

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Jamie Hill, Kathryn Neild, and Tricia Marvin, as
representatives of a class of similarly situated
persons, and on behalf of the Mercy Health
Corporation Employees' Retirement Plan, the
Rockford Health System Retirement Plan, and the
Rockford Health Physicians Retirement Plan,

Plaintiffs,

v.

Mercy Health Corporation, Mercy Health System
Corporation, and Does 1-20,

Defendants.

Case No. 20-cv-50286

**PLAINTIFFS'
MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND
COSTS, ADMINISTRATIVE
EXPENSES, AND CLASS
REPRESENTATIVE SERVICE
AWARDS**

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INTRODUCTION

In light of the Settlement that they have achieved for the participants and beneficiaries of the Mercy-affiliated defined contribution plans at issue in this case,¹ Plaintiffs and Class Counsel respectfully petition the Court to approve: (1) attorneys' fees to Class Counsel in the amount of \$1,300,000 (one-third of the \$3.9 million Gross Settlement Amount); (2) reimbursement of \$40,285.52 in litigation costs and \$64,176 in settlement administration expenses; and (3) service awards of \$5,000 to each of the named Plaintiffs as Class Representatives (\$15,000 total).

As discussed below, the requested distributions are appropriate and reasonable in comparison to awards in similar cases. Class Counsel's requested one-third fee is authorized under the Settlement, *see Settlement Agreement, Dkt. 70-1, ¶¶ 8.1–8.2*, and is consistent with the amount typically awarded in complex ERISA cases such as this. Likewise, the proposed \$5,000 service awards are also authorized under the Settlement, *see id.*, and well within the bounds of what has been approved in other ERISA cases. Finally, the requested costs and expenses are typical and reasonable in comparison to other cases. Accordingly, Plaintiffs and Class Counsel respectfully request that the Court approve the requested distributions. As of the date of this motion, no Class Member has objected to the proposed distributions, and Defendants also do not oppose the motion.

BACKGROUND

I. PLEADINGS AND MOTION TO DISMISS

Plaintiffs Jamie Hill and Kathryn Neild filed this action on August 4, 2020. *Dkt. 2*. The Complaint was later amended on November 20, 2020 to add Plaintiff Tricia Marvin. *Dkt. 40*. In their Amended Complaint, Plaintiffs allege that Defendants failed to prudently monitor and

¹ The plans at issue in this case are the Mercy Health Corporation Employees' Retirement Plan ("Mercy Plan"), the Rockford Health System Retirement Plan ("RHS Plan"), and the Rockford Health Physicians Retirement Plan ("RHP Plan") (collectively, the "Plans").

control the Plans' brokerage expenses and failed to prudently monitor certain Plan investments. *Id.* On December 23, 2020, Defendants filed a motion to dismiss. *Dkt. 48*. After briefing on the motion to dismiss was complete (*see Dkts. 48-1, 49, 52*), the Court stayed the litigation at the parties' request pending mediation and negotiation of the present Settlement. *See Dkts. 59-64*.

II. EARLY DISCOVERY, MEDIATION, AND SETTLEMENT

To facilitate their settlement discussions, the Settling Parties agreed to engage in early discovery, which included the production of over 6,800 pages of documents and other information by Defendants. *See Declaration of Kai Richter in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Richter Decl."), Dkt. 66-1, ¶ 12*. Following production and review of these materials, the Parties engaged in a full-day mediation with a neutral mediator, David Geronemus, on August 31, 2021. *Id. ¶ 13*. After extensive arm's length negotiations, the Parties reached a settlement in principle, and then prepared a comprehensive Settlement Agreement. *Id. ¶ 14*.

III. SETTLEMENT TERMS AND PRELIMINARY APPROVAL

Under the terms of the proposed Settlement, a Gross Settlement Amount of \$3.9 million will be paid to resolve the claims of the Class Members. *Settlement Agreement ¶ 2.29*. After accounting for any Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members in accordance with the Plan of Allocation in the Settlement. *Id. ¶¶ 2.33, 5.9, 6.1*.² In addition, the Settlement also provides that Defendants shall retain one or

² Current Participants will have their Plan accounts automatically credited with their settlement payment. *Id. ¶ 6.5*. Former Participants will have the opportunity to submit a Rollover Form allowing them to have their settlement payment rolled over into an individual retirement account or other eligible employer plan. *Id. ¶ 6.6*. Former Participants who do not timely submit a Rollover Form will be sent a check. *Id.*

more independent consultants pursuant to ERISA § 3(21) for at least three years from the Settlement Effective Date, who is not an existing investment or service provider or affiliated with the Plans, to provide ongoing assistance in reviewing the investment options in the Plans, the fees for those investment options, and any brokerage fees incurred by the Plans. *Id.* ¶ 7.1.

Plaintiffs filed a motion seeking preliminary approval of the Settlement on November 5, 2021. *Dkt.* 65. On December 10, 2021, the Court issued an Order granting preliminarily approval of the Settlement. *Dkt.* 72.³ Plaintiffs are filing the present motion 30 days in advance of the deadline for objections, pursuant the terms of the Settlement. *Settlement Agreement* ¶ 8.1. To date, no objections to the Settlement or the requested distributions have been received. *Declaration of Brock J. Specht in Support of Motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives Service Awards ("Specht Decl.")* ¶ 29.

IV. WORK OF CLASS COUNSEL

Class Counsel have expended significant time and effort prosecuting this action and achieving the Settlement on behalf of the Class. This work is detailed in the accompanying declaration from Class Counsel, and is briefly summarized below.

A. Work Conducted to Date

Prior to filing this action, Class Counsel conducted a thorough investigation of the claims that were asserted and the factual basis for those claims. *Richter Decl.* ¶ 10; *Specht Decl.* ¶ 12. Thereafter, Class Counsel vigorously prosecuted the action on behalf of the Class. Among other

³ Prior to the Court's Preliminary Approval Order, the Parties submitted an updated version of the Settlement Agreement on December 8, 2021 (*Dkt.* 70-1), which resolved issues identified by the Court in its November 24, 2021 Order (*Dkt.* 69). All references to the Settlement Agreement herein are to this updated version, which supersedes the prior version submitted on November 5, 2021 (*Dkt.* 66-2). All capitalized terms used herein have the meaning ascribed to them in the Settlement Agreement, unless otherwise noted.

things, Class Counsel: (1) drafted the initial class action Complaint and subsequent amended complaint; (2) responded to Defendants' motion to dismiss; (3) drafted a comprehensive set of early discovery requests; (4) met and conferred with Defendants during the course of early discovery; (5) reviewed over 6,800 pages of documents; (6) drafted a written mediation statement; (7) participated in a full-day mediation with Defendants; and (8) consulted with the Class Representatives throughout the course of the case. *Specht Decl.* ¶ 12.

Class Counsel also have undertaken considerable work in connection with the Settlement and settlement administration. This has included: (1) drafting the Settlement Agreement and exhibits thereto; (2) preparing Plaintiffs' Preliminary Approval Motion papers; (3) reviewing the bid from the Settlement Administrator; (4) reviewing the final drafts of the Settlement Notices and Former Participant Rollover Form, and ensuring that they were timely mailed; (5) working with the Settlement Administrator to create a settlement website and telephone support line for Class Members; (6) communicating with Class Members; and (7) preparing the present motion. *Id.*

B. Remaining Work to Be Performed

Class Counsel's work on this matter remains ongoing. Prior to the Fairness Hearing, Class Counsel will communicate with the Independent Fiduciary as part of its review of the proposed Settlement on behalf of the Plans (*see infra* at 5–6), draft Plaintiffs' motion for final approval of the Settlement, and respond to any objections. *Specht Decl.* ¶ 18. Class Counsel will then attend the Fairness Hearing, and if final approval is granted, supervise the distribution of payments to Class Members. *Id.* In addition, Class Counsel will continue to respond to questions from Class Members and take any other actions necessary to support the Settlement until the end of the Settlement Period. *Id.*

V. WORK OF CLASS REPRESENTATIVES

The Class Representatives also have worked to advance the interests of the class. Among other things, the Class Representatives: (1) reviewed the allegations in the Complaints bearing their names; (2) provided information to counsel in connection with the lawsuit; (3) communicated with counsel regarding the litigation and Settlement; and (4) reviewed the Settlement Agreement in its entirety. *Id.* ¶ 27; *see also Dkts. 66-06, 66-08, 66-10* (Class Representative declarations).

VI. WORK OF THE SETTLEMENT ADMINISTRATOR, ESCROW AGENT, AND INDEPENDENT FIDUCIARY

In order to be administered and effectuated, the Settlement also requires time, resources, and expertise from several non-parties.

Analytics, as the approved Settlement Administrator, disseminated the Settlement Notices to Class Members, and established the settlement website and telephone support line. *Dkt. 72* ¶¶ 3, 5; *Settlement Agreement* ¶¶ 3.3, 12.1, 12.2; *Specht Decl.* ¶ 23. Analytics also will review the Rollover Forms submitted by Former Participant Class Members, and coordinate distribution of payments to Class Members in the event that the Settlement receives final approval. *Settlement Agreement* ¶¶ 6.1–6.6.

The Escrow Agent will hold the monies in the Settlement Fund while approval of the Settlement and distributions to Class Members are pending. *See id.* ¶¶ 5.1, 5.4–5.5, 5.9; *Specht Decl.* ¶ 24. Upon final approval of the Settlement, the Escrow Agent will release these funds and also execute the investment and tax qualification mandates in the Settlement. *Settlement Agreement* ¶¶ 5.3, 5.8–5.9.

Finally, the Independent Fiduciary (Gallagher Fiduciary Advisors, LLC) will review the Settlement, and independently determine whether it is in the best interest of the Plans to release

the claims against Defendants in exchange for the relief provided. *Id.* ¶ 3.1. This independent review is called for by DOL regulations,⁴ and is also required by Paragraph 3.1 of the Settlement.

VII. REQUESTED ATTORNEYS’ FEES AND COSTS, ADMINISTRATIVE EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

In consideration of the work and expenses summarized above, the Settlement provides that Plaintiffs may seek (1) reasonable attorneys’ fees of no more than one-third of the Gross Settlement Amount; (2) reasonable litigation costs and administrative expenses; and (3) service awards of up to \$5,000 for each Class Representative. *Settlement Agreement* ¶¶ 8.1–8.2. Accordingly, Plaintiffs seek the following amounts in connection with this motion:

- Attorneys’ fees: \$1,300,000 (one-third of the Settlement Fund)
- Litigation Expenses: \$40,285.52
- Settlement Administration Expenses: \$64,176
 - Settlement Administrator (Analytics): \$46,676
 - Escrow Agent (Alerus Financial): \$2,500
 - Independent Fiduciary (Gallagher Fiduciary Advisors, LLC): \$15,000
- Class Representative Service Awards: \$15,000 total (\$5,000 each)

ARGUMENT

I. STANDARD OF REVIEW

When counsel obtain a settlement for a class, courts “may award reasonable attorneys’ fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Here, the requested distributions are authorized both under Article 8 of the Settlement, *see Settlement Agreement* ¶¶ 8.1–8.2, and by applicable law.

The Supreme Court has consistently recognized that “a litigant or a lawyer who recovers a common fund [for the benefit of a class] is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Likewise, “reasonable expenses

⁴ *See* Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830.

of litigation” may be recovered from a common fund, *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970), as well as administrative expenses of settlement, *see Wickens v. Thyssenkrupp Crankshaft Co.*, 2021 WL 267852, at *2 (N.D. Ill. Jan. 26, 2021). Finally, class representative service awards may be granted in ERISA cases to compensate class representatives for the risks they assumed in enforcing the statute on behalf of the class. *See George v. Kraft Foods Glob., Inc.*, 2012 WL 13089487, at *4 (N.D. Ill. June 26, 2012). In summary, the requested distributions are customary in a class action suit such as this and should be approved for the reasons set forth below.

II. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS’ FEES

In a common fund settlement, “courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (quoting *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001)). “When the ‘prevailing’ method of compensating lawyers for ‘similar services’ is the contingent fee, then the contingent fee is the ‘market rate.’” *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986); *Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018); *Martin v. Caterpillar Inc.*, 2010 WL 11614985, at *2 (C.D. Ill. Sept. 10, 2010). Here, Class Counsel’s requested fee reflects the market rate for similar services, and is consistent with the rate negotiated in this case and the fees routinely awarded in this Circuit. Accordingly, Plaintiffs and Class Counsel respectfully request that the Court approve the requested attorneys’ fees.

A. The Market Rate for Complex ERISA Actions Is Well-Established

The market for plaintiffs’ attorney work in complex class actions is a contingency fee. *See Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010); *Hale*, 2018 WL 6606079, at *7 (noting “it is essentially unheard of for sophisticated lawyers to take on a case

of this magnitude and type on any basis other than a contingency fee, expressed as a percentage of the relief obtained”) (quotation omitted). A one-third contingency fee “is consistent with the market in the Northern District of Illinois.” *Kujat v. Roundy’s Supermarkets Inc.*, 2021 WL 4551198, at *4 (N.D. Ill. Aug. 11, 2021); *Brewer v. Molina Healthcare, Inc.*, 2018 WL 2966956, at *3 (N.D. Ill. June 12, 2018); *Castillo v. Noodles & Co.*, 2016 WL 7451626, at *4 (N.D. Ill. Dec. 23, 2016); *see also Dobbs v. DePuy Orthopaedics, Inc.*, 885 F.3d 455, 459 (7th Cir. 2018) (“The typical contingent fee is between 33 and 40 percent[.]”) (quoting *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998)); *Brewer*, 2018 WL 2966956, at *4 (collecting cases); *Hale*, 2018 WL 6606079, at *10 (“Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or higher to counsel in class action litigation.”) (collecting cases).

Contingency fees awarded in complex ERISA class actions are no exception. In ERISA actions such as this, courts in this Circuit have long recognized that a one-third contingency fee is “fair and reasonable.” *Diebold ex rel. ExxonMobil Sav. Plan v. N. Tr. Invs., N.A.*, No. 1:09-cv-01934, Dkt. 285 at *2–3 (N.D. Ill. Aug. 10, 2015); *George*, 2012 WL 13089487, at *2; *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019) (collecting cases).⁵ Courts across the country agree. *See, e.g., Tussey v. ABB, Inc.*, 2019 WL 3859763, at *4 (W.D. Mo. Aug. 16, 2019) (“Class Counsel’s requested one-third fee is common in these cases.”); *Kruger v. Novant Health*, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (“[C]ourts have found that a one-third fee is consistent with the market rate” in complex ERISA

⁵ *See also, e.g., Ramsey v. Philips N. Am., LLC*, No. 3:18-cv-01099, Dkt. 27 at *5 (S.D. Ill. Oct. 15, 2018); *Spano v. Boeing Co.*, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016); *Koerner v. Copenhaver*, 1:12-cv-01091, Dkt. 82 (C.D. Ill. Jan. 12, 2015); *Beesley v. Int’l Paper Co.*, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014); *Nolte v. Cigna Corp.*, 2013 WL 12242015, at *2 (C.D. Ill. Oct. 15, 2013); *Martin*, 2010 WL 11614985, at *6; *Will*, 2010 WL 4818174, at *4 (all awarding a one-third fee in complex ERISA class actions).

class actions) (quotation omitted); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *2 (D. Minn. July 13, 2015) (“[I]n comparing the requested fee with fee awards in similar cases, the relevant comparators are ERISA class actions asserting breaches of fiduciary duties in ... defined contribution plan[s].... In such cases, courts have consistently awarded one-third contingent fees.”). And consistent with this established benchmark, Class Counsel have received one-third fee awards in several other ERISA class action cases similar to this one.⁶

The foregoing authority more than demonstrates that both the local and national market rate for complex ERISA actions is one-third of the gross settlement fund. Moreover, the requested fee is also consistent with the contingent fee that Plaintiffs and Class Counsel agreed upon at the start of the case. *Specht Decl.* ¶ 16 n.2. Accordingly, Plaintiffs and Class Counsel respectfully request that the Court approve the one-third contingency fee. *See Synthroid*, 264 F.3d at 718 (“[C]ourts must do their best to award counsel the market price for legal services[.]”); *Kirchoff*, 786 F.2d at 324 (“When the ‘prevailing’ method of compensating lawyers for ‘similar services’ is the contingent fee, then the contingent fee *is* the ‘market rate.’”).

B. One-Third of the Common Fund Is a Reasonable Fee in this Case

It is axiomatic that “[e]ven if a settlement is a common fund, the fee award still must be reasonable.” *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 832 (7th Cir. 2018). Accordingly, the Seventh Circuit has instructed district courts to consider other factors that may bear on the market price for legal fees, such as the quality of the attorney’s

⁶ *See, e.g., Reetz v. Lowe’s Cos.*, No. 5:18-cv-00075, Dkt. 263 at *1–2 (W.D.N.C. Oct. 12, 2021); *Karpik v. Huntington Bancshares Inc.*, 2021 WL 757123, at *1 (S.D. Ohio Feb. 18, 2021); *Intravaia v. Nat’l Rural Elec. Coop. Assoc.*, No. 1:19-cv-973, Dkt. 114 (E.D. Va. Feb. 25, 2021); *Beach v. JPMorgan Chase Bank*, No. 1:17-cv-00563, Dkt. 232 at ¶¶ 2, 3 (S.D.N.Y. Oct. 7, 2020); *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-375, Dkt. 190 (W.D.N.Y. Sept. 3, 2020); *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020); *Sims v. BB&T Corp.*, 2019 WL 1993519, at *2–3 (M.D.N.C. May 6, 2019); *Andrus v. New York Life Ins. Co.*, No. 16-05698, Dkt. 83 at ¶ 1 (S.D.N.Y. June 15, 2017) (all awarding one-third fee to Nichols Kaster, PLLP).

performance, the risk of nonpayment, the amount of work necessary to resolve the litigation, and the stakes of the case. *See id.* at 833 (citing *Synthroid*, 264 F.3d at 721); *see also Taubenfeld*, 415 F.3d at 599 (citing *Synthroid*, 264 F.3d at 719). Each of these factors also support the reasonableness of Class Counsel’s request.

1. The Quality of the Attorneys’ Performance

This case required significant expertise on the part of Class Counsel. As numerous courts have recognized, ERISA cases such as this are “particularly complex.” *Allegretti v. Walgreen Co.*, 2022 WL 484216, at *1 (N.D. Ill. Jan. 4, 2022), *aff’d* Dkt. 116 at *7 (Feb. 16, 2022); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015).⁷ Prosecution of ERISA cases requires, among other things, “expertise regarding industry practices” and knowledge of how to obtain and analyze pertinent records. *See Kruger*, 2016 WL 6769066, at *3. Because of the expertise required, “few lawyers or law firms are capable of handling, much less willing to handle, this type of national litigation.” *Beesley*, 2014 WL 375432, at *3.

Class Counsel here were well-suited to the challenge. Lead class counsel (Nichols Kaster, PLLP) “is one of the relatively few firms in the country that has the experience and skills necessary to successfully litigate a complex ERISA action such as this.” *Karpik*, 2021 WL 757123, at *9.⁸ The firm has won favorable rulings on class certification and dispositive motions in several ERISA cases, recently tried three other ERISA class actions, successfully litigated an appeal before the First Circuit, and has negotiated class action settlements that have received court approval in

⁷ *See also Pledger v. Reliance Tr. Co.*, 2021 WL 2253497, at *7 (N.D. Ga. Mar. 8, 2021) (“ERISA litigation of this type is a rapidly evolving, complex, and demanding area of the law.”) (citation omitted); *Krueger*, 2015 WL 4246879, at *1 (“ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation.”).

⁸ *See also Moreno v. Deutsche Bank Ams. Holding Corp.*, 2017 WL 3868803, at *11 (S.D.N.Y. Sept. 5, 2017) (“[Nichols Kaster, PLLP] are experienced litigators who serve as class counsel in ERISA actions involving defined-contribution plans[.]”).

numerous cases in addition to this case. *Specht Decl.* ¶¶ 4–5. Moreover, co-counsel from Walcheske & Luzi, LLC are also experienced in ERISA class actions. *Declaration of Paul Secunda in Support of Motion for Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Service Awards (“Secunda Decl.”)* ¶ 2.

Ultimately, the quality of Class Counsel’s performance is reflected in the substantial relief obtained for the class. Here, the \$3.9 million settlement amount represents a significant portion of the alleged losses sustained by the Plans, amounting to over half of the allegedly inflated broker fees and nearly a quarter of the total estimated losses. *Dkt. 66 at 9; Richter Decl.* ¶ 4 & n.1. This recovery is on par with numerous other ERISA class action settlements that have been approved across the country. *See Dkt. 66 at 9 n.8.* Moreover, the Settlement also provides for significant prospective relief, which directly addresses the core issues that Plaintiffs raised in the lawsuit and is designed to ensure that the Plans’ expenses are reasonable going forward. *Id. at 9.* In short, Class Counsel’s expertise benefitted the Class throughout the litigation, provided credibility at the bargaining table, and was instrumental in achieving the result that was obtained. This weighs in favor of awarding the fees requested in this case.

2. The Risk of Nonpayment and the Stakes of the Case

In undertaking to prosecute this complex case on an entirely contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. *See Allegretti*, 2022 WL 484216, at *1. ERISA class cases such as this can extend up to a decade before final resolution,⁹ requiring a substantial investment of time and financial resources. *See George*, 2012 WL 13089487, at *2 (describing ERISA litigation as “an exceptional example of a private attorney

⁹ *See, e.g., Spano*, 2016 WL 3791123, at *1, 4 (9 years); *Abbott*, 2015 WL 4398475, at *1 (8.5 years); *Beesley*, 2014 WL 375432 at *2 (more than 7 years).

general risking breathtaking amounts of time and money while overcoming many obstacles for the benefit of employees and retirees”). This is largely a function of the complexity of such cases and the high stakes involved. *See, e.g., Abbott*, 2015 WL 4398475, at *2. Moreover, upon the conclusion of the litigation, a successful outcome was by no means assured.¹⁰ Accordingly, these factors also support the conclusion that the requested one-third fee is reasonable. *See City of Detroit v. Grinnell*, 495 F.2d 448, 470 (2d Cir. 1974) (“No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success.”).

3. The Amount of Work Necessary to Resolve the Litigation

Although this case was resolved relatively early (due in part to Class Counsel’s experience, skill, and reputation), Class Counsel already have invested significant time and effort on the matter. To date, Class Counsel have expended over 700 hours litigating the case, negotiating the settlement, and overseeing settlement administration. *See supra* at 3–4; *Specht Decl. Ex 1*. Moreover, Class Counsel will perform additional work going forward in connection to Plaintiffs’ Final Approval Motion, the Fairness Hearing, and ongoing settlement administration. *See supra* at 4. This work further supports approval of the requested attorneys’ fees.

The Court is not required to perform a lodestar cross-check. *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011).¹¹ However, to the extent the Court finds it useful, a lodestar cross-check also supports the requested fee. Courts across the country have found that

¹⁰ *See, e.g., Reetz v. Lowe’s Cos.*, 2021 WL 4771535 (W.D.N.C. Oct. 12, 2021) (granting judgment in favor of defendants on ERISA claims following bench trial); *Rozo v. Principal Life Ins. Co.*, 2021 WL 1837539 (S.D. Iowa Apr. 8, 2021) (same).

¹¹ *See also Will*, 2010 WL 4818174, at *3 (describing the use of a lodestar cross-check in common fund cases to be “unnecessary, arbitrary, and potentially counterproductive”); *Martin*, 2010 WL 11614985, at *2, *4 (same); *In re Comdisco Sec. Litig.*, 150 F. Supp. 2d 943, 948 n.10 (N.D. Ill. 2001) (“To view the matter through the lens of free market principles, [a lodestar analysis] (with or without a multiplier) is truly unjustified as a matter of logical analysis.”).

“[i]n risky litigation such as this, lodestar multipliers can be reasonable in a range between 2 and 5.” *Ramsey*, No. 3:18-cv-01099, Dkt. 27 at *9 (quoting *Spano*, 2016 WL 3791123, at *3). Indeed, it is not uncommon for courts to approve higher multipliers.¹² Here, Class Counsel’s lodestar to date (\$390,796.00, exclusive of future work) corresponds to a multiplier of 3.3.¹³ *See Specht Decl. ¶ 16 & Ex. 1; Secunda Decl. ¶ 3*. This is within the typical range, and further demonstrates the reasonableness of the requested fee.

4. There Have Been No Objections to the Requested Attorneys’ Fees

There have been no objections to the Settlement or the requested attorneys’ fees as of the date of this motion. *See Specht Decl. ¶ 29*. This further demonstrates the fairness of the Settlement and the reasonableness of the requested fees. *See Ramsey*, No. 3:18-cv-01099, Dkt. 27 at *2 (“[T]he lack of *any* objections [is] a remarkable sign of the Class’s overwhelming support for Class Counsel’s request.”); *George*, 2012 WL 13089487, at *1 (finding “the lack of any meaningful number of objections” to be a sign of the Class’s support). This is especially so, given that the Settlement Notices disclosed that Class Counsel could seek up to a one-third fee. *See Dkt. 70-01, Ex. 1 at *4 & Ex. 2 at *4* (“The amount of fees that Class Counsel will request will not exceed one-third of the Gross Settlement Amount (\$1,300,000).”).

III. THE COURT SHOULD APPROVE THE REQUESTED COSTS AND EXPENSES

In addition to approving the requested attorneys’ fees, this Court also should approve the requested litigation costs and administrative expenses. “[C]ounsel who create a common fund like

¹² *See, e.g., Steiner v. Am. Broad. Co.*, 248 Fed. App’x. 780, 783 (9th Cir. 2007) (multiplier of 6.85 “falls well within the range of multipliers that courts have allowed”); *Stevens*, 2020 WL 996418, at *13 (approving one-third fee to Nichols Kaster, PLLP that yielded 6.16 multiplier).

¹³ The hourly rates used to calculate Class Counsel’s lodestar (and the resulting multiplier) are “reasonable and are comparable to fees that have been recently approved in [other] ERISA class actions.” *Sims*, 2019 WL 1993519, at *3 (approving Nichols Kaster, PLLP billing rates supporting one-third fee request); *see also Spano*, 2016 WL 3791123, at *3 (adopting rates of \$460 to \$998 based on experience); *Pledger*, 2021 WL 2253497, at *7 (\$490 to \$1,060 per hour based on years of experience).

this one are entitled to the reimbursement of litigation costs and expenses[.]” *George*, 2012 WL 13089487, at *4. Whether a request for expenses is reasonable is dependent upon what the private market would bear. *Synthroid*, 264 F.3d at 722. Here, the requested costs and expenses are typical for a case such as this, and fall at the low end because of the efficient and timely manner in which the litigation was resolved.

Recoverable litigation costs include “such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation.” *George*, 2012 WL 13089487, at *4; *Martin*, 2010 WL 11614985, at *5 (same). These are precisely the types of costs and expenses for which reimbursement is sought here. *See Specht Decl.* ¶¶ 19–22; *Secunda Decl.* ¶ 4. Moreover, the total amount of litigation costs (\$40,285.52) is limited in comparison to amounts approved in other ERISA actions.¹⁴

Recoverable expenses also include costs of settlement administration. *See Settlement Agreement* ¶¶ 2.3, 8.1–8.2; *Wickens*, 2021 WL 267852, at *2. Here, the services provided by the Settlement Administrator, Escrow Agent, and Independent Fiduciary are all essential to implementing the Settlement, *see supra* at 5–6, and the amount charged for these services (\$64,176) is reasonable in comparison to the amounts approved in other cases.¹⁵ Accordingly, these administrative expenses also should be approved.

¹⁴ *See, e.g., Ramsey*, No. 3:18-cv-01099, Dkt. 27 at *9–10 (finding nearly \$45,000 in costs incurred in a case that settled within six months to be “minimal,” and approving the requested reimbursement); *Diebold*, No. 1:09-cv-01934, Dkt. 285 at *2 (approving \$260,644.65 in costs); *Nolte*, 2013 WL 12242015, at *4 (approving \$928,045.87 in costs); *George*, 2012 WL 13089487, at *4 (approving \$1,496,371.33 in costs).

¹⁵ *See, e.g., Karpik*, 2021 WL 757123, at *13 (approving \$107,214 administrative expenses, including \$89,714 to the Settlement Administrator, \$2,500 to the Escrow Agent, and \$15,000 to the Independent Fiduciary); *Reetz*, No. 5:18-cv-00075, Dkt. 263 at *2 (approving request for \$203,045 in administrative expenses, including \$160,545 to the Settlement Administrator, \$2,500 to the Escrow Agent, and \$40,000 to the Independent Fiduciary, finding them “reasonable and appropriate”); *see also In re Ky. Grilled Chicken Coupon Mktg. & Sales Pracs. Litig.*, 2011 WL 13257072, at *4 (N.D. Ill. Nov. 30, 2011) (noting “the administrative costs of [a] settlement are necessary to achieve its overall success”).

IV. THE COURT SHOULD APPROVE THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS

“Incentive awards serve the important purpose of compensating plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs. Accordingly, incentive awards are commonly awarded to those who serve the interests of the class.” *Briggs v. PNC Fin. Servs. Grp., Inc.*, 2016 WL 7018566, at *2 (N.D. Ill. Nov. 29, 2016) (collecting cases). “Service awards are well suited in employment litigation because the plaintiffs assume the risk that future employers may look unfavorably upon them if they file suit against former employers.” *Allegretti*, 2022 WL 484216, at *2 (quoting *Brewer*, 2018 WL 2966956, at *2). Here, the requested \$5,000 service awards are “consistent with those approved by other courts in the Northern District of Illinois for similar activities.” *Wolfe v. TCC Wireless, LLC*, 2018 WL 11215318, at *3 (N.D. Ill. Mar. 12, 2018).¹⁶ Indeed, much higher awards are frequently approved in ERISA cases.¹⁷ Accordingly, Plaintiffs and Class Counsel also respectfully request that the class representative service awards be approved.

CONCLUSION

For the reasons set forth above, Plaintiffs and Class Counsel respectfully request that the Court approve the requested distributions from the Settlement Fund.

¹⁶ See also *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) (awarding \$5,000 to the named plaintiff in a class action that “did not proceed past the earliest phases of formal discovery”); *Wright v. Nationstar Mortg. LLC*, 2016 WL 4505169, at *17 (N.D. Ill. Aug. 29, 2016) (same) (collecting cases).

¹⁷ See, e.g., *Allegretti*, 2022 WL 484216, at *2 (approving \$15,000 service awards); *George*, 2012 WL 13089487, at *4 (same); *Abbott*, 2015 WL 4398475, at *4 (approving \$25,000 service awards).

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2022, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: March 4, 2022

s/Brock J. Specht
Brock J. Specht