UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LISA FEATHER, STANLEY BEIERMANN and HOLLY PYATT, on behalf of themselves and all others similarly situated, and on behalf of the SSM PENSION PLANS Plaintiffs, v. SSM HEALTH CARE CORPORATION, d/b/a SSM HEALTH, a Missouri Non-profit corporation, *et al,* Defendants.	)	No. 4:16-cv-01669-HEA

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

Plaintiffs Lisa Feather, Stanley Beiermann, and Holly Pyatt ("Named Plaintiffs" or "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 Kessler Topaz Meltzer & Check, LLP ("Settlement Class Counsel Committee Co-Chairs"), Cohen Milstein Sellers & Toll PLLC and Izard Kindall & Raabe, LLP ("Settlement Class Counsel Committee Members"), as well as Armstrong Law Firm LLC (Liaison Counsel for the Settlement Class), (collectively, "Plaintiffs' Counsel"); and (2) granting incentive awards to themselves, as class representatives. Defendants do not oppose the relief sought herein.

For the reasons set forth in the accompanying Memorandum, Plaintiffs ask that the Court grant the Motion and approve $500,000 in attorneys' fees and reimbursement of expenses to Class Counsel, including incentive awards of $3,000.00 to each of the three Named Plaintiffs.

DATED: May 6, 2019

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
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LISA FEATHER, STANLEY BEIERMANN, and HOLLY PYATT, on behalf of themselves, and all others similarly situated, and on behalf of the SSM PENSION PLANS, Plaintiffs, v. SSM HEALTH CARE CORPORATION, d/b/a SSM HEALTH, a Missouri Non-Profit corporation, *et al.*, Defendants.	)	No. 4:16-cv-01669-HEA

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

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Plaintiffs Lisa Feather, Stanley Beiermann, and Holly Pyatt ("Plaintiffs" or "Named Plaintiffs"), submit this Memorandum of Law in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs.

I. INTRODUCTION

Nearly three years following the initiation of this litigation, Plaintiffs and Class Counsel achieved a Settlement that provides real and immediate benefits for the preliminarily approved Settlement Class.[1] The Settlement provides the Plans with a cash contribution of $50-$60 million, a commitment to the Plans' participants to pay for any participant's Accrued Retirement Benefit for ten years regardless of merger or plan termination, and additional payments of $115 to eligible participants as described in the Settlement Agreement who previously elected to take a lump sum payment that was less than what they would have received had ERISA's mandated actuarial assumptions been used to calculate the payments. The Settlement thus represents a significant portion of any damages Plaintiffs may have been able to secure at trial, without the delay and cost of continued and uncertain litigation.

From the initial investigation, this litigation on behalf of the Class has required considerable time by Class Counsel and Named Plaintiffs, even after a ruling by the Supreme Court cast doubt on their ability to secure meaningful relief for Class members. Under these circumstances, Class Counsel's request for an award of attorneys' fees and expenses of $500,000, to be paid by SSM ***in addition to*** the monetary relief to be paid to the Plans and to Lump-Sum Class Members, is eminently reasonable. Finally, this Court should also award each

[1] All capitalized, undefined terms shall have the meaning ascribed to them in the Class Action Settlement Agreement ("Settlement Agreement" or "Settlement") previously filed with the Court (ECF No. 118-2) and attached as Exhibit 1 to the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Certification of Settlement Class ("Final Approval Memorandum"), filed contemporaneously herewith. All references to "Exhibit" or "Ex." are to the exhibits attached to this Final Approval Memorandum.

of the Named Plaintiffs an incentive award of $3,000 for their service to the Class because without their efforts and willingness to pursue this Action, the Settlement would not have been possible.

II. FACTUAL AND PROCEDURAL BACKGROUND

The factual and procedural background of this litigation is described in detail in the Final Approval Memorandum and in the supporting Joint Declaration of Class Counsel ("Joint Declaration"), Exhibit 3. In the interests of brevity, Plaintiffs incorporate that discussion by reference here. Additional facts relevant to the Court's consideration for assessing Plaintiffs' requests for fees, expenses and incentive awards are included in this memorandum.

III. THE COURT SHOULD APPROVE PLAINTIFFS' ATTORNEYS' FEE REQUEST

A. Legal Standard

Courts utilize two main approaches in analyzing a request for attorneys' fees by class counsel: the "percentage of the fund" method and the "lodestar" method. *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244-45, 245 n.6 (8th Cir. 1996). The percentage of the fund method is typically utilized in cases where a common fund is created, and attorneys' fees are calculated as some fraction of the common fund. *Id.* at 244-45. Nonetheless, even in cases where attorney fees are to "be paid by the defendants separate and apart from the settlement funds," a Court may utilize the percentage of the "benefit" (*i.e.* common fund) approach. *Id.* at 245-46. "It is within the discretion of the district court to choose which method to apply." *Id*. at 246.

The circumstances in this case suggest that the lodestar method, rather than the percentage of the fund method, is most appropriate. Calculating attorneys' fees as a percentage of the monetary benefit to the class as a whole would likely produce a windfall in light of the circumstances of this case. Moreover, ERISA includes statutory fee shifting, and the Settlement

proposes that the payment of attorneys' fees and expenses be made directly by Defendants ***in addition to*** the amounts Defendants are obligated to pay to the Class, as opposed to being paid from a common fund. "The usual method of calculating reasonable attorney's fees is to multiply the hours reasonably expended in the litigation by a reasonable hourly fee, producing the 'lodestar' amount." *Iron Workers St. Louis Dist. Council Annuity Trust v. United Ironworkers, Inc.*, No. 15-713, 2016 WL 7178747, at *3 (E.D. Mo. Dec. 9, 2016); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Fires v. Heber Springs Sch. Dist.*, 565 F. App'x 573, 575 (8th Cir. 2014); *Fry v. Accent Mktg. Servs., L.L.C.*, No. 13-59, 2014 WL 294421, at *2 (E.D. Mo. Jan. 27, 2014).

The Eighth Circuit holds that a district court should consider four factors to determine reasonableness: (1) the number of hours of work; (2) the reasonable hourly rate; (3) the contingent nature of the case; and (4) the quality of the attorney's work. *See Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 127 (8th Cir. 1975).[2] "[T] most critical factor is the degree of success obtained." *Hensley*, 461 U.S. at 436. *See also Fish v. St. Cloud State Univ.*, 295 F.3d 849, 852 (8th Cir. 2002); *Iron Workers St. Louis*, 2016 WL 7178747, at *3.

Furthermore, requested attorneys' fees are reasonable and appropriate where: 1) "class counsel has expended considerable time and effort in procuring a settlement;" 2) "has

[2] The Eighth Circuit has also cited with approval the factors first outlined in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719-20 (5th Cir. 1974), which are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptable of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the 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. *See Greater Kansas City Laborers Pension Fund v. Thummel*, 738 F.2d 926, 931 (8th Cir. 1984). These factors are "similar to the ones in *Grunin*" and "not all of the individual *Johnson* factors will apply in every case." *In re Xcel Energy, Inc., Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 993 (D. Minn. 2005). *Accord Keil v. Lopez*, 862 F.3d 685, 703 (8th Cir. 2017) (citation omitted).

independently negotiated a maximum fee amount at arm's length with defendants;" and 3) "the fee amount does not impact or diminish the total settlement received by class members." *George v. Uponor Corp.*, No. 12-249, 2015 WL 5255280, at *8 (D. Minn. Sept. 9, 2015). *See also Snell v. Allianz Life Ins. Co. of N. Am.*, No. 97-2784, 2000 WL 1336640, at *19 (D. Minn. Sept. 8, 2000) (approving attorneys' fees which exceeded the value of the attorneys' time as computed by lodestar where it was independently negotiated and did not impact upon the funds available to the class); *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (affirming fee award where "vast majority of the fee will be paid by [defendant] and will not come out of any class recovery").

Here, Section 502(g)(1) of ERISA specifically authorizes the award of attorneys' fees (29 U.S.C. § 1132(g)(1)), and SSM agreed in the Settlement, not to oppose a request for attorneys' fees, so long as the requested amount, coupled with requested expense reimbursements and incentive awards for Named Plaintiffs, did not exceed $500,000. Exhibit 1 ¶ 7.1.5. Importantly, this award will be paid by SSM separate and apart from the monies to be paid to the Plans and to the Class Members. *Id.* at ¶ 7.1.3.

As discussed below, Class Counsel's efforts secured a settlement for the Class which provides for $50-$60 million funding for the Plans, a guarantee of full payment of all current pension benefits from the Plans during a period of ten years, and payment of $115 to at least 5,354 eligible former Plan Participants (as described in the Settlement Agreement and Exhibit A to the Settlement Agreement), who received lump-sum distributions from the Plans during the relevant time period. Exhibit 1 at Ex. A. Accordingly, the requested fees and expenses are reasonable and justified in light of this excellent result.

B. The Requested Fee Is Fair and Reasonable

The requested fee of $500,000, inclusive of expenses, is reasonable given the circumstances of this case. As of this filing, Class Counsel have expended 2,163.50 hours litigating and settling this case. Exhibit 3 ¶ 59. At their standard hourly rates, which are comparable to other class action attorneys with significant experience with ERISA litigation, the total lodestar comes to $1,344,100.50. *Id.* at ¶ 60. The portion of the $500,000 request that will go towards attorneys' fees is $449,982.59 ($500,000 minus $41,017.41 in expenses and $9,000 in incentive awards). Thus, the requested fee results in a fractional multiplier of 0.33, that is, a discount of 67 %. *Id.* at ¶ 61. The finding that "negotiated attorney fees represent a fraction of the time counsel actually spent on litigation" supports a finding of the request's reasonability. *Cullan & Cullan LLC v. M-Qube, Inc.*, No. 13-172, 2017 WL 1040353, at *4 (D. Neb. Mar. 16, 2017).

1. The Number of Hours Worked

The firms representing Plaintiffs in this litigation have undertaken litigation over the past several years against hospital and health care systems that have claimed ERISA's "church plan" exemption for their pension plans. Each of the firms did substantial work, including: (1) researching the law bearing on the church plan exemption and concluding large hospital systems were not entitled to the exemption, and investigating the non-profit hospital business as it bore on liability and defenses; (2) investigating the facts of this case and drafting and filing the initial complaints; (3) reviewing thousands of pages of documents, including publicly available information about the Plans; (4) conducting factual and legal research; (5) drafting and filing the Amended Complaint; (6) briefing and presenting oral argument on the motions to dismiss; (7) negotiating and crafting a comprehensive Settlement Agreement after arm's-length negotiations overseen by a third-party mediator; (8) successfully moving for preliminary approval of the

Settlement, both initially and as revised; (9) drafting the Class Notice and posting it on the dedicated settlement website; and (10) individually responding to 187 inquiries of Settlement Class members concerning the Class Notice, the Settlement, and this Action. Exhibit 3 ¶ 55.

Class Counsel also anticipates that they will expend another 100 hours on this matter, in order to: (1) prepare for and attend the final approval hearing; (2) research, draft, and prepare any additional submissions requested by the Court, including the reply brief; (3) assist Settlement Class members with their inquiries; (4) respond to any objections that may arise; and (5) handle any resulting appeal. *Id*. at ¶ 56.

The complexity of this Action, including the changing landscape of the applicable law, required Class Counsel to devote substantial resources to carefully investigating and researching the claims, merits, and possible defenses. This case involves multiple Plans and ultimately, a class of over 65,000 people who are or were participants in Plans which Defendants maintained were subject to the ERISA "church plan" exemption. When initially filed, the applicable case law included favorable, unanimous decisions from the Third and Seventh Circuits. *See Kaplan v. Saint Peter's Healthcare Sys.*, 810 F.3d 175 (3d Cir. 2015) and *Stapleton v. Advocate Health Care Network*, 817 F.3d 517 (7th Cir. 2016). While this case was pending, the Ninth Circuit also favorably decided *Rollins v. Dignity Health*, 830 F.3d 900 (9th Cir. 2016). Despite the lack of a split among the Circuits, the Supreme Court granted certiorari to *Advocate*, and subsequently reversed and remanded all three cases. *See Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017). Although Plaintiffs advance other strong arguments and theories not addressed by the Supreme Court, including additional state law claims, this decision dramatically altered the underlying legal landscape of the case.

Despite this complicated legal background, Class Counsel has been diligent in organizing and moving this litigation forward so as to reduce costs while maximizing the results for the Class. First, Class Counsel organized amongst themselves to consolidate the initial cases, *Beiermann v. SSM Health Care Corporation*, No. 16-460 (E.D. Mo.), and *Feather v. SSM Health*, No. 16-393 (S.D. Ill). Second, following the expiration of the stay entered by this Court during the pendency of *Advocate*, Class Counsel has allocated work to maximize efficiency, and minimize fees and duplication of effort. Exhibit 3 ¶ 62. Third, following this Court's ruling on the motions to dismiss and Plaintiffs' filing of the appeal notice, settlement negotiations commenced in mid-September and on September 24, 2018, the Parties retained Robert Meyer, an independent JAMS mediator with experience in mediating successfully other cases involving ERISA's "church plan" exemption. *Id.* at ¶ 27.

Class Counsel have served in leadership positions in other ERISA class actions in the past and the hours they have spent on this case are consistent with their prior experiences. *Id.* at ¶ 64. Class Counsel have also provided the Court with a summary of the time spent by each attorney and support staff members for each firm. *See George*, 2015 WL 5255280, at *8 (a district court may rely on summaries and not actual billing records where defendant agrees to pay fees and costs separately from the class benefit).

2. The Reasonable Hourly Rate

The hourly rates charged by Class Counsel are reasonable and should be approved. The hourly rate to be applied in calculating the lodestar is that which is normally charged in the community where the attorney practices. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). Current rates are used because such rates compensate for inflating and the loss of use of funds. *Id.* The Court should also take into account "the attorneys' legal reputation, experience and status." *In re*

Charter Commc'ns, Inc., Sec. Litig., No. 02-1186, 2005 WL 4045741, at *17 (E.D. Mo. June 30, 2005).

Here, Class Counsel have collectively worked 2,163.50 hours, resulting in a lodestar of $1,344,100.50 to date. Exhibit 3 ¶¶ 59-60. The basis for this calculation and the reasonableness of counsel's rates are attested to by the accompanying Joint Declaration and represent the customary hourly rates of the attorneys. ERISA class action litigators in the St. Louis area have commanded, and been approved at, higher rates. *See, e.g., Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016) (approving lodestar rates of $998 for attorneys with 25+ of experience, $850 for attorneys with 15-24 years of experience, $612 for attorneys with 5-14 years of experience, $460 for attorneys with 2-4 years of experience, $309 for paralegal, and $190 for legal assistants).

These rates are also reasonable given the expertise of Class Counsel in both ERISA actions generally and in litigating the scope of the "church plan" exception as it related to large healthcare corporations. As demonstrated by their firm résumés, each of the firms has extensive experience in complex class action litigation, in ERISA cases generally, and in the specific provisions of ERISA at issue in this case. Class Counsel have been awarded fees based upon similar hourly rates in other church plan cases. Exhibit 3 ¶¶ 79-81. District courts have also granted final approval and awarded fees to Class Counsel based on the then-current rates in other ERISA cases. *Id.* at ¶¶ 82-85. Further, Class Counsel's current rates are on par with, or below, other plaintiffs' firms performing similar work, and even those of defense firms defending church plan cases. *Id.* at ¶¶ 86-87. Thus, this factor supports the requested fee award.[3]

[3] It is worth noting that the requested fee represents only $207.96 per hour for the 2,163.50 hours Class Counsel have devoted to this litigation.

3. The Contingent Nature of the Case

"Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorneys' fees." *In re Xcel*, 364 F. Supp. 2d at 994. Class Counsel undertook the prosecution of the action on a wholly contingent basis. Undertaking significant risks with no promise of recovery is a strong indicator of reasonableness and is frequently cited by courts in this Circuit in approving attorneys' fee requests. *See, e.g.*, *George*, 2015 WL 5255280, at *8; *Soderstrom v. MSP Crossroads Apartments LLC*, No. 16-233, 2018 WL 692912, at *9 (D. Minn Feb. 2, 2018); *Edwards v. Orchestrate Hosp. Grp., L.L.C.*, No. 16-63, 2017 WL 2423792, at *3 (D. Iowa Feb. 23, 2017); *Blume v. Int'l Servs., Inc.*, No. 12-165, 2014 WL 12799567, at *2 (E.D. Mo. Sept. 2, 2014). Thus, this factor strongly supports award of the requested fee.

4. The Quality of the Work

"The most critical factor in assessing fees is the degree of success obtained." *Fish*, 295 F.3d at 852 (citing *Hensley*, 461 U.S. at 436). Plaintiffs initiated this action in order to secure funding for the Plans in which they were participants in order to secure their future retirement benefits. Through the work of Named Plaintiffs and Class Counsel and by the terms of the Settlement, the Plans will be funded with $50-$60 million over the course of the next four years, benefits will be guaranteed to all participants during a period of ten years, and eligible former participants who took a lump sum (as described in the Settlement Agreement) will be given an additional $115, a figure totaling no less than $615,710.00. This excellent result for the Class was obtained by Class Counsel despite the Supreme Court's ruling in *Advocate* and the current posture of this case before the Eighth Circuit, and provides "a substantial and immediate benefit to the Class." *Caliguiri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017).

Moreover, Class Counsel have been efficient in litigating and settling this case. If the case had not been settled, the Class would have been exposed to ongoing litigation in the form of

an appeal that if successful, would have only led to further litigation. *See In re Charter Commc'ns, Inc. Sec. Litig.*, 2005 WL 4045741, at *18 (finding that a settlement's end to litigation and delay was a factor in the reasonableness of the fee request). Indeed, shortly after this Court's decision dismissing the case, the parties entered into settlement negotiations and secured the aid of an experienced mediator quickly to further speed the process. Exhibit 3 ¶¶ 27-29. As such, this factor weighs in favor of the reasonableness of the fee.

5. Additional Factors Favoring the Reasonableness of the Fee Request

With the help of a mediator, Class Counsel secured a settlement and negotiated independently the fee amount which is to be paid separately from the monies SSM will provide to fund the Plans and the monies SSM will pay to former participants who received lump sum payments. *Id*. at ¶ 30. As "the fee amount does not impact or diminish the total settlement received by class members," and was "independently negotiated…at arm's length with defendants" with the help of a mediator, the reasonableness of the requested fee amount is further confirmed. *George*, 2015 WL 5255280, at *8; *see also DeBoer*, 64 F.3d at 1178 (affirming requested award where defendant independently paid most of the fee); *Khaliki v. Helzberg's Diamond Shops, Inc.*, No. 11-10, 2012 WL 12903778, at *2 (W.D. Mo. Mar. 9, 2012) (approving requested $225,000 fee where attorneys' fees would be paid separately by defendants, not reducing the funds available to the class, and where the time and expenses incurred by class counsel exceeded the requested fee).

Moreover, "[t]he lack of objections is strong evidence that the requested amount of fees and expenses is reasonable." *Beaver Cty. Emps.' Ret. Fund v. Tile Shop Holdings, Inc.*, No. 14-786, 2017 WL 2588950, at *3 (D. Minn. June 14, 2017). Here, no Class member has yet to

object to the proposed award of attorneys' fees.[4] *See* Exhibit 3 ¶ 91. This further supports the reasonableness of the requested fee. *See Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *2 (D. Minn. July 13, 2015) (finding that "the lack of any objections to be a sign of the Class's support for" the attorneys' fee application); *Khoday v. Symantec Corp.*, No. 11-180, 2016 WL 1637039, at *11 (D. Minn. Apr. 5, 2016) (finding the requested fee award reasonable even when there was a "miniscule" amount of opposition to the settlement).

Finally, the requested fee award is within the range of reasonableness of fee awards for similar ERISA church exemption cases. *See, e.g.*, Order & Final Judgment ¶ 18, *In re Mercy Health ERISA Litig.*, No. 16-441 (S.D. Ohio Nov. 28, 2018), ECF No. 107 (awarding attorneys' fees of $779,531.20); Order & Final Judgment ¶ 19, *Stapleton v. Advocate Health Care Network & Subsidiaries*, No. 14-873 (N.D. Ill. June 27, 2018), ECF No. 172 (awarding attorneys' fees of $1,022,726.61); Order & Final Judgment ¶ 21, *Garbaccio v. St. Joseph's Hosp. & Med. Ctr. & Subsidiaries*, No. 16-2740 (D.N.J. Mar. 6, 2018), ECF No. 116 (awarding fees of $2,425,863.95); Order & Final Judgment ¶ 21, *In re Wheaton Franciscan ERISA Litig.*, No. 16-4232 (N.D. Ill. Jan. 16, 2018), ECF No. 107 (awarding fees of $2,178,165.54); Order & Final Judgment ¶ 9, *Hodges v. Bon Secours Health Sys., Inc.*, No. 16-1079 (D. Md. Dec. 21, 2017), ECF No. 117 (awarding fees of $3,434,820.29); Order & Final Judgment ¶ 10, *Lann v. Trinity Health Corp.*, No. 14-2237 (D. Md. May 31, 2017), ECF No. 111 (awarding attorneys' fees of $7,621,179.72); Order Finally Approving Class Settlement ¶ 10, *Griffith v. Providence Health & Servs.*, No. 14-1720 (W.D. Wash. Mar. 21, 2017), ECF No. 69 (awarding attorneys' fees of 6,425,877.27).

[4] The objection deadline set in the Amended Order Preliminarily Approving Settlement, Notice Procedures, and Scheduling of a Fairness Hearing ("Preliminary Approval Order" or "Prelim. Approval Order"), ECF No. 121, is May 23, 2019.

The requested fee award is also within the range of fee awards routinely found to be reasonable within this Circuit using the lodestar analysis. *See, e.g., Powers v. Credit Mgmt. Servs., Inc.*, No. 11-436, 2016 WL 6994080, at *4 (D. Neb. Nov. 29, 2016) (awarding $315,000 in attorneys' fees); *Ewald v. Royal Norwegian Embassy*, No. 11-2116, 2015 WL 1746375, at *18 (D. Minn. Apr. 13, 2015) (awarding $1,773,719.05); *Morales v. Farmland Foods, Inc.*, No. 08-504, 2013 WL 1704722, at *11 (D. Neb. Apr. 18, 2013) (awarding $2,008,142).

IV. CLASS COUNSEL'S EXPENSES SHOULD BE REIMBURSED

Class Counsel should also be reimbursed the $41,017.41 in litigation expenses that they advanced in prosecuting this case pursuant to Federal Rule of Civil Procedure ("Rule") 23(h) which provides that courts in certified class actions may "award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Reasonable costs and expenses are routinely awarded in ERISA class action cases where they are directly related to counsels' representation of the class. *See, e.g., Beaver Cty. Emps.' Ret. Fund*, 2017 WL 2588950, at *3. Normal costs properly reimbursed include computerized legal research, copying costs, and travel. *See Morales*, 2013 WL 1704722, at *11. Further, courts have held that where counsel undertakes litigation on a contingent-fee basis, "they ha[ve] a strong incentive to keep these expenses at a reasonable level." *Krueger*, 2015 WL 4246879, at *3 (citing *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010)).

In prosecuting this case, Class Counsel incurred $41,017.41 in litigation-related expenses for which they respectfully seek reimbursement. These expenses are itemized in further detail in the Joint Declaration and exhibits submitted by counsel. *See* Exhibit 3 ¶¶ 92-95; Exhibits 3B, 3D, 3F and 3H. The expenses were incidental to and necessary for the prosecution of this case, and are of the type that courts recognize would normally be charged to fee-paying clients, including filing fees, printing costs, travel expenses for court appearances and mediation,

copying, delivery and telecommunications charges, computer-based research and database services, and mediator's charges. Class Counsel respectfully submit that their request for reimbursement of expenses is reasonable and should be approved.

V. THE INCENTIVE AWARDS ARE REASONABLE

Plaintiffs request that each of the Class Representatives be granted an incentive award in compensation for the time and effort they expended in successfully prosecuting this case to a successful resolution. Such awards acknowledge representative plaintiffs' hard work and sacrifices in support of the class, as well as their promotion of the public interest. "Courts often grant service awards to named plaintiffs in class action suits to promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits," and courts in this circuit regularly grant service awards for $10,000 or greater. *Caligiuri*, 855 F.3d at 867 (citation omitted). *See also In re Aquila ERISA Litig.*, No. 04-865, 2007 WL 4244994, at *3 (W.D. Mo. Nov. 29, 2007) (awarding incentive awards between $5,000 and $25,000 for named plaintiffs because they "rendered valuable service to the Plan and all Plan Participants. Without this participation, there would have been no case and no settlement.").

Here, Plaintiffs seek awards of $3,000 for each class representative, amounts that are well-deserved. Each of the Class Representatives have been closely involved in this litigation since its inception. They provided documents relating to their employment at SSM and their participation in the Plans, reviewed draft of the pleadings and approved the filing of the final versions, and monitored Class Counsel and the progress of the litigation, including involvement with the mediation and ultimate settlement of the litigation. Exhibit 3 ¶ 97. Each of the Plaintiffs have submitted affidavits to attest to their efforts in prosecuting this case. *See* Feather Decl. ¶¶ 6-12, 17, Exhibit 4; Beiermann Decl. ¶¶ 6-12, 16, Exhibit 5; and Pyatt Decl. ¶¶ 6-12, 17, Exhibit 6.

Moreover, Plaintiffs willingly put themselves forward in litigation against their former employer regarding their personal finances. "ERISA litigation against an employee's current or former employer carries unique risks, including alienation from employers or peers." *Krueger*, 2015 WL 4246879, at *3 (issuing incentive awards of $25,000 each to five named plaintiffs in ERISA action against former employer). In recognition of their commitment to the class and selfless service, the requested incentive award is reasonable. Substantially larger awards have been approved as well within the ranges that are typically awarded in comparable cases. *See, e.g.*, *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at *11 (W.D. Mo. Nov. 2, 2012) (awarding $25,000 to each class representative in ERISA 401(k) fee class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upholding award of $25,000 to class representative); *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014) (awarding $25,000 to each of the three named plaintiffs); Order Regarding Plaintiffs' Application for Attorneys' Fees & Reimbursement of Expenses at 9, *Nolte v. Cigna Corp.*, No. 07-2046 (C.D. Ill. Oct. 15, 2013), ECF No. 413 (same); Memorandum & Order at 6-7, *Will v. Gen. Dynamics Corp.*, No. 06-698 (S.D. Ill, Nov. 22, 2010), ECF No. 259 (same).

VI. CONCLUSION

For these reasons, Plaintiffs request that the Court approve a fee award of $500,000, inclusive of both Class Counsel's expenses of $41,017.41, and incentive awards of $3,000 to each of the three class representatives:

Dated: May 6, 2019

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