

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
COUNTY OF LEE, STATE OF ILLINOIS**

<b>JOHN DOE,</b>	)	
Plaintiff,	)	
v.	)	
	)	Case No. 21L26
<b>KATHERINE SHAW BETHEA HOSPITAL</b>	)	
<b>and KSB MEDICAL GROUP, INC.,</b>	)	
Defendants.	)	
	)	
	)	
	)	

**PLAINTIFF’S UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF  
FINAL APPROVAL OF PLAINTIFF’S INCENTIVE AWARD AND PAYMENT OF  
ATTORNEYS’ FEES AND COSTS**

**INTRODUCTION**

The facts and procedural history of this matter, including the material settlement terms, are discussed at length in Plaintiff’s Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement and the concurrently filed Unopposed Motion and Memorandum in Support of Final Approval of Class Action Settlement. As such, Plaintiff will not burden the Court with repeating them here.

**ARGUMENT**

Pursuant to the Court-approved notice plan, direct notice has been sent to the 1,549 Settlement Class Members. The Notice clearly provided that Plaintiff would seek an incentive award and that Plaintiff’s Counsel would seek to recover their attorneys’ fees and litigation costs. *See*, Exhibit A to Declaration of Ryan Aldridge (“Aldridge Dec.”). No objections were filed, only two Settlement Class Member chose to opt-out of the Settlement, and the Settlement received an astonishing 38% claims rate as of February 22. Aldridge Dec. at ¶¶ 15-17. As explained below, the Court should approve Plaintiff’s requested Incentive Award and attorneys’ fees and costs.

**I. THE COURT SHOULD APPROVE PLAINTIFF’S REASONABLE REQUESTED INCENTIVE AWARD**

The requested incentive award should be approved here. Indeed, “since without the named plaintiff there can be no class action, such compensation may be necessary to induce [him] to participate in the suit.” *In re Cont’l Ill Sec. Litig.*, 962 F. 2d 566, 571 (7th Cir. 1992). Illinois state courts, like the federal courts, routinely approve incentive awards to named plaintiffs in class actions. *See, e.g., GMAC Mrtg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497) (1st Dist. 1992) (incentive awards are not atypical in class action cases, and serve to encourage the filing of class action suits) (citations omitted); *Coy v. CCN Managed Care, Inc.*, 2011 IL App. 5th 100068-U, 2011 WL 10500933 (5th Dist. 2011) (approving the incentive award agreed upon by the parties).

Here, the Settlement provides for an incentive award of \$2,500.00 to John Doe. This amount is fair and reasonable given Plaintiff’s assistance in gathering information during the pendency of the litigation and the fact that the Plaintiff spent a significant amount of his own personal time assisting with the litigation. Declaration of Eric S. Johnson at ¶¶ 5-8, Exhibit 1 (“Johnson Dec.”). *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601 (N.D. Ill. 2011) (“Class Representative’s willingness to publicly place their names on this suit and open themselves up to scrutiny and attention is certainly worth some remuneration.”).

Compensating Plaintiff for the risks and efforts he undertook for benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the positive results obtained. Moreover, no objection to the Incentive Award has been raised to date. Accordingly, an Incentive Award of \$2,500.00 to Plaintiff is reasonable and justified by Plaintiff’s time and effort in this case and should be approved.

## **II. THE COURT SHOULD APPROVE CLASS COUNSEL'S REASONABLE ATTORNEYS' FEES AND EXPENSES**

The Court should also approve the payment of Attorneys' Fees and costs of litigation. Like the incentive award, the Notice to Class Members disclosed that Plaintiff's Counsel would seek payment of attorneys' fees and reimbursement of costs. In providing the estimated net benefit to the Settlement Class, a \$80,000.00 attorney fee estimate was utilized (only 20% of the Settlement Fund), and no Settlement Class Member objected to either his or her net benefit estimate or counsel seeking their fees and costs. Notably, because every claimant will receive the maximum \$250.00 award under the Settlement Agreement, the requested award of Attorneys' Fees does not reduce the net benefit to any Class Member.

It is well settled that attorneys who, by their efforts, create a common fund for the benefit of a class are entitled to reasonable compensation for their services. *See Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)) (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”).

### **A. Class Counsel's Requested Fees Are Reasonable**

In cases where, as here, a class action settlement results in the creation of a settlement fund, “[t]he Illinois Supreme Court has adopted the approach taken by the majority of Federal courts on the issue of attorney fees[.]” *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st Dist. 1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)). That is, where “an equitable fund has been created, attorneys for the successful plaintiff may directly petition the court for the reasonable value of those of their services which benefited the class.” *Id.* at 14 (citing *Fiorito*, 72 Ill.2d 73). This rule “is based on the equitable notion that those who have benefited from litigation should

share in its costs.” *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (citing *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 252 (7th Cir. 1988)).

The requested fee award of \$80,000.00 represents merely twenty one percent of the \$380,000.00 Settlement Fund. This percentage is well below the ordinary requests for attorneys’ fee awards that courts have found reasonable in other class action settlements. In fact, it is about half of what other court have awarded in similar cases. In *Willis v. iHeartMedia Inc.*, attorneys’ fees and costs of 40% of an \$8,500,000 common fund was awarded in a class settlement. *See Willis*, No. 16-CH-02455 (Cook Cty., Ill. Feb. 19, 2016), August 11, 2016 Final Judgment and Order of Dismissal, at 5; *see also, e.g., Retsky Family Ltd. P’ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at \*4 (N.D. Ill. Dec. 10, 2001) (noting that a “customary contingency fee” ranges “from 33 1/3% to 40% of the amount recovered”) (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 599 (N.D. Ill. 2011) (same); *Sabon*, 2016 IL App (2d) 150263, at ¶¶ 59, 65 (affirming over objections an attorney fee award of 33% of the fund); *Sterk v. Path, Inc.*, No. 2015-CH-08609 (Cook Cty., Ill. Sept. 21, 2015) (approving attorneys’ fee award in TCPA case of 35% of the fund); *Meyenburg v. Exxon Mobil Corp.*, No. 3:05-CV-15-DGW, 2006 WL 2191422, at \*2 (S.D. Ill. July 31, 2006) (“33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation”); *Herbert Newberg & Alba Conte, Newberg on Class Actions* § 15.83 (William B. Rubenstein ed.; 5th ed.) (noting that fifty percent of the fund appears to be an approximate upper limit on fees and expenses). Therefore, the fee requested herein is reasonable.

**B. The Requested Percentage of Attorneys' Fees is Appropriate Given the Significant Risks Involved in Continued Litigation.**

The attorneys' fees sought in this case are particularly reasonable considering the risks of bringing the litigation and the relief that Class Counsel have obtained for the Settlement Class. *See Sabon, Inc.*, 2016 IL App (2d) 150236, at ¶ 59 (upholding fee award based on percentage-of-the-fund in light of the "substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]"); *Ryan*, 274 Ill. App. 3d at 924 (noting the trial court's fee award was reasonable given the funds recovered for the class and the contingency risk).

The Settlement in the instant case provides significant individual relief to the Settlement Class Members. From the time of filing, through the time of settlement, the prosecution of this case was particularly risky given the numerous defenses presented by Defendants, the novelty of the litigation, and risks of both class certification and a successful result at trial. As a result, this litigation presented multiple risks to Plaintiff's ultimate success and Defendants would have strenuously defended the claims asserted had this Settlement not been reached. Without the Settlement, there would remain the distinct possibility that Defendants could succeed on any of their defenses to liability against Plaintiff's individual claims or successfully opposed certification, either of which would result in Settlement Class Members recovering nothing. As a result, a settlement providing for such a significant cash benefit is an exceptional result.

**C. The Court Should Also Award Class Counsel's Requested Reimbursement of Their Minimal Litigation Expenses**

By the conclusion of this case, Class Counsel will have expended \$3,500.00 in reimbursable expenses related to filing fees, mediation, and case administration, with the potential of more expenses yet to come. *Johnson Dec.*, ¶ 21. Of course, Class Counsel incurred additional

overhead expenses related to this litigation for which it does not seek reimbursement. Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.*, No. 12 C 5134, 2014 WL 2808801, at \*4 (N.D. Ill. June 20, 2014) (awarding expenses “for which a paying client would reimburse its lawyer”); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation).

Given the significant value conferred to the Settlement Class at its minimal expense, Class Counsel requests the Court approve as reasonable the incurred expenses, a request which Defendants do not oppose.

### CONCLUSION

For the foregoing reasons, Plaintiff and his Counsel respectfully request that this Court enter the Final Order and Judgment attached as Exhibit 3 to the Final Approval Motion.

Date: February 27, 2023

Respectfully Submitted,

/s/ G. Michael Stewart

G. Michael Stewart

**SIMMONS HANLY CONROY**

One Court St.

Alton, Illinois 62002

mstewart@simmonsfirm.com

Jason “Jay” Barnes

Eric S. Johnson

**SIMMONS HANLY CONROY**

112 Madison Ave., 7th Floor

New York, New York 10016

jaybarnes@simmonsfirm.com

ejohnson@simmonsfirm.com

**SETTLEMENT CLASS COUNSEL**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2023, I filed the foregoing document with the clerk of the Court using the Illinois E-Filing System, which should further distribute a true and accurate copy of the foregoing to all counsel of record.

/s/ G. Michael Stewart