

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

Mary Holcomb, Mary Grovogel, Holly Mollet, Rhonda Rosenthal, and Donald Schneider, on behalf of themselves, individually, and on behalf of all others similarly situated, and on behalf of the Hospital Sisters Health System Employees' Pension Plan,	)	No. 3:16-cv-03282
	)	
	)	Judge Sue E. Myerscough
	)	Magistrate Judge Tom Schanzle-Haskins
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Hospital Sisters Health System; Hospital Sisters Health System Retirement Committee; and John and Jane Does 1-20,	)	
	)	
Defendants.	)	
	)	
	)	

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

Plaintiffs Mary Holcomb, Mary Grovogel, Holly Mollet, Rhonda Rosenthal, and Donald Schneider (collectively, "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 at Keller Rohrback L.L.P. and Cohen Milstein Sellers & Toll PLLC ("Class Counsel"), as well as Interim Liaison Counsel at Armstrong Law LLC, and counsel for Plaintiff Mollet, Glancy Prongay & Murray LLP, Sarraf Gentile LLP, Wham & Wham Lawyers, and Heffner Hurst (collectively, "Plaintiffs' Counsel"); and (2) granting Incentive Awards to

themselves, as class representatives.<sup>1</sup> 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 Awards 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 \$850,000 in attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel, including Incentive Awards of \$5,000.00 to each of the Named Plaintiffs.

DATED this 7th day of January, 2019.

**KELLER ROHRBACK L.L.P.**

*/s/ Laura R. Gerber*

\_\_\_\_\_  
Lynn Lincoln Sarko

Laura R. Gerber

Alison S. Gaffney

1201 Third Avenue, Suite 3200

Seattle, WA 98101-3052

Tel.: (206) 623-1900

Fax: (206) 623-3384

lsarko@kellerrohrback.com

lgerber@kellerrohrback.com

agaffney@kellerrohrback.com

**KELLER ROHRBACK L.L.P.**

Ron Kilgard

3101 North Central Avenue, Suite 1400

Phoenix, AZ 85012

Tel.: (602) 248-0088

Fax: (602) 248-2822

rkilgard@kellerrohrback.com

---

<sup>1</sup> Plaintiffs file the instant Motion contemporaneously with their Unopposed Motion for Final Approval of Settlement Agreement.

**COHEN MILSTEIN SELLERS  
& TOLL PLLC**

Karen L. Handorf  
Michelle C. Yau  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, DC 20005  
Tel.: (202) 408-4600  
Fax: (202) 408-4699  
khandorf@cohenmilstein.com  
myau@cohenmilstein.com

*Class Counsel*

**ARMSTRONG LAW FIRM LLC**

Matthew H. Armstrong, ARDC #6226591  
8816 Manchester Road, No. 109  
St. Louis, MO 63144  
Tel.: (314) 258-0212  
matt@mattarmstronglaw.com

*Interim Liaison Counsel*

**GLANCY PRONGAY & MURRAY LLP**

Robert I. Harwood  
Daniella Quitt  
712 Fifth Avenue, 31st Floor  
New York, NY 10019  
Tel.: (212) 935-7400  
rharwood@glancylaw.com  
dquitt@glancylaw.com

**SARRAF GENTILE LLP**

Ronen Sarraf  
Joseph Gentile  
14 Bond Street, Suite 212  
Great Neck, NY 11021  
Tel.: (516) 699-8890  
ronen@sarrafgentile.com  
joseph@sarrafgentile.com

**HEFFNER HURST**

Matthew T. Hurst  
30 North LaSalle Street, 12th Floor  
Chicago, IL 60602  
Tel.: (312) 346-3466

mhurst@heffnerhurst.com

*Attorneys for Plaintiff Mollet*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 7, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which in turn sent notice to all counsel of record.

*/s/ Laura R. Gerber* \_\_\_\_\_

Laura R. Gerber

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

Mary Holcomb, Mary Grovogel, Holly	)	No. 3:16-cv-03282
Mollet, Rhonda Rosenthal, and Donald	)	
Schneider, on behalf of themselves,	)	Judge Sue E. Myerscough
individually, and on behalf of all others	)	Magistrate Judge Tom Schanzle-Haskins
similarly situated, and on behalf of the	)	
Hospital Sisters Health System Employees’	)	
Pension Plan,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Hospital Sisters Health System; Hospital	)	
Sisters Health System Retirement	)	
Committee; and John and Jane Does 1-20,	)	
	)	
Defendants.	)	
	)	
	)	

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

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	1
II.	CLASS COUNSEL’S EFFORTS AND THE RESULTS OBTAINED .....	4
	A. Initial Investigation into the ERISA Church Plan Exemption.....	4
	B. Class Counsel’s Vigorous Prosecution of this Action. ....	6
	C. Settlement Negotiations. ....	8
III.	THE COURT SHOULD AWARD THE REQUESTED FEES AS A MEDIATOR-PROPOSED, MARKET-SET FEE AGREEMENT .....	10
IV.	THE REQUESTED FEE AWARD IS REASONABLE .....	11
	A. Class Counsel’s Request for Attorneys’ Fees Is Justified by Having Created a Common Benefit for the Settlement Class. ....	11
	B. Class Counsel’s Fee is Within the Range of Fees That Would Have Been Negotiated in an Arm’s-Length Negotiation. ....	12
	1. The Requested Fee Represents a Much Lower Percentage of the Settlement Fund than Typical Attorneys’ Fee Awards in Similar Cases in This Circuit.....	13
	2. Named Plaintiffs Agreed <i>Ex Ante</i> That Plaintiffs’ Counsel Would Cap Fees at a Reasonable Amount of No More Than One-Third of the Monies Recovered. ....	13
	3. Class Counsel Assumed Significant Risk in Bringing This Action, and the Stakes of This Litigation Are Significant for Plaintiffs.....	14
	4. Class Counsel’s Quality of Performance and the Amount of Work Performed Support the Award of the Requested Fees.....	15
	C. Alternatively, a Separate Lodestar Analysis Also Supports the Reasonableness of the Requested Fees. ....	17
V.	THE COURT SHOULD AWARD THE REQUESTED REIMBURSEMENT OF EXPENSES .....	18
VI.	THE COURT SHOULD AWARD THE REQUESTED INCENTIVE AWARDS .....	19

VII. CONCLUSION ..... 20



**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Advocate Health Care Network v. Stapleton</i> , 137 S. Ct. 1652 (2017) .....	6, 7, 14, 15
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984) .....	18
<i>Boden v. St. Elizabeth Medical Center, Inc.</i> , No. 16-49, 2018 WL 1629866 (E.D. Ky. Apr. 4, 2018) .....	15
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980) .....	11
<i>Butler v. Holy Cross Hosp.</i> , No. 16-5907 (N.D. Ill. June 29, 2017) .....	13
<i>Camp Drug Store, Inc., v. Cochran Wholesale Pharm., Inc.</i> , 897 F.3d 825 (7th Cir. 2018) .....	20
<i>Castillo v. Noodles &amp; Co.</i> , No. 16-3036, 2016 WL 7451626 (N.D. Ill. Dec. 23, 2016) .....	13, 19
<i>In re Cont'l Ill. Sec. Litig.</i> , 962 F.2d 566 (7th Cir. 1992) .....	11, 12
<i>Cook v. Niedert</i> , 142 F.3d 1004 (7th Cir. 1998) .....	20
<i>In re Dairy Farmers of Am., Inc.</i> , 80 F. Supp. 3d 838 (N.D. Ill. 2015) .....	14
<i>Evans v. Jeff D.</i> , 475 U.S. 717 (1986) .....	10
<i>Feather v. SSM Health</i> , No. 16-1669, 2018 WL 3536613 (E.D. Mo. July 23, 2018).....	15
<i>In re Fine Paper Antitrust Litig.</i> , 751 F.2d 562 (3d Cir. 1984) .....	11
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998) .....	11, 13

<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983) .....	17
<i>Johnson v. GDF, Inc.</i> , 668 F.3d 927 (7th Cir. 2012) .....	18
<i>Kaplan v. Houlihan Smith &amp; Co.</i> , No. 12-5134, 2014 WL 2808801 (N.D. Ill. June 20, 2014) .....	13
<i>Koszyk v. Country Fin. a/k/a CC Servs., Inc.</i> , No. 16-3571, 2016 WL 5109196, (N.D. Ill. Sept. 16, 2016).....	13, 14
<i>Medina v. Catholic Health Initiatives</i> , 877 F.3d 1213 (10th Cir. 2017).....	8, 15
<i>Mollet v. Hosp. Sisters Health Sys.</i> , No. 16-9238 (N.D. Ill.) .....	6, 7
<i>Nolte v. Cigna Corp.</i> , No. 07-2046-HAB-DGB, 2013 WL 12242015 (C.D. Ill. Oct. 15, 2013).....	11, 12, 13, 18
<i>Owens v. St. Anthony Medical Center, Inc.</i> , No. 14-4068, 2018 WL 4682337 (N.D. Ill. Sept. 29, 2018).....	15
<i>Rollins v. Dignity Health</i> , 338 F. Supp. 3d 1025 (N.D. Cal. 2018).....	15
<i>Sanzone v. Mercy Health</i> , 326 F. Supp. 3d 795 (E.D. Mo. 2018).....	15
<i>Sheedy v. Adventist Health System Sunbelt Healthcare Corp.</i> , No. 16-1893, 2018 WL 3538441 (M.D. Fla. July 23, 2018).....	15
<i>Smith v. OSF Healthcare</i> , No. 16-467, 2018 WL 4680671 (S.D. Ill. Sept. 28, 2018) .....	15
<i>Spicer v. Chi. Bd. Options Exch., Inc.</i> , 844 F. Supp. 1226 (N.D. Ill. 1993) .....	19
<i>Sutton v. Bernard</i> , 504 F.3d 688 (7th Cir. 2007) .....	14
<i>In re Synthroid Mktg. Litig. (Synthroid I)</i> , 264 F.3d 712 (7th Cir. 2001) .....	12, 13, 14
<i>In re Synthroid Mktg. Litig. (Synthroid II)</i> , 325 F.3d 974 (7th Cir. 2003) .....	11, 12, 17

*Taubenfeld v. Aon Corp.*,  
415 F.3d 597 (7th Cir. 2005) ..... 12, 13, 14

*In re Trans Union Corp. Privacy Litig.*,  
629 F.3d 741 (7th Cir. 2011) ..... 14

*Williams v. Rohm & Haas Pension Plan*,  
658 F.3d 629 (7th Cir. 2011) ..... 12, 13

**RULES**

Fed. R. Civ. P. 12(b) ..... 8

Fed. R. Civ. P. 23(e)..... 1

Fed. R. Civ. P. 23(h) ..... 11, 18

**STATUTES**

26 U.S.C. § 414(e) ..... 4, 5

28 U.S.C. § 1404(a) ..... 7

29 U.S.C. § 1002(33) ..... 4, 5

**OTHER AUTHORITIES**

Manual for Complex Litigation (Fourth) § 21.71 (2004)..... 11

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs Mary Holcomb, Mary Grovogel, Holly Mollet, Rhonda Rosenthal, and Donald Schneider (collectively, “Plaintiffs” or “Named Plaintiffs”), respectfully move the Court for an Order approving an award 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”), for their distribution to additional counsel in the matter, including Interim Liaison Counsel, Armstrong Law Firm LLC (“Armstrong Law”) and to counsel for Plaintiff Holly Mollet, Glancy Prongay & Murray LLP (“Glancy Prongay”), Sarraf Gentile LLP (“Sarraf Gentile”), Wham & Wham Lawyers (“Wham & Wham”), and Heffner Hurst (collectively, “Plaintiffs’ Counsel”). Class Counsel also seek approval of proposed incentive awards for Named Plaintiffs, recognizing their contributions to the litigation. Defendants do not agree with all averments stated in this Memorandum in Support of Plaintiffs’ Unopposed Motion for Award of Attorneys’ Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs (“Memorandum”)<sup>1</sup>; however, Defendants do not oppose the ultimate relief sought herein.

## I. INTRODUCTION

The parties to this ERISA<sup>2</sup> Action have entered into a comprehensive Settlement Agreement that provides substantial relief to the Settlement Class.

Under the Settlement, Hospital Sisters Health System (“HSHS”) will contribute \$62.5 million to the Plan for the benefit of the participants and beneficiaries. For four fiscal years,

---

<sup>1</sup> Capitalized terms not otherwise defined in this Memorandum shall have the same meaning ascribed to them in the Class Action Settlement Agreement (“Settlement Agreement” or “Settlement”). A copy of the Settlement Agreement is attached as Exhibit A to the Memorandum in Support of Plaintiffs’ Unopposed Motion for Final Approval of Settlement Agreement (“Final Approval Memorandum”), filed contemporaneously herewith. Referenced Exhibits B through O are also attached to the Final Approval Memorandum.

<sup>2</sup> “ERISA” refers to the federal Employee Retirement Income and Security Act of 1974, as amended.

Fiscal Years 2019 through 2022, HSHS will make annual cash contributions to the Plan of a minimum of \$15.625 million per year, for a total contribution of \$62.5 million. Moreover, after April 4, 2018, any of the Released Parties may fund any part of the \$62.5 million Plan cash contribution at any time. Ex. A § 7.1.

The Settlement also establishes, through Fiscal Year 2022, or until such time as \$62.5 million is contributed to the Plan, certain equitable provisions that are comparable to provisions of ERISA concerning plan administration, protection against cutbacks of accrued benefits, Summary Plan Descriptions (“SPDs”), notices and the Plan’s claim review procedure. *Id.* § 8. As a result of this provision, Plan participants will receive access to SPDs that include a description of how benefits are paid, the pension formula, vesting requirements, and claims review procedures. *Id.* § 8.5.1. Plan participants will also have access to summary annual reports. *Id.* § 8.5.3. These annual reports will include, among other information, a summary of the Plan’s funding arrangements, and the value of net assets at the beginning and end of each Plan year. *Id.*

The Settlement also provides enhanced assurance of payment to participants through Fiscal Year 2022 or such time as the \$62.5 million is contributed to the Plan. During that period:

- (1) HSHS guarantees that if HSHS is the Plan’s sponsor and the funds in the Plan’s Master Trust become insufficient to pay benefits as they are due, HSHS will contribute sufficient funds to pay the accrued benefits payable to Participants as they are due.
- (2) If the Plan is merged or consolidated with another plan or adopted by additional employers, participants and beneficiaries who are Settlement Class Members will be entitled to an accrued benefit that is no less than they enjoyed before that event.
- (3) No amendment or termination of the Plan will result in a reduction of a Settlement Class Member’s accrued benefit.

*Id.* § 8.1, 8.2, 8.3.

After resolving the key Settlement provisions that provide relief to the Settlement Class, the Parties negotiated, based upon a proposal by a JAMS mediator, Robert Meyer, Esq., an agreement for payment of attorneys' fees, reimbursement of expenses, and incentive awards to Named Plaintiffs. Ex. E<sup>3</sup> ¶ 32. Pursuant to the Settlement Agreement, if approved by the Court, the Parties have agreed that Plaintiffs will seek no more than \$850,000 for payment of attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel. Ex. A § 7.1.2. The Parties have also agreed that Plaintiffs will seek incentive awards of \$5,000 each for Named Plaintiffs to be paid from the \$850,000 award request. *Id.* §§ 1.13, 7.1.2. If awarded, this payment will be made by HSHS, and will not reduce the payment to the Plan or other Settlement benefits to the Settlement Class. *Id.* § 7.1.3.

Plaintiffs request that the Court approve the negotiated attorneys' fees, reimbursement of 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 fee and expense award, if added to the settlement consideration, would yield a common benefit for the class of \$63,350,000. Viewed in this light, Plaintiffs' fee and expense request would represent just 1.3% of the settlement value. Further, because the requested net fee award of \$799,595.74 is less than the total value of the fees recorded by Plaintiffs' Counsel, it results in a fractional multiplier of ".77", for a discount of 23% off the actual lodestar (\$1,036,825.75) that

---

<sup>3</sup> The Joint Declaration of Laura R. Gerber, Karen L. Handorf, and Matthew H. Armstrong in Support of (1) Plaintiffs' Unopposed Motion for Final Approval of Settlement Agreement; and (2) Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs is attached to the Final Approval Memorandum as Exhibit E.

Plaintiffs' Counsel expended developing and pursuing this Action. Ex. E ¶¶ 58-59. The incentive awards to Named Plaintiffs are also fair and reasonable in light of Named Plaintiffs' substantial commitment of time and effort to this litigation over the last two years. *Id.* ¶¶ 89-91; Ex. J (Declaration of Mary Holcomb in Support of Approval of Settlement Agreement) ¶¶ 3,6-11, 14-16; Ex. K (Declaration of Mary Grovogel in Support of Approval of Settlement Agreement) ¶¶ 3,6-11, 14-16; Ex. L (Declaration of Holly Mollet in Support of Approval of Settlement Agreement) ¶¶ 3,6-12, 15-17; Ex. M (Declaration of Rhonda Rosenthal in Support of Approval of Settlement Agreement) ¶¶ 3,6-11, 14-16; Ex. N (Declaration of Donald Schneider in Support of Approval of Settlement Agreement) ¶¶ 3, 6-11, 14-16.

## **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. Ex. E ¶ 11. This litigation was hard fought and involved extensive investigation, review of publicly available financial information, review of confidential plan documents and other documents, legal research, and briefing, all of which were necessary to achieve a positive result for the Settlement Class. *Id.*

### **A. Initial Investigation into the ERISA Church Plan Exemption.**

This Action 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 HSHS 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. Ex. E ¶ 14. Class Counsel concluded, based on their investigation, that this was a narrow exemption intended for *churches*, and that hospitals like HSHS were improperly claiming the exemption. *Id.*; Am. Master Consolidated Compl. ¶¶ 117-46, ECF No. 35.

Class Counsel also concluded 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”;<sup>4</sup> 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. Ex. E ¶ 15.

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. *Id.* ¶ 16. 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.* ¶ 17. The early results in the district courts were mixed,<sup>5</sup> but when the first three cases reached the appellate courts, Class Counsel

---

<sup>4</sup> See 29 U.S.C. § 1002(33)(C)(i).

<sup>5</sup> See Ex. E ¶ 17 n.6.



achieved major victories. *Id.* All three appellate courts ruled unanimously in favor of plaintiffs.<sup>6</sup> *Id.*

The fight then moved to the Supreme Court, which reversed the unanimous appellate decisions and remanded the cases for further proceedings on plaintiffs' additional theories of liability.<sup>7</sup> *Id.* ¶ 18. The stay in this case was lifted and then settled after briefing of the motions to dismiss and mediation and negotiation. *Id.* ¶ 26, 28-34. The settlement achieved here, following the Supreme Court's decision, is a direct result of Class Counsel's total immersion in the issue. *Id.* ¶¶ 11-34, 53.

#### **B. Class Counsel's Vigorous Prosecution of this Action.**

Before filing the complaint in this Action ("*Holcomb* Complaint" or "*Holcomb* Compl."), ECF No. 1, Class Counsel developed the legal theories outlined above and also analyzed the facts relating to HSHS and the Plan at issue in this Action.<sup>8</sup> For example, Class Counsel reviewed HSHS's corporate filings; delved into the business activities of HSHS 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 HSHS; pored over financial statements and bond offerings for information relating to the Plan; reviewed the Plan's documents; researched the role and responsibilities of Defendants and committees who were alleged to be fiduciaries and to have responsibilities concerning the Plan; and examined documents provided by the Named Plaintiffs. Ex. E ¶ 21. Ultimately, this research

---

<sup>6</sup> *See id.* ¶ 17 n.7.

<sup>7</sup> *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

<sup>8</sup> On September 26, 2016, Named Plaintiff Mollet filed a putative class action complaint in the United States District Court for the Northern District of Illinois against HSHS and various other defendants, alleging violations of ERISA. Compl. for Violations of the Employee Retirement Income Security Act, *Mollet v. Hosp. Sisters Health Sys.* (the "*Mollet* Action"), No. 16-9238 (N.D. Ill.), ECF No. 1. Plaintiff Mollet was represented by the firms of Harwood Feffer LLP (now Glancy Prongay & Murray LLP), Sarraf Gentile LLP, Wham & Wham Lawyers, and Heffner Hurst.

resulted in the 58-page *Holcomb* Complaint asserting ten counts against numerous Defendants. *Id.* ¶ 22; *Holcomb* Compl. ¶¶ 134-233.

On October 27, 2016, Plaintiff Mollet and Defendants requested transfer of the *Mollet* Action to the United States District Court for Central District of Illinois pursuant to 28 U.S.C. § 1404(a), where the *Holcomb* matter was already pending. Uncontested Joint Mot. to Transfer Venue Under 28 U.S.C. § 1404(a), *Mollet* Action, ECF No. 21. The transfer motion was granted on October 31, 2016. Minute Entry, *Mollet* Action, ECF No. 23. On November 18, 2016, this Court consolidated the two cases. Order, ECF No. 16.

Following full briefing on contested motions for the appointment of interim lead counsel, on January 18, 2017, the Court appointed Keller Rohrback and Cohen Milstein as Interim Co-Lead Counsel, Matthew H. Armstrong as Interim Liaison Counsel, and Plaintiffs Mary Holcomb and Mary Grovogel as Interim Lead Plaintiffs. Order at 5-6, ECF No. 29. The Master Consolidated Complaint, ECF No. 32, was filed on February 16, 2017.

The Court then stayed the case pending the Supreme Court's decision in another church plan case, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017). Order at 4, ECF No. 29. Following the issuance of the Supreme Court's June 5, 2017 decision in *Advocate*, reversing the holdings of the appellate courts, and holding that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans so long as other conditions necessary for church plan status are satisfied, the stay in this case was lifted. During the stay, Class Counsel kept the Named Plaintiffs fully informed of the status of the developments in the Supreme Court. Ex. E ¶ 26.

Subsequently, Plaintiffs filed an Amended Master Consolidated Complaint ("Complaint"), ECF No. 35, on August 15, 2017, that included new state law claims.

Defendants then moved to dismiss the Complaint on October 16, 2017. Defendants filed both a Rule 12(b)(6) Motion to Dismiss, ECF No. 41, and a Rule 12(b)(1) Motion to Dismiss, ECF No. 44. The Parties then filed a Joint Stipulation, ECF No. 50, subject to the Court's approval, authorizing Plaintiffs to file a sur-reply memorandum addressing *Medina v. Catholic Health Initiatives*, 877 F.3d 1213 (10th Cir. 2017) (decided on December 19, 2017, after Plaintiffs had filed their Opposition to Defendants' Motions to Dismiss), and responding to Defendants' arguments based on *Medina* in their Reply brief. The Parties also stipulated to a further sur-reply memorandum by Defendants. Plaintiffs filed their Sur-Reply in Opposition to Defendants' Motions to Dismiss the Complaint on January 30, 2018. ECF No. 51.

**C. Settlement Negotiations.**

On February 2, 2018, shortly before briefing was complete on Defendants' Motions to Dismiss, the Parties jointly moved to stay all proceedings in the case for a period of ninety days so that the Parties could engage in settlement negotiations and schedule a mediation before a JAMS mediator, Mr. Meyer. Joint Motion to Stay, ECF No. 52. Mr. Meyer has substantial experience mediating cases involving ERISA and retirement plan issues, including cases involving the church plan exemption. Ex. E ¶ 30. The Court granted the motion via Text Order on February 6, 2018. During March of 2018, Plaintiffs shifted the focus of their efforts to preparing for the mediation with Mr. Meyer. The settlement negotiations included exchange of confidential discovery documents in advance of an in-person mediation session on April 4, 2018.

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 Plan, and the industry; (b) researching the applicable law with respect to the claims and possible defenses; (c) consulting with experts; and (d) exploring

potential remedies. *Id.* ¶ 31. As part of this process, Class Counsel reviewed information from HSHS's actuary regarding the Plan's funding. *Id.*

The Parties attended a face-to-face mediation on April 4, 2018, in Los Angeles, California, with Mr. Meyer. Both sides exchanged proposals and counter-proposals concerning potential settlement terms. *Id.* ¶ 32. The Parties only negotiated attorneys' fees and reimbursement of expenses after reaching agreement on the key provisions for the Settlement Class—including the substantial financial guarantees and non-monetary equitable relief identified above. Mr. Meyer oversaw the negotiations and came up with a mediator's proposal for attorneys' fees, expenses, and incentive awards to Named Plaintiffs, to which the Parties ultimately agreed (subject to the Court's approval). *Id.* ¶ 32.

By the end of the all-day mediation, the Parties reached an agreement to preliminarily resolve the case and memorialized the key terms of the agreement in a Term Sheet dated April 4, 2018, *id.* ¶ 33, subject to approval by the HSHS Board, the Board of Hospital Sisters Ministries, and the individual Plaintiffs, with such approval to be communicated to the mediator by May 1, 2018. *Id.* The Parties notified the Court of the Settlement on May 1, 2018. Joint Notice of Settlement, ECF No. 53. At the Parties request the Court continued the stay in force while the Settlement was documented, and the Motion for Preliminary Approval of the Settlement was filed. Text Order, May 2, 2018; Text Order, June 1, 2018. The Parties executed the Settlement Agreement on May 31, 2018.

Class Counsel then drafted and filed Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement Agreement, ECF No. 57, on June 8, 2018. The Court granted preliminary approval of the Settlement on October 30, 2018. Order Prelim. Approving Settlement, Certifying

the Settlement Class, Approving Notice to the Settlement Class, and Scheduling Fairness Hr'g ("Preliminary Approval Order"), ECF No. 59.

Pursuant to the Preliminary Approval Order, Class Notice in the form approved by the Court was timely mailed to a total of 61,932 Settlement Class members by the settlement administrator, Rust Consulting, Inc.,<sup>9</sup> and posted on Class Counsels' settlement websites. Ex. E ¶¶ 47, 44-46. Following re-mailing of undeliverable notices that had forwarding information, as well as address tracing for other undeliverable notices, a total of 64,908 notices were mailed to Settlement Class members. *Id.* ¶ 48. Class Counsel has received and responded to 133 inquiries (either by phone or e-mail) from Settlement Class members, *id.* ¶ 49, and has reviewed the Court filing by one Settlement Class member. *Id.* ¶ 50. Class Counsel will continue to devote significant time to responding to inquiries from the Settlement Class and answering questions concerning the Settlement. *Id.* ¶ 54.

The comprehensive Settlement Agreement now before the Court is the result of Plaintiffs' Counsel's research and analysis, prosecution of this litigation, and extensive arm's-length negotiation between the Parties in a thorough, adversarial, and professional process. *Id.* ¶¶ 10, 53. Accordingly, Class Counsel request an award of attorneys' fees and reimbursement of expenses for the significant time Plaintiffs' Counsel devoted to this Action, as well as incentive awards to Named Plaintiffs for their services to the Settlement Class over the past two 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

---

<sup>9</sup> See Ex. C (Declaration of Jennifer Mills for Rust Consulting, Inc.) ¶¶ 6-10. The Class List initially included names of 62,215 potential Settlement Class Members, but addresses were unavailable for 283 individuals. *Id.* ¶ 6.

(1986). Rule 23(h) 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 fee agreement to pay up to \$850,000 for attorneys’ fees, expenses, and incentive awards, was 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 fee agreement was based upon the mediator’s proposal (subject to the Court’s approval). Ex. E ¶ 32.

#### **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.”). A court must also consider any substantial affirmative relief when evaluating the overall benefit to the class. *See Manual for Complex Litigation (Fourth)* § 21.71 (2004).

When determining the reasonableness of a fee, the Seventh Circuit uses the percentage basis rather than a lodestar or other basis. *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998); *In re Synthroid Mktg. Litig. (Synthroid II)*, 325 F.3d 974, 979-980 (7th Cir. 2003) (use of lodestar cross-check has fallen into disfavor). A one-third fee is typical in ERISA cases. *Nolte v. Cigna*

*Corp.*, No. 07-2046-HAB-DGB, 2013 WL 12242015, at \*2 (C.D. Ill. Oct. 15, 2013). Here, the Class Settlement Amount is \$62.5 million, not including equitable relief. Combined with the separately negotiated fees of up to \$850,000 for attorneys' fees, expenses, and incentive awards, the common benefit for the class would be \$63,350,000. Accordingly, Plaintiffs' request of a total of \$850,000 for attorneys' fees, expenses, and incentive awards represents just 1.3% of the settlement value, which is far below the Seventh Circuit's benchmark of one-third (33%).

**B. Class Counsel's Fee is Within the Range of Fees That Would Have Been Negotiated in an Arm's-Length Negotiation.**

The Seventh Circuit requires that courts test the reasonableness of a fee by determining whether a requested fee is within the range of fees that would have been negotiated in an arm's-length negotiation given the risk of nonpayment and the normal rate of compensation in the market at the time. *See Nolte*, 2013 WL 12242015, at \*2 (citing *Synthroid Mktg. Litig. (Synthroid I)*, 264 F.3d 712, 718 (7th Cir. 2001)). 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 *just over 1.3%* of the contribution to the Plan, is well below fee awards made by courts in this District in similar cases. As set forth above, courts routinely hold that one-third of a common fund is an appropriate attorneys' fees award in class action settlement. *Nolte*, 2013 WL 12242015, at \*2. 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. 12-5134, 2014 WL 2808801, at \*3 (N.D. Ill. June 20, 2014) (citing *Williams*, 658 F.3d at 636).<sup>10</sup> As 1.3% 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. Ex. 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

---

<sup>10</sup> See, e.g., *Taubenfeld*, 415 F.3d at 598 (affirming fee award of 30% of \$7.25 million settlement); *Gaskill*, 160 F.3d at 362-63 (affirming fee award of 38% of the settlement fund, or roughly \$8 million); Order and Final Judgment ¶ 21, *Butler v. Holy Cross Hosp.*, No. 16-5907 (N.D. Ill. June 29, 2017), ECF No. 52 (awarding fee award of 15% of \$4 million settlement); *Castillo v. Noodles & Co.*, No. 16-3036, 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. 16-3571, 2016 WL 5109196, at \*4 (N.D. Ill. Sept. 16, 2016) (awarding fee award one-third of \$2.825 million settlement).



‘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*, 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 Action, 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 just over 1.3% 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 Action, 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’ Final Approval 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. And while it is neither factually nor legally controlling 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, as do the divergent outcomes in other church plan cases pending in the district courts. Since *Medina*, the case law has been mixed with very strong opinions for plaintiffs in *Rollins v. Dignity Health*, 338 F. Supp. 3d 1025 (N.D. Cal. 2018) and *Owens v. St. Anthony Medical Center, Inc.*, No. 14-4068, 2018 WL 4682337 (N.D. Ill. Sept. 29, 2018), solid victories for plaintiffs in *Sheedy v. Adventist Health System Sunbelt Healthcare Corp.*, No. 16-1893, 2018 WL 3538441 (M.D. Fla. July 23, 2018) and *Boden v. St. Elizabeth Medical Center, Inc.*, No. 16-49, 2018 WL 1629866, at \*5 (E.D. Ky. Apr. 4, 2018), and defense outcomes in *Feather v. SSM Health*, No. 16-1669, 2018 WL 3536613 (E.D. Mo. July 23, 2018), *Sanzone v. Mercy Health*, 326 F. Supp. 3d 795 (E.D. Mo. 2018), and *Smith v. OSF Healthcare*, No. 16-467, 2018 WL 4680671 (S.D. Ill. Sept. 28, 2018). Ex. E ¶ 76. 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 Fees.**

Class Counsel are among the leading ERISA plaintiffs' firms and possess unparalleled expertise in the specific types of ERISA claims brought in this Action. *See id.* ¶ 51; Ex. E-1 (Keller Rohrback résumé); Ex. E-2 (Cohen Milstein résumé). As set forth in detail in Section II.A, *supra*, these two firms commenced church plan litigation over five 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 Action. Ex. E ¶ 11. For instance, Class Counsel reviewed and analyzed Plan documents, public disclosures, publicly-available financial statements, governmental filings, and information provided by Named Plaintiffs, prior to filing the complaints. *Id.* ¶¶ 21, 41. The Settlement negotiations were also extensive, including a face-to-face mediation session in Los Angeles, California. *Id.* ¶ 32. During the course of these negotiations, Class Counsel investigated the facts, circumstances, and legal issues associated with the allegations and defenses in this Action, including review of the Plan's actuarial statements and the Plan's funding, and crafted a comprehensive Settlement after arm's-length negotiations overseen by a third-party mediator. *See id.* ¶¶ 29-34. Even while this Action was stayed, Class Counsel monitored the developments in the other pending church plan cases, informed Named Plaintiffs of those developments, and assessed the impact of those developments on the instant case. *Id.* ¶¶ 26, 31. 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 133 inquiries from Settlement Class members concerning the Class Notice, the Settlement, and this litigation. *See id.* ¶¶ 43-46, 49. 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.* ¶ 54. Because the Settlement is the culmination of Class Counsel's substantial factual and legal investigations, briefing on the contested motions to dismiss, 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.

**C. Alternatively, a Separate Lodestar Analysis Also Supports the Reasonableness of the Requested Fees.**

A lodestar analysis also confirms the reasonableness of the requested fees. *See Synthroid II*, 325 F.3d at 979-980. The lodestar method provides courts an objective basis upon which to determine the value of the services provided by counsel. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

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.<sup>11</sup> In this motion, Class Counsel seeks no multiplier.

Plaintiffs' Counsel expended a total of 1,666 hours developing and prosecuting this litigation. Ex. E ¶¶ 53, 57. At Plaintiffs' Counsel's hourly rates, which are comparable to those of other class action attorneys, this amounts to a lodestar of \$1,036,825.75. *Id.* ¶¶ 55, 58. Plaintiffs' total requested award of \$850,000 is inclusive of unreimbursed litigation costs totaling \$25,404.26 plus the requested incentive awards for the five Named Plaintiffs in the amount of \$5,000 each (discussed *infra*). *Id.* ¶¶ 84-87. Before reimbursement of costs and the requested incentive awards for the Named Plaintiffs, the requested attorneys' fees are less than the amount expended; they amount to a 23% discount on Plaintiffs' Counsel's combined lodestar of \$1,036,825.75. *Id.* ¶¶ 58-59.

---

<sup>11</sup> *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 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).

The hourly rates Plaintiffs' Counsel charged to perform this work, which range from \$170 to \$1,035, are also reasonable. *Id.* ¶ 73. 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). Only a handful of law firms are capable of handling this type of national litigation, therefore, the relevant market for legal services in cases such as this one is a national market. *See Nolte*, 2013 WL 12242015, at \*3. The reasonableness of these rates is therefore 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 similar to those sought herein that have all been approved. Ex. E ¶ 77.

**V. THE COURT SHOULD AWARD THE REQUESTED REIMBURSEMENT OF 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 Declarations filed contemporaneously herewith, Class Counsel requests reimbursement for common and routinely reimbursed litigation expenses incurred by Plaintiffs' Counsel in the amount of \$25,404.26. Ex. E ¶¶ 84-87; Ex. E-4 (Keller Rohrback fees and expenses), E-5 (Cohen Milstein fees and expenses), E-6 (Armstrong Law fees and expenses), Ex. F (Declaration of Daniella Quitt in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and for an Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs), Ex. G (Declaration of Ronen Sarraf in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and for an Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named

Plaintiffs), Ex. H (Declaration of Ryan Rich in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and for an Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs), Ex. I (Declaration of Matthew Hurst in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and for an Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs). This request is reasonable and should be approved.

These expenses include filing fees; travel expenses, court appearances and mediation; copying, delivery and telecommunications charges; computer-based research and database services; mediator's charges; and similar litigation expenses. Ex. 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 v. Chi. Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256-66 (N.D. Ill. 1993) (finding costs such as those sought here necessary in class litigation). These expenses were necessary for the litigation and resolution of this Action, and Class Counsel has documentation for the amounts sought. Ex. E ¶¶ 84-85; Exs. E-4, E-5, E-6, F through I (summaries of expenses).

#### **VI. THE COURT SHOULD AWARD THE REQUESTED INCENTIVE AWARDS**

Class Counsel respectfully requests that the Court approve an incentive award of \$5,000 for each of the five 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 \$850,000 being sought in this motion to cover attorneys' fees, reimbursement of expenses, and incentive awards to Named Plaintiffs.

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). “To determine if an incentive award is warranted, a district court evaluates ‘the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.’” *Camp Drug Store, Inc., v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 834 (7th Cir. 2018) (quoting *Cook*, 142 F.3d at 1016).

Here, each of the Named Plaintiffs made substantial contributions to the litigation, including by collecting and producing documents to counsel; maintaining regular contact with Class Counsel; meeting either in person or telephonically with counsel; reviewing and approving the complaint(s), 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 Action. Ex. E ¶¶ 42, 89. These actions provided great benefit to the Settlement Class and thus the proposed incentive awards to the Named Plaintiffs Mary Holcomb, Mary Grovogel, Holly Mollet, Rhonda Rosenthal, and Donald Schneider of \$5,000 each, for a total of \$25,000, are reasonable, appropriate, and should be awarded.

## VII. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court grant Plaintiffs’ Unopposed Motion for Award of Attorneys’ Fees and Reimbursement of Expenses, and for incentive awards to Named Plaintiffs, in the total amount of \$850,000, 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 O to the Final Approval Memorandum.

DATED this 7th day of January, 2019.

**KELLER ROHRBACK L.L.P.**

*/s/ Laura R. Gerber*

---

Lynn Lincoln Sarko  
Laura R. Gerber  
Alison S. Gaffney  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
Tel.: (206) 623-1900  
Fax: (206) 623-3384  
lsarko@kellerrohrback.com  
lgerber@kellerrohrback.com  
agaffney@kellerrohrback.com

**KELLER ROHRBACK L.L.P.**

Ron Kilgard  
3101 North Central Avenue, Suite 1400  
Phoenix, AZ 85012  
Tel.: (602) 248-0088  
Fax: (602) 248-2822  
rkilgard@kellerrohrback.com

**COHEN MILSTEIN SELLERS  
& TOLL PLLC**

Karen L. Handorf  
Michelle C. Yau  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, DC 20005  
Tel.: (202) 408-4600  
Fax: (202) 408-4699  
khandorf@cohenmilstein.com  
myau@cohenmilstein.com

*Class Counsel*

**ARMSTRONG LAW FIRM LLC**

Matthew H. Armstrong, ARDC #6226591  
8816 Manchester Road, No. 109  
St. Louis, MO 63144  
Tel.: (314) 258-0212  
matt@mattarmstronglaw.com

*Interim Liaison Counsel*



**GLANCY PRONGAY & MURRAY LLP**

Robert I. Harwood  
Daniella Quitt  
712 Fifth Avenue, 31st Floor  
New York, NY 10019  
Tel.: (212) 935-7400  
rharwood@glancylaw.com  
dquitt@glancylaw.com

**SARRAF GENTILE LLP**

Ronen Sarraf  
Joseph Gentile  
14 Bond Street, Suite 212  
Great Neck, NY 11021  
Tel.: (516) 699-8890  
ronen@sarrafgentile.com  
joseph@sarrafgentile.com

**HEFFNER HURST**

Matthew T. Hurst  
30 North LaSalle Street, 12th Floor  
Chicago, IL 60602  
Tel.: (312) 346-3466  
mhurst@heffnerhurst.com

*Attorneys for Plaintiff Mollet*

**CERTIFICATE OF COMPLIANCE**

I declare under penalty of perjury that the Memorandum in Support of Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs complies with the type volume limitation of CDIL-LR 7.1(B)(4)(b) because the Memorandum contains 6,591 words. I relied on the word count of Microsoft Word 2013 in preparing this certificate.

*/s/ Laura R. Gerber*

\_\_\_\_\_  
Laura R. Gerber

**CERTIFICATE OF SERVICE**

I hereby certify that on January 7, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which in turn sent notice to all counsel of record.

*/s/ Laura R. Gerber*

\_\_\_\_\_  
Laura R. Gerber