as local counsel, Stephan Zouras LLP (collectively, "Plaintiffs' Counsel"); and (2) granting Incentive Awards to themselves, as class representatives.[1] While Defendants do not agree with all averments stated in the accompanying Memorandum in Support of Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Award to Named Plaintiffs ("Memorandum"), Defendants do not oppose the ultimate relief sought herein.

For the reasons set forth in the accompanying Memorandum, Plaintiffs ask that the Court grant the Motion and approve $1,550,000 in attorneys' fees and expenses to Plaintiffs' Counsel, including Incentive Awards of $8,000 to each of the four Named Plaintiffs.

[1] Plaintiffs file the instant Motion contemporaneously with their Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class.

Dated: May 25, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 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: May 25, 2018

/s/ Christopher Graver
Christopher Graver

UNITED STATES DISTRICT COURT
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LESLEE R. CARVER, *et al.*, Plaintiffs, v. PRESENCE HEALTH NETWORK, *et al.*, Defendants.	Case No. 1:15-cv-02905 Judge Harry D. Leinenweber Magistrate Judge M. David Weisman

MEMORANDUM IN SUPPORT OF
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AND FOR INCENTIVE AWARDS TO NAMED PLAINTIFFS

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs Leslee R. Carver, Diane Eslinger, Lisa Jenkins, and Susan L. Phillips ("Plaintiffs" or "Named Plaintiffs") respectfully move the Court for an Order approving awards of attorneys' fees and expenses to their attorneys, Keller Rohrback L.L.P. ("Keller Rohrback") and Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") (collectively, "Class Counsel"), as well as local counsel, Stephan Zouras LLP ("Stephan Zouras") (collectively, "Plaintiffs' Counsel"). Class Counsel also seek approval of proposed Incentive Awards for Named Plaintiffs' contributions to the litigation. Defendants do not agree with all averments stated in this Memorandum; however, Defendants do not oppose the ultimate relief sought herein.

I. INTRODUCTION

The parties to this ERISA[1] Action, together with non-party Ascension Health,[2] have entered into a comprehensive Revised and Final Class Action Settlement Agreement ("Settlement Agreement" or "Settlement") that provides substantial relief to the Settlement Class Members in the form of a $20,000,000 guarantee and other enhancements to their retirement

[1] "ERISA" refers to the federal Employee Retirement Income and Security Act of 1974, as amended.

[2] Ascension Health is a large health system that acquired the Presence Health system on March 1, 2018. Under the final structure of the acquisition, Ascension Health did not acquire the entity "Presence Health Network" and its subsidiary, "Resurrection University." It acquired Presence Care Transformation Corporation, which is the statutory employer of Presence Health's employees and is the sole corporate member of the Presence Health hospital corporations and other business interests. *See* Declaration of Howard Shapiro ("Presence Declaration") ¶¶ 4-6, Exhibit D to the Memorandum in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class ("Final Approval Memorandum"), filed contemporaneously herewith. Referenced Exhibits A–C and E–L are also attached to the Final Approval Memorandum. On March 1, 2018, Alexian Brothers Health System, doing business as Presence Alexian Brothers Health System, a subsidiary of Ascension Health, became the sole corporate member of Presence Care Transformation Corporation and replaced Presence Health Network as the sponsor of the two defined benefit pension plans that are the subject of this litigation, the Resurrection Health Care Retirement Plan ("RHC Plan") and the Provena Health Employees' Pension Plan ("Provena Plan") (collectively, the "Plans"). Exhibit D ¶ 6.

security.[3] In summary, Ascension Health guarantees payment of $20,000,000 of benefits that are distributable from either or both of the Plans' Trusts to Settlement Class Members if either of the Plans is unable to pay such benefits (the "Plan Benefits Guarantee").[4] Exhibit A § 8.1.2. The Plan Benefits Guarantee will continue as long as the Plans are sponsored by any of the Releasees identified in the Settlement Agreement, and should a corporate transaction occur where the Plans' assets and liabilities covering Settlement Class Members transfer to a Successor, Ascension Health will cause the Successor to honor this commitment. *Id.* §§ 8.1.2, 8.1.3. For a period of seven and one-half years, the Plans' participants' Accrued Benefits will not be reduced on account of merger, consolidation, amendment, or termination of the Plans. *Id.* §§ 9.1, 9.2.

The Settlement also enhances the retirement security of the Settlement Class Members through a commitment during that seven and one-half year period to provide information to Settlement Class Members, providing, among other things, that the Plans' participants will receive annual notices concerning the Plans' funded status and their accrued retirement benefits. *Id.* §§ 9.3.3, 9.3.4. The notices will include, among other information, a summary of the Plans' funding arrangements, a summary of the Plans' expenses, a statement of the Plans' liabilities and assets, and summary information about the Plans' total income. *Id.* § 9.3.3. The Plans will designate a named fiduciary; provide a procedure for establishing and carrying out the current funding policy and method; describe a procedure for allocation of administrative responsibilities; provide a procedure for Plan amendments and identify persons with authority to make such amendments; specify the basis on which payments are made to and from the Plans; provide a joint and survivor annuity, if this form of benefit is provided currently by the relevant Plan;

[3] *See* Settlement Agreement, Exhibit A. Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Settlement Agreement.

[4] The Plan Benefit Guarantee may be satisfied earlier by making contributions that aggregate $15,000,000. Exhibit A § 8.1.4.1.

provide a procedure for establishing and carrying out a funding policy; and provide a claims review procedure. *Id.* §§ 9.3.1, 9.3.6. These protections are comparable to some of ERISA's key provisions and will ensure the Plans' participants and beneficiaries receive important notices and disclosures concerning the Plans and their benefits.

After resolving the key Settlement provisions that provide relief to the Settlement Class, the parties negotiated, based upon a proposal by a third-party mediator, Robert Meyer, Esq., an agreement for payment of attorneys' fees, expenses, and Incentive Awards to Named Plaintiffs. Exhibit E[5] ¶ 31. Pursuant to the Settlement Agreement, if approved by the Court, the parties have agreed that Plaintiffs will seek no more than $1,550,000 for payment of attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel. Exhibit A § 8.1.5. The parties have also agreed that Plaintiffs will seek Incentive Awards of $8,000 each for Named Plaintiffs Carver, Eslinger, Jenkins, and Phillips, to be paid out of the $1,550,000 award request. *Id*. If awarded, these amounts will not reduce the Plan's Benefits Guarantee or other Settlement benefits to the Settlement Class. *Id.*

Plaintiffs request that the Court approve the negotiated attorneys' fees, expenses, and Incentive Awards as a reasonable, market-set fee agreement. These fees compensate Plaintiffs' Counsel and Named Plaintiffs for the significant time, effort, risk, and expenses they bore in the successful resolution of this Action. The fees and expenses are consistent with the benefits that the Settlement confers on the Settlement Class. The negotiated award represents a fractional multiplier of less than 1, for a substantial discount of 26% off of the actual lodestar

[5] The Joint Declaration of Lynn Lincoln Sarko and Mary J. Bortscheller in Support of (1) Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Certification of Settlement Class; and (2) Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs ("Joint Declaration" or "Joint Decl.") is attached to the Final Approval Memorandum as Exhibit E.

($1,987,387.25) that Plaintiffs' Counsel expended developing and pursuing this Action. Exhibit E ¶¶ 63-64. The Incentive Awards to the Named Plaintiffs are also fair and reasonable in light of Named Plaintiffs' substantial commitment of time and effort to this litigation over the last three years. *Id.* ¶¶ 46, 91; Declaration of Leslee R. Carver in Support of Class Action Settlement ¶ 3-10, Exhibit G; Declaration of Diane M. Eslinger in Support of Approval of Class Action Settlement ¶ 3-11, Exhibit H; Declaration of Lisa A. Jenkins in Support of Approval of Class Action Settlement ¶ 3-11, Exhibit I; Declaration of Susan Phillips in Support of Approval of Class Action Settlement ¶ 3-11, Exhibit J.

II. CLASS COUNSEL'S EFFORTS AND THE RESULTS OBTAINED

Class Counsel committed considerable time and resources to develop and prosecute this matter without any guarantee of payment. Exhibit E ¶ 9. This litigation was hard fought and involved extensive investigation, review of publicly available financial information, confidential plan documents, and other documents, legal research and analysis, discovery, and participation in Court proceedings, all of which were necessary to achieve a positive result for the Settlement Class. *Id.* ¶¶ 9-23.

A. Initial Investigation into the ERISA Church Plan Exemption.

This case is very different from the typical class action brought under the securities laws, consumer protection statutes, or ERISA for fiduciary breach. Rather, this is one of a number of cases pending around the country that challenge whether hospital systems like Presence Health Network are entitled to claim that their pension plans are exempt from ERISA as "church plans" under 29 U.S.C. § 1002(33).

Class Counsel devoted many hours to researching the definition of a "church plan" found in both ERISA and the Internal Revenue Code, 29 U.S.C. § 1002(33); 26 U.S.C. § 414(e), including analyzing the statutory text, its interaction with other provisions of the United States

Code, the legislative history of the statute, and agency and court interpretations of the statute. Exhibit E ¶¶ 10-12. Class Counsel concluded, based on their investigation, that this was a narrow exemption intended for ***churches***, and that hospitals like Presence Health were improperly claiming the exemption. *Id.* ¶ 12; Third Am. Class Action Compl. ("Third Amended Complaint" or "TAC") ¶¶ 192-217, ECF No. 75-1.

Class Counsel concluded, based upon their investigation, that there were three independent and alternative statutory prerequisites for a plan to be a church plan—that it be "established" by a church; that it be "maintained" by either a church or a so-called "principal-purpose organization"; and that the participants be employed by either a church or an entity "controlled by or associated with" a church, as those terms were defined under ERISA. Class Counsel concluded that with respect to a typical hospital pension plan, none of these requirements were met.

Class Counsel also understood, based upon their research, that filing church plan cases like this one would challenge private letter rulings from the Internal Revenue Service and informal Advisory Opinions of the United States Department of Labor. Exhibit E ¶ 14. They also knew that the defense would maintain that the small amount of church plan case law then in existence would favor a defense reading of the church plan exemption. *Id.* And they knew that once even a few of the cases were filed, the major hospitals claiming religious ties, which employ hundreds of thousands of people, would be arrayed against them. *Id.*

Nevertheless, Class Counsel decided to take on this high-stakes, high-risk litigation. Initially, Class Counsel were the only lawyers to do so. *Id.* ¶ 15. The early results in the district

courts were mixed,[6] but when the first three cases reached the appellate courts, Class Counsel achieved major victories. *Id.* All three courts ruled unanimously in favor of plaintiffs.[7] *Id.*

The fight then moved to the Supreme Court, which reversed the appellate decisions and remanded for further proceedings on plaintiffs' additional theories of liability.[8] *Id.* ¶¶ 16, 24-25. This case then settled after extensive mediation and negotiation, but Class Counsel continue to litigate their additional theories in other church plan cases throughout the country. *Id.* ¶ 16. The settlement achieved here, following the Supreme Court's decision, is a direct result of Class Counsel's total immersion in the issue. *Id.*

B. Class Counsel's Vigorous Prosecution of this Case.

Before filing the Complaint in this Action, Class Counsel developed the legal theories outlined above and also analyzed the facts relating to Presence Health and the Plans at issue in this case. For example, Class Counsel reviewed Presence Health's corporate filings; delved into the business activities of Presence Health and its subsidiaries; scoured news articles and publicly-available information for insight into the company and its treatment of its purported church plans; reviewed regulatory filings concerning Presence Health; pored over financial statements and bond offerings for information relating to the Plans; reviewed the Plans' documents; researched the role and responsibilities of Defendants and committees who were

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[6] *Compare, e.g.*, Order, *Chavies v. Catholic Health E.*, No. 13-1645 (E.D. Pa. Mar. 28, 2014), ECF No. 67; *Kaplan v. Saint Peter's Healthcare Sys.*, No. 13-2941, 2014 WL 1284854 (D.N.J. Mar. 31, 2014); *Rollins v. Dignity Health*, 19 F. Supp. 3d 909 (N.D. Cal. 2013); and *Stapleton v. Advocate Health Care Network & Subsidiaries*, 76 F. Supp. 3d 796 (N.D. Ill. 2014), *with Overall v. Ascension*, 23 F. Supp. 3d 816 (E.D. Mich. 2014); *Medina v. Catholic Health Initiatives*, No. 13-1249, 2014 WL 4244012 (D. Colo. Aug. 26, 2014); and *Lann v. Trinity Health Corp.*, No. 14-2237, 2015 WL 6468197 (D. Md. Feb. 24, 2015); *see also* Exhibit E ¶ 15 n.6.

[7] *See Rollins v. Dignity Health*, 830 F.3d 900, 905 (9th Cir. 2016); *Stapleton v. Advocate Health Care Network*, 817 F.3d 517 (7th Cir. 2016); *Kaplan v. Saint Peter's Healthcare Sys.*, 810 F.3d 175 (3d Cir. 2015); *see also* Exhibit E ¶ 15 n.6.

[8] *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017); *see also* Exhibit E ¶ 25.

alleged to be fiduciaries and to have responsibilities concerning the Plans; and examined documents provided by the initial Named Plaintiff Carver. *Id.* ¶ 17. Ultimately, this research resulted in a 77-page Complaint asserting 10 counts against multiple defendants. Compl. – Class Action, ECF No. 1; *see also* Exhibit E ¶ 18.

Defendants moved to dismiss the Complaint in this case, Defs.' Rule 12(b)(1) Partial Mot. to Dismiss the Provena Defs., ECF No. 50, asserting that Leslee R. Carver, then the only Plaintiff and a participant in the RHC Plan, could not assert claims with respect to the Provena Plan. The Complaint was amended on July 14, 2016, First Am. Class Action Compl., ECF No. 56, to add the claims of additional Plaintiffs who were participants in the Provena Plan. Exhibit E ¶ 19. The Complaint was later amended further, and now names as additional plaintiffs Diane Eslinger, Lisa Jenkins, and Susan L. Phillips, all participants in the Provena Plan. TAC ¶¶ 15-16, 18; Exhibit E ¶ 20. Defendants answered Plaintiffs' Third Amended Complaint, ECF No. 79, denying that Plaintiffs were entitled to relief because Defendants contend that the Plans were properly treated as church plans. *Id.* ¶ 21.

Following a status hearing on May 5, 2016, Minute Entry, ECF No. 44, the parties commenced discovery and thereafter each served and responded to written discovery requests. Exhibit E ¶ 23. Both Plaintiffs and Defendants propounded and responded to multiple requests for the production of documents and interrogatories. Over 10,000 pages of documents were produced by the parties, including the Named Plaintiffs. On October 13, 2016, however, by agreement of the parties, the Court stayed further proceedings (with the exception of completion of pending document discovery) while the United States Supreme Court considered whether to grant *certiorari* in three other "church plan" cases involving one of the same issues present in

this case. Minute Entry, ECF No. 78. The Court subsequently stayed all proceedings after *certiorari* was granted. Minute Entry, ECF No. 87; *see also* Exhibit E ¶ 24.

The appeal to the Supreme Court addressed whether, as Plaintiffs alleged in this case, a church plan must be established by a church in order to qualify as an ERISA-exempt church plan. The Supreme Court held argument in that case on March 27, 2017, and issued its decision on June 5, 2017, holding that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans, though they still had to satisfy other conditions. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017). Exhibit E ¶ 25. The Supreme Court did not decide Plaintiffs' other theories of liability. *Id.* Class Counsel kept Named Plaintiffs abreast of these developments. *Id.* ¶ 44.

C. The Mediator Oversaw Settlement Negotiations.

Following the *Advocate* decision, as the parties prepared to resume active litigation, they agreed to attempt to settle the case with the assistance of an experienced JAMS mediator, and the Court granted their Joint Motion to Continue Status Hearing in Light of Pending Mediation on July 11, 2017. Minute Entry, ECF No. 95; *see also* Exhibit E ¶ 26. The parties attended a face-to-face mediation on August 29, 2017, in Chicago, Illinois, with the assistance of Robert Meyer, Esq., an experienced JAMS mediator. Exhibit E ¶ 27. Mr. Meyer has substantial experience mediating cases involving ERISA and retirement plan issues, including cases involving the church plan exemption. *Id.*

Shortly before the August 29, 2017 mediation, Presence Health and Ascension Health publicly announced the signing of a non-binding letter of intent for Ascension Health to acquire Presence Health Network. Although the acquisition had not then been finalized, Ascension Health was present at and participated in the mediation. *Id.* ¶ 28.

The case was not resolved at the August 29, 2017 mediation, though the parties agreed to continue pursuing settlement. *Id.* ¶ 29. The parties jointly requested that a status conference scheduled for September 13, 2017, be postponed so that the parties could attempt to bring the matter to a final resolution, and the Court continued the status conference to November 16, 2017. Minute Entry, ECF No. 98; *see also* Exhibit E ¶ 29. At Mr. Meyer's urging the parties continued to negotiate over several months, with Mr. Meyer's continued assistance, and the parties finally accepted a mediator's proposal and reached an agreement in principle to settle the Action. On November 2017, the parties signed a Term Sheet containing the preliminary terms resolving this matter. *Id*.

Prior to and during these negotiations, Class Counsel investigated the facts, circumstances, and legal issues associated with the allegations and defenses in the action. The investigation included, *inter alia*: (a) analyzing documents and information produced by or relating to the Defendants, the Plans, and the industry; (b) researching the applicable law with respect to the claims and possible defenses; and (c) exploring potential remedies. Exhibit E ¶ 45.

Only ***after*** the parties reached agreement on the key terms for the Settlement Class did they turn to negotiations concerning attorneys' fees. *Id.* ¶ 31. Those negotiations were overseen by the mediator, who came up with a mediator's proposal, to which the parties ultimately agreed, subject to the Court's approval. *Id.*; *see also* Exhibit A § 8.1.5.[9]

Once the parties reached an agreement in principle, on November 10, 2017, the parties signed a Term Sheet containing the preliminary terms resolving this matter. Exhibit E ¶ 32. Thereafter, Class Counsel drafted and filed a settlement agreement (the "Initial Settlement

[9] *See In re Sw. Airlines Voucher Litig.*, No. 11 C 8176, 2013 WL 4510197, at *8 (N.D. Ill. Aug. 26, 2013) (noting absence of collusion where agreement to attorneys' fees were only discussed in mediator's presence after agreement to terms of settlement for class members).

Agreement"), ECF No. 106-2, and Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement Agreement, ECF No. 104, and took the lead on drafting the Class Notice materials to be sent to current and former participants in the Plans. Exhibit E ¶¶ 32-33. The Court preliminarily approved the Settlement on January 16, 2018. Order Prelim. Approving the Settlement, Certifying the Class, Approving Notice to the Class, and Scheduling Final Approval Hr'g, ECF No. 110; *see also* Exhibit E ¶ 33.

In February 2018, before notice of the Initial Settlement Agreement had been mailed to Settlement Class Members, Defendants advised Plaintiffs that the structure of the acquisition of Presence by Ascension Health had changed. Ascension Health, Presence Health Network, and Presence Care Transformation Corporation, which is the statutory employer of Presence Health's employees, and is the sole corporate member of the Presence Health hospital corporations and other business interests, had agreed that Ascension Health would acquire most Presence entities except for Presence Health and its subsidiary, Resurrection University. Exhibit E ¶ 34; *see also* Exhibit D ¶¶ 4-6. Defendants further advised Plaintiffs that Ascension Health and Presence Health Network agreed that the Plans would become sponsored by Ascension Health or a subsidiary thereof after the closing of the acquisition transaction. Exhibit E ¶ 35; *see also* Exhibit D ¶ 6.

The Initial Settlement Agreement was jointly amended and modified to reflect those changes in the structure of the acquisition, resulting in the Revised and Final Class Action Settlement Agreement currently before this Court. The changes to the Initial Settlement Agreement did not affect the substantive terms of relief granted to the Settlement Class. Exhibit E ¶ 36. The Settlement Agreement was executed on February 21, 2018. *Id.* ¶ 37. Because of

Ascension Health's acquisition of Presence on March 1, 2018, Ascension Health is bound by the Settlement Agreement. Exhibit A § 2.3.

Class Counsel then drafted and filed Plaintiffs' Unopposed Motion for Preliminary Approval of Revised and Final Settlement Agreement, ECF No. 111, on February 28, 2018, including revised Class Notice materials. Exhibit E ¶ 47. The Court preliminary approved the Settlement, as revised, on March 8, 2018. Order Prelim. Approving the Settlement, Certifying the Class, Approving Notice to the Class, and Scheduling Final Approval Hr'g ("Preliminary Approval Order"), ECF No. 118; *see also* Exhibit E ¶ 48.

Pursuant to the Preliminary Approval Order, Class Notice in the form approved by the Court was timely mailed to a total of 52,918 Settlement Class Members by the settlement administrator, Garden City Group, LLC,[10] and posted on Class Counsels' settlement websites. Exhibit E ¶¶ 52-53. Class Counsel has received and responded to phone calls and emails from over 530 Class members, *id.* ¶ 54, and has responded to Court filings by four Class members. *Id.* ¶ 55. Class Counsel will continue to devote significant time to responding to inquiries from the Settlement Class and answering questions concerning the Settlement. *Id.* ¶ 59.

The comprehensive Settlement Agreement now before the Court is the result of Plaintiffs' Counsel's research and analysis, prosecution of this litigation, and lengthy arm's-length negotiation between the Parties in a thorough, adversarial, and professional process. *Id.* ¶ 32. The Settlement Agreement's $20,000,000 Plan Benefits Guarantee was crafted to provide a type of insurance that the Plans will remain sufficiently funded into the future—a protection that may not otherwise be available. *Id.* ¶ 42. Accordingly, Class Counsel request an award of

[10] *See* Affidavit of Jose C. Fraga ¶¶ 8-9, Exhibit B. Of 50,710 Class Members identified, after extensive efforts, Garden City Group was unable to find mailing addresses for 300. *Id.* ¶ 6. 50,410 Class Notices were mailed on March 23, 2018, and 2,508 were re-mailed upon receipt of an updated address, for a total of 52,918 as of May 22, 2018. *Id.* ¶¶ 8-9.

attorneys' fees and expenses for the significant time Plaintiffs' Counsel devoted to this case and also an Incentive Award to the Named Plaintiffs for their services to the Settlement Class over the past three years.

III. THE COURT SHOULD AWARD THE REQUESTED FEES AS A MEDIATOR-PROPOSED, MARKET-SET FEE AGREEMENT

The 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 outside the "common fund" context, the Supreme Court has made clear that settlements of requests for attorneys' fees should be encouraged and respected; indeed, it is only where parties fail to reach agreement on fees that courts should scrutinize fee requests:

> 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) of the Federal Rules of Civil Procedure specifically authorizes the Court to award "reasonable attorney's fees and nontaxable costs . . . by the parties' agreement." Fed. R. Civ. P. 23(h).

The virtue in the negotiation of attorneys' fees by the adversarial parties to the settlement is that the "[m]arkets know market values better than judges do." *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992). Thus, "the court can, [generally] 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). This is particularly true here because the fees were negotiated after agreement was reached on the key terms of the Settlement for the Settlement Class with the assistance of a well-respected and neutral mediator, and the fees were based upon the mediator's proposal (subject to Court approval).

IV. THE REQUESTED FEE AWARD IS REASONABLE

A. Class Counsel's Request for Attorneys' Fees Is Justified by Having Created a Common Benefit for the Settlement Class.

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."). By extension, courts recognize that attorneys' fees are justified where the settlement confers a common benefit to the class.

The Supreme Court recognized the concept of treating common benefits and common fund fee analyses similarly in *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (under the "common benefit" doctrine, there is no requirement "that the suit must actually bring money into the court as a prerequisite to the court's power to order reimbursement of expenses," including attorneys' fees). Thus, when "the benefit conferred is capable of expression in monetary terms," many courts treat the value of the benefit to the class as the basis for awarding attorneys' fees, *Mills*, 396 U.S. at 395. *See In re M.D.C. Holdings Sec. Litig.*, No. CV89-0090 E (M), 1990 WL 454747, at *2 (S.D. Cal. Aug. 30, 1990) (finding that the settlement's non-pecuniary benefits to the class were worth approximately $100 million)*; Will v. Gen. Dynamics Corp.*, No. 06-698-GPM, 2010 WL 4818174, at *1 (S.D. Ill. Nov. 22, 2010) (in calculating the common benefit to the class in an ERISA class action settlement for purposes of awarding attorneys' fees, "this Court recognizes that it is important to take into account affirmative relief in addition to monetary relief so as to encourage attorneys to obtain effective affirmative relief. While the true value of the affirmative relief is difficult to pinpoint, it will without a doubt materially add to the monetary recovery to the Plans."). *See also Williams v. Gen. Elec. Capital*

Auto Lease, No. 94 C 7410, 1995 WL 765266, at *9 (N.D. Ill. Dec. 26, 1995) ("The approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred on the class," especially where that percentage approximates what the market would yield.).

In this Settlement, both the monetary guarantee and the non-pecuniary terms of the Settlement confer a substantial benefit on the Settlement Class. As a result of the Plan's Benefits Guarantee, if the Plans are unable to pay benefits, Ascension Health will pay up to $20,000,000 of the Plans' outstanding benefits. Exhibit A § 8.1.1–8.2. If Defendants choose the Settlement Agreement's buyout option, Defendants will be required to make contributions that in the aggregate amount to $15,000,000 into the Plans' Trusts. *Id.* § 8.1.4. This guarantee functions as a type of insurance that may not otherwise be available, and provides significant value to the Settlement Class because of the protection it offers that the Plans will remain sufficiently funded into the future. Exhibit E ¶ 42.

It is also important to take into account the non-pecuniary affirmative relief provided by the Settlement Agreement. *Will*, 2010 WL 4818174, at *1. For seven and one-half years, participants' Accrued Benefits are protected against cutbacks, Exhibit A § 9.2, and Ascension must comply with equitable provisions comparable to certain provisions of ERISA—including providing information about the Plans' funding and participants' retirement benefits. *Id.* § 9.3.1–9.3.6. While the "true value" of these provisions (*see Will*, 2010 WL 4818174, at *1) is difficult to quantify, they were designed to equip Settlement Class Members with informational protections comparable to ERISA so that they are able to plan for their retirement. Exhibit E ¶ 40. These protections will also confer significant value on the class and "materially add[s] to the monetary recovery to the Plans." *Will*, 2010 WL 4818174, at *1. An award of attorneys' fees is

thus justified both as an arm's-length negotiated agreement and because of the creation of a common benefit.

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

The Court must also determine whether Class Counsel's requested fees are reasonable. *Florin v. Nationsbank of Ga.*, *N.A.*, 34 F.3d 560, 565 (7th Cir. 1994). Courts in the Seventh Circuit have the discretion to choose between two methods for calculating reasonable attorneys' fees: 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). *See id.* at 566 ("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.").

Here, Class Counsel seek a total award of $1,550,000, covering attorneys' fees for Plaintiffs' Counsel, the three firms representing the four Named Plaintiffs and the Settlement Class; out-of-pocket litigation expenses for Plaintiffs' Counsel; and Incentive Awards to the four Named Plaintiffs. After deducting the requested expense reimbursement and Incentive Awards, the total fee award to Plaintiffs' Counsel will be $1,473,268.25. Even without counting the substantial value of the non-monetary components of the Settlement, and assuming that Ascension Health immediately bought out the guarantee with a $15,000,000 contribution to the Plans' Trusts, Class Counsel's requested fee award of $1,473,268.25 only represents 9.8% of $15,000,000. This amount is well below the 25-33% fees that courts in this jurisdiction have awarded using the "percentage of recovery" method in ERISA class action litigation, as set forth below.

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

Although this case is analogous to a common fund settlement because the award does not reduce the benefits to the Settlement Class, it bears noting that 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 (the "*Synthroid* 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 class counsel's performance; the amount of work necessary to resolve the litigation; and the stakes of the case. *See Taubenfeld v. Aon Corp.*, 415 F.3d 597, 599 (7th Cir. 2005). Each of these factors weighs in favor of awarding Plaintiffs' Counsel their requested attorneys' fees.

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 9.8% of the $15,000,000 buyout value, 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. 16-03036, 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).[11] As 9.8% falls well below the market rate for an ERISA class action suit, this factor supports Class Counsel's requested award.

2. Named Plaintiffs Agreed *Ex Ante* that Plaintiffs' Counsel Would Cap Fees at a Reasonable Amount of 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 agreements with Named Plaintiffs cap fees at one-third of the recovery.[12] Exhibit E ¶ 82. 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

[11] *See, e.g.*, *Taubenfeld*, 415 F.3d at 598 (affirming fee award of 30% of $7.25 million settlement); *Gaskill v. Gordon*, 160 F.3d 361, 362-63 (7th Cir. 1998) (affirming fee award of 38% of the settlement fund, or roughly $8 million settlement); Order and Final Judgment, *Butler v. Holy Cross Hosp.*, No.16-05907 (N.D. Ill. June 29, 2017), ECF No. 52 (awarding fee award of 15% of $4 million settlement); *Castillo*, 2016 WL 7451626, at *1, 4 (N.D. Ill. Dec. 23, 2016) (awarding fee award of one-third of $3 million settlement); *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) (awarding fee award one-third of $2.825 million settlement); *Wright v. Nationstar Mortg. LLC*, No. 14 C 10457, 2016 WL 4505169, at *16 (N.D. Ill. Aug. 29, 2016), *appeal dismissed*, No. 16-3376 (7th Cir. Oct. 24, 2016), *appeal dismissed*, No. 16-3538, 2016 WL 9752125 (7th Cir. Oct. 21, 2016), *appeal dismissed*, No. 16-3537, 2016 WL 9752126 (7th Cir. Oct. 25, 2016) (awarding fee award of 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) (awarding fee award of 25% of class's net recovery); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001) (awarding fee award of 33 1/3% of $14 million settlement).

[12] Plaintiff Leslee Carver's fee agreement is limited to a "reasonable percentage" of a recovery – and that percentage is necessarily capped at one-third by the express terms of her co-plaintiffs' agreements. Exhibit E ¶ 82.

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*, 2016 WL 5109196, at *4 (quoting *Synthroid I*, 264 F.3d at 718, 720) (citing *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 844-45 (N.D. Ill. 2015)). In this case, even though Plaintiffs' Counsel bargained *ex ante* to seek an award of up to one-third of Plaintiffs' recovery, Class Counsel now seeks an award of only 9.8% of Defendants' minimum liability. This factor therefore supports the reasonableness of 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.

The contingent nature of this case strongly 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. Privacy 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) ("[T]here 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."). From the outset, Plaintiffs' 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 Class Action Settlement and Certification of Settlement Class (filed contemporaneously with this memorandum), absent this Settlement, Plaintiffs and the Settlement Class risked obtaining no recovery at all. Prior to the parties beginning negotiations to settle this Action, the Supreme Court ruled on a question central to this litigation, holding that an entity that is not a church *may* establish an ERISA-exempt

"church plan." *Advocate*, 137 S. Ct. at 1663. Though Plaintiffs advance other arguments and theories not reached by the Supreme Court, Plaintiffs' case was arguably negatively impacted by the Supreme Court's decision.[13] Exhibit E ¶ 25. The possibility that the ruling in *Advocate* could have hampered Plaintiffs' ability to recover anything at all for the Settlement Class if this litigation proceeded therefore weighs in favor of an award of 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. *See* Exhibit E ¶¶ 11-15, 56. As set forth in detail in Section II.A, *supra*, these two firms commenced church plan litigation six years ago and have been vigorously litigating those claims ever since. As a result of this extensive experience, they have a deep knowledge of the applicable law.

As detailed in Sections II.A, B, *supra*, Class Counsel expended significant time and resources in the investigation and litigation of this case. Exhibit E ¶ 58. For instance, Class Counsel reviewed and analyzed Plan documents, public disclosures, publicly-available financial statements, governmental filings, and information provided by Plaintiff Carver, prior to filing the Complaint. *Id.* ¶¶ 17, 45, 58. On behalf of Named Plaintiffs, Class Counsel propounded and also responded and objected to multiple requests for production of documents, and interrogatories. *Id.* ¶ 23. The Settlement negotiations were similarly extensive and took place over the course of several months, including a face-to-face mediation session in Chicago, Illinois, as well as numerous calls. *Id.* ¶¶ 27, 29-31. During the course of these negotiations, Class Counsel investigated the facts, circumstances, and legal issues associated with the

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[13] While it was not decided until after the parties here had agreed on the terms of a settlement, and neither factually nor legally controls the result in this case, *Medina v. Catholic Health Initiatives*, 877 F.3d 1213 (10th Cir. 2017) (finding for defendants in another church plan case) also illustrates the litigation risk in this matter.

allegations and defenses in this action. *See id.* ¶¶ 9-16, 58. Even while this case was stayed, Class Counsel monitored the developments in the other pending Church Plan cases, informed the Named Plaintiffs of those developments, and assessed the impact of those developments on the instant case. *Id.* ¶¶ 44-45. Class Counsel also successfully moved for preliminary approval of the Settlement, drafted the Class Notice materials, and posted them on two dedicated settlement websites; and individually responded to over 530 inquiries from Settlement Class Members concerning the Class Notices, the Settlement, and this litigation. *See id.* ¶ 58. Moreover, Class Counsel's work is not yet done. Class Counsel still need to complete the final approval process, assist Settlement Class Members with inquiries, respond to any potential objections, and handle any resulting appeal. *Id.* ¶ 59. Because the Settlement is the culmination of Class Counsel's substantial factual and legal investigations, discovery on the merits, 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. Alternatively, a Separate Lodestar Analysis Also Supports the Reasonableness of the Requested Fees.

Alternatively, a lodestar analysis also confirms the reasonableness of the requested fees. The lodestar method provides courts an objective basis upon which to determine the value of the services provided by counsel. *Hensley*, 461 U.S. at 433. Multiplying the number of hours counsel worked by a reasonable hourly rate establishes the lodestar. After examining the time and labor required, the Court may apply a multiplier to the lodestar, taking into account relevant factors such as the novelty of the questions involved, the skill required, and in contingent fee cases, the risk to the attorneys.[14] In this motion, Class Counsel seeks no multiplier.

[14] *Hensley*, in a different context, identifies twelve possible factors: "(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of

Plaintiffs' Counsel expended a total of 3129.65 hours developing and prosecuting this litigation. Exhibit E ¶ 62. At Plaintiffs' Counsel's hourly rates, which are comparable to those of other class action attorneys, this amounts to a lodestar of $1,987,387.25. *Id.* ¶ 63. Plaintiffs' total requested award of $1,550,000 is inclusive of unreimbursed litigation costs totaling $44,731.75 plus the requested Incentive Awards for the four Named Plaintiffs in the amount of $8,000 each (discussed *infra*). *Id.* ¶¶ 84, 91. After reimbursement of costs and the requested Incentive Awards for the Named Plaintiffs, the requested attorneys' fees are only a fraction of the amount expended; they amount to a 0.74 multiplier on Plaintiffs' Counsel's combined lodestar of $1,987,387.25. *Id.* ¶¶ 63-64.

The hourly rates Plaintiffs' Counsel charged to perform this work, which range from $175 to $995, are reasonable. *Id.* ¶ 74. These rates are "prevailing market rates," for similar services by lawyers of "reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 & n.11 (1984). The reasonableness of these rates is evidenced by comparison to fee awards Class Counsel has received in similar cases. *See Johnson v. GDF, Inc.*, 668 F.3d 927, 933 (7th Cir. 2012). Class Counsel have submitted fee petitions in a number of other church plan cases in which they reported hourly rates at amounts comparable to those sought herein. Exhibit E ¶ 77. The other church plan cases include two church plan cases from the Northern District of Illinois. Order and Final Judgment ¶ 21, *In re Wheaton Franciscan ERISA Litig.*, No. 16-4232 (N.D. Ill. Jan. 16, 2018), ECF No. 107; Order and Final Judgment ¶

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the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Id.* at 429-30 n.3 (citation omitted).

21, *Butler v. Holy Cross Hosp*., No. 16-5907 (N.D. Ill. June 29, 2017), ECF No. 52. The courts approved the fee awards in these cases and all the other church plan cases. *Id.*[15]

V. THE COURT SHOULD AWARD THE REQUESTED EXPENSES

This Court may award reasonable litigation expenses authorized by the parties' agreement. Fed. R. Civ. P. 23(h). Trial courts may determine what is reasonable based on an objective standard of reasonableness, i.e., the prevailing market value of services rendered. *Blum*, 465 U.S. at 895. Here, based on the Joint Declaration filed contemporaneously herewith, Class Counsel requests reimbursement for common and routinely reimbursed litigation expenses incurred by Plaintiffs' Counsel in the amount of $ 44,731.75. Exhibit E ¶¶ 84, 86. This request is reasonable and should be approved. *See, e.g.*, Order and Final Judgment ¶ 21, *In re Wheaton Franciscan ERISA Litig.*, No. 16-4232 (N.D. Ill. Jan. 16, 2018), ECF No. 107 (granting expenses incurred during litigation); Order and Final Judgment ¶ 21, *Butler v. Holy Cross Hosp.*, No. 16-5907 (N.D. Ill. June 29, 2017), ECF No. 52 (granting expenses incurred during litigation); *Spicer v. Chi. Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256-66 (N.D. Ill. 1993) (detailing and awarding various expenses incurred during litigation); *In re AT&T Mobility Wireless Data Servs.*

[15] Other examples of cases in which Class Counsel submitted fee petitions in the district reporting similar hourly rates, and the courts approved them, include: Order Approving Attorney's Fees, Expenses and Incentive Awards at 3, *Diebold v. N. Tr. Invs., N.A.*, No. 09-1934 (N.D. Ill. Aug. 10, 2015), ECF No. 285 (awarding then-current Keller Rohrback attorneys' rates between $395 and $895); Order Awarding Attorneys' Fees and Litigation Expenses at 3, *La. Firefighters Ret. Sys. v. N. Tr. Invs., N.A.*, No. 09-7203 (N.D. Ill. Aug. 5, 2015), ECF No. 499 (approving then-current Keller Rohrback attorneys' rates between $475 and $945); Order on Lead Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses and Reimbursement of Lead Plaintiff's Costs and Expenses at 2, *Constr. Workers Pension Tr. Fund v. Navistar Int'l Corp.*, No. 13-2111 (N.D. Ill. Nov. 1, 2016), ECF No. 183 (approving then-current attorneys' rates between $475 and $945 on a lodestar cross-check); Order Granting Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses at 2, *Hughes v. Huron Consulting Grp. Inc.*, No. 09-4734 (N.D. Ill. May 6, 2011), ECF No. 145-1 (awarding then-current attorneys' rates between $475 and $795). *See also* Exhibit E ¶¶ 79-80 (listing additional examples).

Sales Tax Litig., 792 F. Supp. 2d 1028, 1040-41 (N.D. Ill. 2011) (awarding expenses incurred during litigation).

Here, Class Counsel requests reimbursement for common and routinely reimbursed litigation expenses in the amount of $ 44,731.75. Exhibit E ¶¶ 84, 86; Keller Rohrback Fees and Expenses, Exhibit E-3; Cohen Milstein Fees and Expenses, Exhibit E-4; Declaration of James B. Zouras in Support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses at 2, Exhibit E-5. These expenses include filing fees; travel expenses for court appearances and mediation, copying, delivery and telecommunications charges; computer-based research and database services; mediator's charges; and similar litigation expenses. Exhibit E ¶ 85. 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 1256-66 (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 maintains bills of costs for the amount sought. Exhibit E ¶ 85; Exhibits E-3, E-4, E-5 (summaries of expenses).

VI. THE COURT SHOULD AWARD THE REQUESTED INCENTIVE AWARDS

Class Counsel respectfully requests that the Court approve an Incentive Award of $8,000 for each of the Named Plaintiffs. These stipends do not affect or reduce the benefits to the Settlement Class in any way and will be paid solely out of the total $1,550,000 being sought in this motion to cover attorneys' fees, reimbursement of expenses, and Incentive Awards.

It is well-recognized that "[p]laintiffs 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 *2. "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 v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998). 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 *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005)). As a result, courts in this District consider three factors in their examination of the reasonableness of a requested Incentive Awards: "(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 *3 (citing *Cook*, 142 F.3d at 1016; *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07 CV 2898, 09 C 2026, 2012 WL 651727, at *16 (N.D. Ill. Feb. 28, 2012)).

Here, each of the Named Plaintiffs made substantial contributions to the litigation, including by collecting and producing documents; maintaining regular contact with Class Counsel; reviewing and approving the Complaint and other major filings; staying abreast of the pleadings, motions, and settlement negotiations in this case; and staying abreast of the mediation and ultimate settlement of this litigation. Exhibit E ¶ 45. These actions provided great benefit to the Settlement Class and thus the Incentive Awards to the Named Plaintiffs Leslee R. Carver, Diane Eslinger, Lisa Jenkins, and Susan L. Phillips are reasonable, appropriate, and should be awarded.

VII. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant Plaintiffs' Unopposed Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs, together with such other and further relief as to the

Court may deem just and proper. A proposed order granting the relief sought herein is attached as Exhibit L to the Final Approval Memorandum.

Dated: May 25, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 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: May 25, 2018

/s/ Christopher Graver
Christopher Graver