

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

Sheilar Smith, Kasandra Anton, Bonnie
Bailey, Peggy Wise, and June Schwierjohn,
on behalf of themselves, individually, and
on behalf of all other similarly situated, and
on behalf of the OSF Plans,

Plaintiffs,

v.

OSF HealthCare System; The Sisters of the
Third Order of St. Francis Employees
Pension Plan Administrative Committee;
and Retirement Committee for the
Retirement Plan for Employees of Saint
Anthony’s Health Center,

Defendants.

No. 3:16-cv-00467-SMY-RJD

**PLAINTIFFS’ REPLY IN SUPPORT OF UNOPPOSED MOTIONS
FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT AND
FOR AWARD OF ATTORNEYS’ FEES**

Plaintiffs Sheilar Smith, Kasandra Anton, Bonnie Bailey, Peggy Wise, and June Schwierjohn (collectively, “Plaintiffs” or “Named Plaintiffs”), by and through their attorneys, submit this reply memorandum (“Reply”) in support of their Unopposed Motion for Final Approval of Settlement Agreement and Certification of Settlement Class (“Final Approval Motion”), ECF No. 245, and their Unopposed Motion for Award of Attorneys’ Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs (“Fee Motion”), ECF No. 246 (together, the “Approval Motions”). Defendants do not oppose the relief sought herein, but they do not necessarily agree with all the statements in this Reply.

I. INTRODUCTION

The Approval Motions seek final approval of a Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”)¹ completely resolving this matter, and further seek approval of an award of attorneys’ fees, reimbursement of expenses, and incentive awards to the Named Plaintiffs that, pursuant to agreement with Defendants, will not affect the relief granted to the Settlement Class under the Settlement.² For the reasons set forth in this Reply and its attachments, in the Approval Motions and their supporting memoranda, and in the Joint Declaration of Class Counsel,³ the Settlement is “fair, reasonable, and adequate” under Federal Rule of Civil Procedure 23(e)(2), and the Court should now grant final approval. Further, the total award of \$1,750,000 in attorneys’ fees and reimbursement of expenses, inclusive of incentive awards in the amount of \$5,000 for each of the five Named Plaintiffs, should be approved. No objections to the relief requested in either of the Approval Motions has been filed with the Court or received by Class Counsel.

II. THE APPROVAL MOTIONS SHOULD BE GRANTED

A. Notice of the Settlement Was Properly Given.

On November 16, 2020, 18,773 Notices were mailed to each person within the Settlement Class who Analytics Consulting, LLC (“Analytics”), the vendor retained by Defendants to disseminate and publish Class Notice, could locate addresses for using standard skip tracing

¹ A true copy of the Class Action Settlement Agreement dated September 17, 2020, is attached as Exhibit A to the Memorandum in Support of Plaintiffs’ Unopposed Motion for Final Approval of Settlement Agreement and Certification of Settlement Class (“Final Approval Memo”), ECF No. 245-2. Capitalized terms not otherwise defined in this Reply shall have the same meaning ascribed to them in the Settlement Agreement.

² See Settlement Agreement § 7.1.2, 7.1.4.

³ See Final Approval Memo Ex. E (Joint Decl. of Laura R. Gerber & Michelle C. Yau in Supp. of Pls.’ Unopposed Mots. for Final Approval of Settlement Agreement & Certification of Settlement Class & for Award of Att’ys’ Fees & Reimbursement of Expenses, & for Incentive Awards (“Joint Decl.”)), ECF No. 245-6.

methods.⁴ On November 17, 2020, Analytics mailed an additional 493 Notices to the Class Member for whom additional research was required to confirm their last names.⁵

Beginning on November 16, 2020, Analytics also coordinated the publication of Summary Notice in 13 newspapers in communities located near OSF facilities.⁶ By November 16, 2020, Class Counsel had also posted the Settlement Agreement and the Class Notice to the two websites identified in the Class Notice.⁷ As the Preliminary Approval Order required these actions to be taken by November 16, 2020, *id.* ¶ 5(F)(i)–(ii), the Class Notice Program has been fully and timely complied with.

Additionally, pursuant to 28 U.S.C. § 1715(a)(1) and (b), on September 30, 2020, Counsel for Defendants at Morgan, Lewis & Bockius LLP sent notice of the Settlement as required by the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1711-15, to the Attorney General of the United States of America, the United States Secretary of Labor, and the Attorneys General for the states in which a settlement class member resides.⁸

B. The Settlement Agreement Should Be Approved.

The Parties went to great lengths to notify the Settlement Class members about the terms of the Settlement and to educate the Class members about the effects of the Settlement on the Class. Plaintiffs and Class Counsel are pleased to report that these efforts were extremely

⁴ Final Approval Memo Ex. C (Decl. of Jeffrey J. Mitchell (“Mitchell Decl.”)) ¶ 10, ECF No. 245-4. Pursuant to the Class Notice Program approved by the Court’s October 7, 2020 Order Preliminarily Approving the Settlement (“Preliminary Approval Order”), ECF No. 244, the Notice of Proposed Settlement of Class Action, Final Approval Hearing, and Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses and Incentive Awards to Named Plaintiffs (“Class Notice”) that was mailed by Analytics to each individual on the mailing list included all of the information required by paragraph 5 of the Preliminary Approval Order.

⁵ Mitchell Decl. ¶ 11.

⁶ *Id.* ¶¶ 12-13.

⁷ Joint Decl. ¶¶ 45, 46.

⁸ Final Approval Memo Ex. D (Decl. of Abbey M. Glenn) ¶ 3, ECF No. 245-5.

successful, as evidenced by the fact that no Settlement Class members filed documents that may be considered objections.⁹

This is a remarkable result given that a total of 19,266 copies of the Class Notice were mailed to Settlement Class members on November 16 and 17, 2020, providing them with notice of the Settlement terms and their right to object.¹⁰ Following the initial mailing, 98 Class Notices were returned with a forwarding address and were re-mailed to the updated address.¹¹ 1,657 Class Notices were returned without a forwarding address.¹² Analytics then conducted a skip trace in order to ascertain a valid address and 1,217 new addresses were identified following address tracing and were re-mailed.¹³ A total of 1,315 Class Notices were re-mailed, and out of those, 56 were returned as undeliverable by the U.S. Postal Service.¹⁴ Of the 19,266 Class Notices mailed by Analytics, a total of 496 have been returned as undeliverable by the U.S. Postal Service, or approximately 2.57%.¹⁵ In the view of Class Counsel, when combined with the publication of the Class Notice, this is a very successful notice program, and certainly the “best notice that is practicable under the circumstances” pursuant to Rule 23(c)(2)(B).

The Class Notice provided Settlement Class members with information on the Settlement; the date and location of the Fairness Hearing; their right to object; the December 18, 2020 deadline for filing objections; the December 31, 2020 deadline for requesting to speak at

⁹ Declaration of Laura R. Gerber Regarding Compliance with Notice and Publication Requirements and Plaintiffs’ Reply in Support of Unopposed Motions for Final Approval of Settlement Agreement and Certification of Settlement Class and for Award of Attorney’s Fees and Reimbursement of Expenses, and for Incentive Awards (“Gerber Decl.”) ¶¶ 8-9, attached hereto as Exhibit 1.

¹⁰ See Mitchell Decl. ¶¶ 10, 11.

¹¹ Supplemental Declaration of Jeffrey J. Mitchell ¶ 5, attached hereto as Exhibit 2.

¹² *Id.* ¶ 6.

¹³ *Id.*

¹⁴ See *id.* ¶¶ 5-6.

¹⁵ *Id.* ¶ 7.

the Fairness Hearing; contact information for Class Counsel; a toll-free number and a dedicated email address for inquiries; and two websites for further information: www.kellersettlements.com and www.cohenmilstein.com/OSFsettlement.¹⁶

Class Counsel have received and responded to approximately 42 phone calls, 12 emails, and zero letters/faxes.¹⁷ Most of these inquiries have been calls requesting information regarding the Settlement's terms and relief.¹⁸ Out of the 19,266 Settlement Class members who were mailed the Class Notice, and the 54 people who contacted Class Counsel, none have mailed any documents to the Court or indicated that they intended to object to the Settlement.¹⁹

C. The Requested Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards Should Be Approved.

The fact that there have been no objections to Class Counsel's Fee Motion is a very strong indication that the requested fees, expenses, and incentive awards are fair and reasonable. As set forth in the Final Approval Memo, the Class Notice informed Settlement Class members that Class Counsel would seek fees and expenses in an amount not to exceed \$1,750,000.²⁰ In addition, the Fee Motion and its supporting memorandum, ECF No. 246-1, explained why the request of \$1,750,000, separate and apart from the relief to the Settlement Class, is fair and reasonable and supported by, among other factors, the result achieved in the face of significant risks and the contingent nature of the litigation. The Fee Motion was supported by the Joint Declaration of Class Counsel, which includes a detailed explanation of fees and costs and the reasons they were incurred.²¹ The Fee Motion is also supported by the five Named Plaintiffs, all

¹⁶ Class Notice at 3-8; Gerber Decl. ¶ 3.

¹⁷ Gerber Decl. ¶ 6.

¹⁸ *Id.* ¶ 7.

¹⁹ *Id.* ¶¶ 6, 8, 9.

²⁰ Final Approval Memo at 6; Class Notice at 4-6, 8.

²¹ Joint Decl. ¶¶ 50-82.

of whom were active participants in this litigation, and all of whom participated in the settlement process by assessing and discussing with Class Counsel the strengths and weaknesses of further litigation.²² Equipped with this information, not one member of the Settlement Class objected to the fees, expenses, or Incentive Awards that Named Plaintiffs and Class Counsel seek. Courts have consistently found that the lack of objection to a request for attorneys' fees and expenses indicates that the request is fair and reasonable. *See, e.g., Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 WL 7781572, at *2 (N.D. Ill. Oct. 22, 2014) ("The absence of objections indicates that [a] fee is fair and reasonable and consistent with prevailing market rates."); *Will v. Gen. Dynamics Corp.*, No. 06-698-GPM, 2010 WL 4818174, at *1 (S.D. Ill. Nov. 22, 2010) ("The Court finds this remarkably small number of objections to be an indication of the class' overwhelming and justified support for their Class Counsel and Class Counsel's Application [for fees and costs]."). Accordingly, the approval of Settlement Class members in this Action supports approval of the request for attorneys' fees, reimbursement of expenses, and incentive awards to Named Plaintiffs.

III. CONCLUSION

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

²² *See* Final Approval Memo Exs. I-M.

DATED this 8th day of January 2021.

KELLER ROHRBACK L.L.P.

/s/ Laura R. Gerber

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021, 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