

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

Paul Laidig, Peter Lewis, and Derek Kemp, as  
representatives of a class of similarly situated  
persons, and on behalf of the Vi-Jon Employee  
Stock Ownership Plan,

Plaintiffs,

v.

GreatBanc Trust Company, et al.,

Defendants.

Case No. 1:22-cv-01296

Hon. LaShonda A. Hunt

Hon. Heather K. McShain

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

**INTRODUCTION**

In light of the Settlement that they have achieved for participants and beneficiaries of the ESOP at issue in this case, Plaintiffs and Class Counsel respectfully petition the Court to approve: (1) attorneys' fees to Class Counsel in the amount of \$333,333.33 (one-third of the \$1,000,000 Gross Settlement Amount; (2) reimbursement of \$70,538.67 in litigation costs and 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. Class Counsel's requested one-third fee is authorized under the Settlement, *see* Settlement Agreement, Dkt. 258-01, §§ 1.6, 6.1 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.* § 6.2, 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. The Pleadings and Motions to Dismiss**

On March 10, 2022, Plaintiffs Laidig, Lewis, and Michael Robbins filed this action. Dkt. 1. In their Complaint, they alleged that Defendant GreatBanc Trust Company, as a fiduciary to the Plan, caused the Plan to engage in a prohibited transaction with a party in interest, as barred by ERISA. *Id.* ¶ 80. They also alleged that Defendants Berkshire Fund VI, L.P. (“Berkshire”), Brunner, and the Brunner Trust are liable to the Plan as transferees of proceeds of the transaction. *Id.* ¶ 88. On June 6, 2022, Defendants moved to dismiss via three separate motions. *See* Dkts. 42, 43, 45. On January 31, 2023, the Court denied GreatBanc and Berkshire’s motions in their entirety, and “denie[d] in large part the Brunner Defendants’ motion.”<sup>1</sup> Dkt. 70, at 1.

### **II. Subsequent Motions and Settlement with the Brunner Defendants**

On December 6, 2023, Plaintiffs moved to amend the Complaint, seeking to add Mr. Kemp as a plaintiff. *See* Dkt. 112-1 ¶ 19. On December 7, 2023, the Court granted this request. Dkt. 114. On June 4, 2024, Plaintiff Robbins requested to be withdrawn as a named plaintiff. Dkt. 155. The Court granted Robbins’ request the next day. Dkt. 157. Plaintiffs moved to amend the Complaint a second time to add three corporations, eleven corporate officers (cumulatively the “Vi-Jon Defendants”), and the John and Janell Brunner Family Trust Dated May 27, 2020, as defendants. Dkts 162; 164-4, at 1–2. They also sought to add a claim for co-fiduciary liability against the Vi-Jon Defendants. Dkt. 164-4, at 47–49. Berkshire and the Brunner Defendants opposed the motion to amend. Dkt. 180. The Court granted the motion to amend, Dkt. 274, and Plaintiffs filed their

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<sup>1</sup> The Court dismissed Plaintiff’s requests for declaratory relief and “other appropriate relief.” Dkt. 70, at 19–20.

Second Amended Complaint on March 5, 2025, Dkt. 275. Motions to dismiss the Second Amended Complaint are currently pending before the Court. *See* Dkts. 315, 318, 323.

Settlement negotiations began around April 2023 and continued throughout that year. Dkt. 95 ¶ 1–2. While Plaintiffs’ motion to amend was pending, the Parties continued negotiations facilitated by Magistrate Judge McShain. Four such negotiations were held between November 20, 2023, and January 4, 2024. Dkt. 125, at 2–3. During a January 19, 2024, conference, the Parties indicated that global settlement discussions were at an impasse, had become unproductive, and were ultimately terminated. Dkt. 132, at 3–4. But counsel for the Plaintiffs and Brunner Defendants remained in contact and after extensive arm’s-length negotiations, reached a settlement in principle and prepared a comprehensive Settlement Agreement. Declaration of Brock J. Specht in Support of Motion for Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives Service Awards (“Specht Decl.”) ¶ 11; Dkt. 143.

### **III. Settlement Terms and Preliminary Approval**

Plaintiffs filed a motion seeking preliminary approval of the Settlement on January 27, 2025. Dkt. 256. On May 13, 2025, the Court issued an Order granting preliminary approval of the Settlement. Dkt. 311. Plaintiffs are filing the present motion at least 14 days in advance of the deadline for objections, pursuant the terms of the Settlement. Settlement Agreement § 6.1. To date, no objections to the Settlement or the requested distributions have been received. Specht Decl. ¶ 26.

### **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 declarations 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. Specht Decl. ¶ 11; Declaration of Gregory Y. Porter (“Porter Decl.”) ¶¶ 5-6. Thereafter, Class Counsel vigorously prosecuted the action on behalf of the Class. Among other things, Class Counsel (1) drafted a detailed Class Action Complaint, First Amended Complaint, and Second Amended Complaint; (2) successfully opposed various Defendants’ motions to dismiss; (3) prevailed on a contested motion to amend; (4) engaged in extensive discovery whereby Defendants produced 25,000 documents of which Brunner Defendants produced 965 documents amassing 7,500 pages; (5) took the depositions of numerous party and non-party fact witnesses, including Brunner; (6) engaged in arm’s length settlement negotiations with counsel for various defendants, (7) reached an agreement with counsel for the Brunner Defendants and drafted the Settlement Agreement and exhibits thereto (including the Settlement Notices, Former Participant Rollover Form, and the proposed preliminary and final approval orders); (8) prepared Plaintiffs’ Preliminary Approval Motion papers; and (9) consulted with Plaintiffs as the named Class Representatives throughout the course of the case. Specht Decl. ¶ 11; Porter Decl. ¶¶ 5-6.

### **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, draft Plaintiffs’ motion for final approval of the Settlement, and respond to any objections. Specht Decl. ¶ 17. 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, while also continuing to litigate against the non-settling defendants. *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) assisted Class Counsel's investigation of the case, provided documents and other information, and reviewed the allegations in the Complaints bearing their names; (2) participated in discovery, including by producing documents, responding to interrogatories, and sitting for depositions; (3) communicated with counsel regarding the litigation and Settlement; (4) reviewed and authorized the Settlement Agreement; and (5) generally made themselves available to stay informed on the status of the action, answer questions, and represent the interests of the class. *Id.* ¶¶ 24.

#### **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. Atticus Administration LLC ("Atticus"), as the approved Settlement Administrator, is responsible for disseminating the Settlement Notices to Class Members and establishing the settlement website and telephone support line. Settlement Agreement §§ 3.2, 3.3; Specht Decl. ¶ 22. The Independent Fiduciary (Fiduciary Counselors, Inc.) 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. Settlement Agreement § 2.2; Specht Decl. ¶ 23. This independent review is called for by DOL regulations,<sup>2</sup> and is also required by Paragraph 2.2 of the Settlement.

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<sup>2</sup> See Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830.

## **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 §§ 1.6, 6.1-6.2. Accordingly, Plaintiffs seek the following amounts in connection with this motion:

- Attorneys' fees: \$333,333.33 (one-third of the Settlement Fund)
- Total Litigation & Settlement Administration Costs: \$70,538.67, comprised of:
  - Nichols Kaster Costs: \$25,677.62
  - Bailey & Glasser Costs: \$13,361.05
  - Settlement Administrator: \$16,500
  - Independent Fiduciary: \$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 VI of the Settlement, *see* Settlement Agreement ¶¶ 6.1, 6.2, 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 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. 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); *Chesemore v. All. Holdings, Inc.*, No. 09-CV-413-WMC, 2014 WL 4415919, at \*7 (W.D. Wis. Sept. 5, 2014) (upholding attorney’s fees in a settlement involving an ESOP claim “which represents approximately 35% of the total settlement” as “reasonable and consistent with other awards in common fund class actions.”); *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).<sup>3</sup> 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 class actions) (quotation omitted).

The foregoing authority more than demonstrates that both the local and national market

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<sup>3</sup> *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).



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. ¶ 14, n. 1. 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 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 are “particularly complex.” *Allegretti v. Walgreen Co.*, 2022 WL 484216, at \*1 (N.D. Ill. Jan. 4, 2022); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at \*2 (S.D. Ill. July 17, 2015).<sup>4</sup> Prosecution of ERISA cases requires, among other things, “expertise regarding industry practices” and knowledge of how to obtain and analyze pertinent records. *See*

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<sup>4</sup> *See also Krueger*, 2015 WL 4246879, at \*1 (“ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation.”).

*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. 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.” *Karpik*, 2021 WL 757123, at \*9. The firm has won favorable rulings on class certification and dispositive motions in several ERISA cases, has tried multiple ERISA class actions, successfully litigated an appeal before the First Circuit, and has negotiated class action settlements that have received court approval in numerous cases in addition to this case. Specht Decl. ¶¶ 3-6. Bailey & Glasser’s credentials are equally impressive. The firm has direct experience in lawsuits under ERISA challenging ESOP transactions, including trying a case to a successful \$30 million judgment, *see Brundle v. Wilmington Trust N.A.*, 241 F. Supp. 3d 610 (E.D. Va. 2017) (\$29.7 million trial judgment), *aff’d* 919 F.3d 763 (4th Cir. 2019), along with a lengthy list of other successful matters, *see* Porter Decl. ¶ 8. Bailey & Glasser also currently represents plaintiffs in several other ESOP lawsuits. Porter Decl. ¶ 8.

Ultimately, the quality of Class Counsel’s performance is reflected in the substantial relief obtained for the class. While \$1 million is not a high proportion of what Plaintiffs believe will ultimately be recovered for the Class in the overall case, it is a significant recovery against a subset of minor defendants. Although this partial settlement would not provide a complete victory to Plaintiffs, it provides them some “present victory, meaning they will not need to await a result of uncertain and potentially lengthy litigation” to obtain relief. *See Koerner v. Copenhaver*, 2014 WL 5544051, at \*4 (C.D. Ill. Nov. 3, 2014). Because this is a partial settlement against secondary defendants that has no effect on Plaintiffs’ claims against any of the other Defendants, from whom

Plaintiffs are seeking further recovery, \$1 million in immediate relief to the Class is a significant recovery at this stage of litigation. *See* Dkt. 257, at 9-10. 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 Risks 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 can extend up to a decade before final resolution,<sup>5</sup> 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 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. 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**

Class Counsel have invested significant time and effort on the matter. As of the date of the Settlement, *i.e.* January 27, 2025, Class Counsel have expended a total of over 3,000 hours litigating the case and negotiating the settlement. *See* Specht Decl. ¶ 12, Ex 1; Porter Decl. ¶ 18.

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<sup>5</sup> *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).

Moreover, in addition to continuing to litigate against the non-settling Defendants, Class Counsel will perform additional work related to the Settlement going forward, including Plaintiffs' Final Approval Motion, the Fairness Hearing, and ongoing settlement administration. *See* Specht Decl.

¶ 17. This work further supports approval of the requested attorneys' fees.

The Court is not required to perform a lodestar cross-check. *Williams*, 658 F.3d at 636.<sup>6</sup> However, to the extent the Court finds it useful, a lodestar cross-check also supports the requested fee. Class Counsel's total lodestar in this case, approximately \$2 million as of the date of the Settlement, is substantially greater than the requested fee. *See* Specht Decl. ¶ 15 & Ex. 1; Porter Decl. ¶ 18. This further demonstrates the reasonableness of the requested fee. *See Will*, 2010 WL 4818174, at \*3 ("[W]hile the Court does not believe a lodestar cross-check is necessary, Class Counsel's fee request easily withstands such analysis" when the lodestar multiplier "would be less than 1."); *Welsh v. Navy Fed. Credit Union*, 2018 WL 7283639 (W.D. Tex. Aug. 20, 2018) ("Because there is a strong presumption that the lodestar represents a reasonable fee, the fact that Class Counsel seek an award less than the lodestar supports a finding that the fee award is reasonable.") (citation omitted).

#### **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. ¶ 26. This further demonstrates the fairness of the Settlement and the reasonableness of the requested fees. *See 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

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<sup>6</sup> *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.").

so, given that the Settlement Notices disclosed that Class Counsel could seek up to a one-third fee. *See* Dkt. 258-01, Ex. 1, at 6. (“The amount of any fees requested will not exceed one-third of the Settlement Fund.”).

### **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 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 expenses commonly billed by attorneys to clients are precisely the types of costs and expenses for which reimbursement is sought here. *See* Specht Decl. ¶ 19 & Ex. 2; Porter Decl. ¶¶ 24-25. Class Counsel has also excluded its expert costs from its present request for litigation costs for this particular motion and will seek those costs from the remaining Defendants at a later stage of litigation. *Id.* Ultimately, the amount of Class Counsel’s total litigation costs sought here (\$39,038.67) is limited in comparison to amounts approved in other ERISA actions.<sup>7</sup>

Recoverable expenses also include costs of settlement administration and the costs of the

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<sup>7</sup> *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).

Independent Fiduciary. *See* Settlement Agreement § 5.1; *Wickens*, 2021 WL 267852, at \*2. The Settlement Administrator (Atticus) bid provides that it will cost \$16,500 to administer the settlement in this action. *See* Specht Decl. ¶ 22. The Independent Fiduciary (Fiduciary Counselors Inc.) charges a fee of \$15,000 for its services and report. *Id.* ¶ 23; *see* Dkt. 304 ¶¶ 5-6. Here, the services provided by the Settlement Administrator and Independent Fiduciary are all essential to implementing the Settlement and the amount charged for these services, \$16,500 and \$15,000, respectively, is reasonable in comparison to the amounts approved in other cases.<sup>8</sup> Accordingly, these administrative expenses also should be approved.

#### **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. The Seventh Circuit has recognized that “incentive awards are justified when necessary to induce individuals to become named representatives.” *Synthroid*, 264 F.3d at 722. 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

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<sup>8</sup> *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”).

activities.” *Wolfe v. TCC Wireless, LLC*, 2018 WL 11215318, at \*3 (N.D. Ill. Mar. 12, 2018).<sup>9</sup> Indeed, much higher awards are frequently approved in ERISA cases.<sup>10</sup> 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.

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<sup>9</sup> 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).

<sup>10</sup> See, e.g., *Allegetti*, 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).

Dated: July 8, 2025

**NICHOLS KASTER, PLLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2025, 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: July 8, 2025

s/Brock J. Specht  
Brock J. Specht