IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TOM HENSIEK, *et al.,* Plaintiffs, vs. BD. OF DIRECTORS OF CASINO QUEEN HOLDING CO., INC., *et al*., Defendants.	
BD. OF DIRECTORS OF CASINO QUEEN HOLDING CO., INC., *et al*., Crossclaim/Third-Party Plaintiffs, vs. CHARLES BIDWILL, III, *et al.*, Crossclaim/Third-Party Defendants.	
CHARLES BIDWILL, III, TIMOTHY J. RAND, Defendants/Counterclaimants, Crossclaim/Third-Party Plaintiffs, vs. TOM HENSIEK*, et al.*, Counterclaim/Crossclaim/Third-Party Defendants.	Case No. 3:20-cv-00377-DWD
JAMES G. KOMAN, Crossclaim Plaintiff, vs. BD. OF DIRECTORS OF CASINO QUEEN HOLDING CO., INC., *et al.* Crossclaim Defendants.	

PLAINTIFFS' MOTION AND INCORPORATED MEMORANDUM OF LAW FOR ATTORNEYS' FEES AND EXPENSE REIMBURSEMENT, SETTLEMENT ADMINISTRATION EXPENSES, AND SERVICE AWARDS

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Consistent with the terms of the Class Action Settlement Agreement, Plaintiffs Tom Hensiek, Jason Gill, and Lillian Wrobel ("Plaintiffs" or "Named Plaintiffs") and Class Counsel respectfully move the Court for an order approving (1) attorneys' fees to Class Counsel in the amount of $2,366,666.67 (one-third of the total Settlement value), (2) reimbursement of $184,232.59 in litigation expenses, (3) Settlement Administration and Independent Fiduciary Expenses of $36,572, (3) Service Awards of $25,000 to each Named Plaintiff as Settlement Class Representatives, and (4) for other such relief as the Court may deem just and proper.[1]

In this case, Plaintiffs challenged transactions with Casino Queen's Employee Stock Ownership Plan (ESOP). Plaintiffs and the class faced serious risks in this litigation, which also posed risks to Class Counsel's ability to recover their attorneys' fees and expenses expended on this case, which was undertaken solely on a contingency basis. As discussed herein, all requested amounts for fees, expenses, and service awards are reasonable in light of the excellent results obtained for the Class through the proposed Settlement and given that Seventh Circuit courts typically award one-third or more of the Settlement fund as attorneys' fees in complex ERISA cases. Further, Class Counsel performed extensive work during the four-year pendency of this case, and their requested fee is significantly less than the value of the number of hours Class Counsel spent prosecuting this Action. Finally, to date, zero objections have been lodged concerning the Settlement's terms or the requested attorneys' fees and expense reimbursement, settlement administration expenses, and service awards. Plaintiffs asked Defendants whether they oppose this Motion. Defendants have not responded and have not indicated any opposition

[1] The soon to-be-filed Motion for Final Approval of Settlement ("Final App. Mot.") will set forth why the Settlement Agreement provides substantial and valuable economic consideration to the Class and should be approved. Capitalized terms used herein shall have the same meaning as set forth in the Settlement Agreement, filed previously at ECF 539-2, unless otherwise specified.

to the relief requested herein. Accordingly, the Court should grant the requested attorneys' fees, expense reimbursements, and service awards.

BACKGROUND AND PROPOSED SETTLEMENT TERMS

I. PLAINTIFFS' COUNSEL EXPENDED CONSIDERABLE TIME, EFFORT, AND OUT-OF-POCKET EXPENSES LITIGATING THIS CASE.

A. Time and Effort Expended on Pleadings, Motion Practice, and Settlement.

Litigating this case and achieving the instant Settlement involved an extraordinary amount of work on the part of Class Counsel and their co-counsel. Among the most important work, Class Counsel and their co-counsel from Stris & Maher performed the following tasks:

- drafted the initial complaint, ECF 1;
- defeated a motion to compel arbitration, ECFs 56, 57 (briefs in opposition to motion to compel), ECF 84 (order denying motion to compel);
- after Defendants filed an interlocutory appeal to again attempt to force Plaintiffs to individualized arbitration, ECFs 85-87, the Seventh Circuit ruled in plaintiffs' favor in another case, *Smith v. Board of Directors of Triad Manufacturing, Inc.*, 13 F.4th 613 (2021), which was also litigated by Class Counsel, forcing Defendants to voluntarily dismiss their arbitration appeal in this case, ECF 109;
- defeated the original Defendants' first motion to dismiss the original complaint, ECF 58 (brief in opposition to motion to dismiss), ECF 69 (supplement in opposition to motion to dismiss), ECF 118 (order denying motion to dismiss);
- drafted the First Amended Complaint ("FAC"), which named additional Defendants to the action, ECF 144;
- briefed and argued a motion to compel production of documents, ECF 151 (motion to compel), ECF 214 (reply brief), ECF 215 (order setting hearing);

- drafted answers to certain Defendants' cross-claims, ECF 193;
- successfully defeated no less than ***nine*** motions to dismiss the FAC, *see* ECFs 155, 231, 234, 252, 267, 319, 327, 362, 402 (motions to dismiss), ECFs 426, 427, 510 (orders denying motions to dismiss);
- successfully defeated a motion for judgment on the pleadings filed by Defendant James G. Koman, ECF 216 (brief in opposition to motion for judgment on the pleadings), ECF 426 (order denying motion for judgment on the pleadings);
- petitioned for permission to appeal the denial of Plaintiffs' motion for class certification to the Seventh Circuit under Federal Rule of Civil Procedure 23(f), ECFs 512-514, which the Seventh Circuit granted, ECF 516;
- drafted and served extensive fact discovery on the various Defendants, then reviewed and analyzed tens of thousands of documents that Defendants produced in response, Declaration of Michelle C. Yau ("Yau Decl.") ¶ 20;
- took and defended ***fifteen*** depositions, *id.*; and
- worked with a valuation expert to estimate potential damages, *id.*

To achieve this class-wide settlement, Class Counsel also engaged in protracted settlement negotiations that lasted several years. *Id.* The Parties mediated formally on no less than ***three occasions*** and were unable to settle the case during those mediations. *Id.* In 2021, the Parties engaged in the Seventh Circuit's mandatory mediation program. ECF 539-1 ¶ 26. In 2022, JAMS mediator Robert A. Meyer facilitated an in-person mediation between the Parties. *Id.* ¶ 27. In 2023, retired Judge Michael J. Reagan facilitated another in-person mediation between the Parties. *Id.* ¶ 28. After the mediation, Judge Reagan facilitated more than two months of further negotiations to reach resolution during these mediations, but those negotiations

concluded without success in November 2023. *Id.* After the Seventh Circuit granted Plaintiffs' Petition for Permission to Appeal Under Rule 23(f), the Parties re-engaged in settlement discussions and reached this Settlement. *Id.* ¶ 29.

As of December 16, 2024, Class Counsel from Cohen Milstein Sellers & Toll and their paralegals had collectively worked 7137.30 hours, for a total lodestar of $4,492,562.50 when multiplied by their standard hourly rate. Yau Decl. ¶¶ 21, 24. Class Counsel reviewed this time and excluded hours based on their billing judgment. *Id.* ¶ 24. Class Counsel continued to incur fees between December 16 and the date of this filing. In addition, as of December 31, 2024, co-counsel from Stris & Maher had collectively worked 2700.20 hours on this case, for a total lodestar of $2,346,727.50. Declaration of Peter K. Stris ("Stris Decl.") ¶¶ 4-5. The representation of Plaintiffs in this case was undertaken entirely on a contingent-fee basis. Yau Decl. ¶¶ 17, 32. Class Counsel and their co-counsel have received no payment for their work or reimbursement of their expenses to date. *Id.*; Stris Decl. ¶ 12.

B. Remaining Work To Be Performed.

Going forward, numerous additional time and effort is required to conclude this litigation, including the following: 1) drafting a motion and memorandum in support of final approval of the Settlement; 2) responding to inquiries and any objections from class members; 3) preparing for, travel to, and presenting at the final Fairness Hearing; and 4) supervising the distribution of payments to Class Members. Yau Decl. ¶ 35.

C. Out-of-Pocket Expenses and Anticipated Settlement Administration Expenses.

Here, Cohen Milstein Sellers & Toll has incurred $179,794.61 in out-of-pocket litigation expenses. *Id.* ¶ 31. Their co-counsel from Stris & Maher have incurred $4,437.98 in out-of-pocket litigation expenses. Stris Decl. ¶ 10. Such expenses included, *inter alia*, court filing fees,

postage, online legal research, vendor expenses for electronic discovery storage and review, mediation expenses, expert witness fees, transcript and stenography expenses for depositions, and travel expenses in connection with depositions, mediation, and court hearings. *Id.*; Yau Decl. ¶ 31.

II. THE NAMED PLAINTIFFS ALSO EXPENDED CONSIDERABLE TIME AND EFFORT ON THIS CASE FOR THE BENEFIT OF THE CLASS.

Named Plaintiffs Tom Hensiek, Jason Gill, and Lillian Wrobel have also worked tirelessly to advance the interests of the Class. Specifically, the Plaintiffs: (1) reviewed the allegations in the complaints bearing their names; (2) communicated with Class Counsel and provided documents and information to them; (3) provided information in response to Defendants' Interrogatories; (4) produced documents in response to Defendants' document requests; (5) testified under oath during their depositions and prepared in advance of their depositions with Class Counsel; (6) had regular contact with Class Counsel throughout all three mediations; and (7) discussed the proposed Settlement with counsel and reviewed the terms of the Settlement Agreement. Declaration of Tom Hensiek ("Hensiek Decl.") ¶¶ 2-3; Declaration of Jason Gill ("Gill Decl.") ¶¶ 2-3; Declaration of Lillian Wrobel ("Wrobel Decl.") ¶¶ 2-3; Yau Decl. ¶ 38.

III. THE SETTLEMENT AGREEMENT CONTEMPLATES THE REQUESTED FEES AND EXPENSES.

Plaintiffs incorporate by reference the Factual and Procedural Background and the Summary of the Proposed Settlement Terms from their Motion for Preliminary Approval of Class Action Settlement and the Motion's accompanying Declaration. ECFs 539, 539-1. Relevant to this motion, the Settlement Agreement provides that Class Counsel may move for an award of attorneys' fees, reimbursement of litigation costs and expenses, and service awards for the Named Plaintiffs. ECF 539-2, at § 8.1. The Settlement Agreement also provides for payment of reasonable settlement administration expenses and taxes from the Settlement Fund. *Id.* § 7.1.

The Settlement Agreement provides that the Settlement Fund will pay up to $20,000 for the cost of the Independent Fiduciary, with Defendants paying anything in excess of $20,000. *Id.* The value to the Class from the Settlement is not contingent on the award of any attorneys' fees and expense reimbursement, settlement administration expenses, or service awards. The Class Notice explained that the Named Plaintiffs and Class Counsel would seek attorneys' fees and expense reimbursement, settlement administration expenses, and service awards consistent with the amounts in this motion and informed Class Members of their right to object to any of these requested amounts. *See* ECF 539-3; *Notice of Proposed Class Action Settlement in the Casino Quen ESOP Litigation*, Casino Queen ESOP Settlement, Dec. 27, 2024, https://cqesopsettlement.com/wp-content/uploads/2024/12/Hensiek_Notice.pdf.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEE IS REASONABLE AND BELOW MARKET RATES FOR CONTINGENT CLASS REPRESENTATION.

Under the common fund doctrine, class counsel are entitled to reasonable attorneys' fees from the funds they recover for a class through a settlement. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In the Seventh Circuit, "attorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services." *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 957 (7th Cir. 2013).

When evaluating the reasonableness of a requested fee, the Seventh Circuit requires district courts to consider whether the fee is within the range of fees that would have been agreed to at the outset of the litigation, considering the risk of nonpayment and the market rate. *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 832-33 (7th Cir. 2018); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid I*"); *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007). Courts must "do their best to recreate the market by considering

factors such as actual fee contracts that were privately negotiated for similar litigation[and] information from other cases." *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (citation omitted).

To determine a reasonable fee in a class action settlement, courts in this Circuit favor the percentage-of-the-fund-method, rather than lodestar method, because the class action market commands contingency fee agreements, under which class counsel accepts a substantial risk of nonpayment. *See George v. Kraft Foods Glob., Inc.*, 2012 WL 13089487, at *2 (N.D. Ill. June 26, 2012) (citing *Gaskill v. Gordon*, 160 F.3d 361, 362-63 (7th Cir. 1998)) (applying percentage of the fund method in awarding attorneys' fees in ERISA class action settlement); *see also In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (noting that market rate in consumer class actions is a fee based on a percentage of the recovery); *Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *2 (S.D. Ill. Nov. 22, 2010) (same).

However, regardless of which method is applied here—the percentage of the fund or the lodestar method—the requested fee is reasonable.

A. The Requested Fee Is the Typical 33% Fee Approved in Similar Class Action Settlements.

In ERISA cases similar to this one, Seventh Circuit courts routinely award fees that are one-third of the common fund achieved by class counsel. *See, e.g.*, *Godfrey v. GreatBanc Tr. Co.*, ECF 324, at 4 (N.D. Ill. Oct. 4, 2022) (awarding one-third of $16.5 million ERISA class action settlement as attorneys' fees); *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *1, *3 (S.D. Ind. Sept. 4, 2019) (awarding one-third of $23 million common fund as attorneys' fees and listing numerous ERISA cases awarding one-third of the common fund in fees); *Spano v. Boeing Co.*, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016) (finding a one-third fee award to be consistent with ERISA class action settlements); *Abbott v. Lockheed Martin*

Corp., 2015 WL 4398475, at *1, *4 (S.D. Ill. July 17, 2015) (awarding one-third of $62 million ERISA class action settlement); *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *1-3 (S.D. Ill. Jan. 31, 2014) (awarding $10 million in fees out of $30 million gross settlement fund in ERISA class action and explaining: "[a] one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law [ERISA]." (citation omitted)); *George*, 2012 WL 13089487, at *4 (awarding one-third of $9.5 million ERISA class action settlement). In fact, one-third of the common fund may be "on the low end of the market contingency rate" for complex, risky class action litigation. *Young v. Cnty. of Cook*, 2017 WL 4164238, at *5 (N.D. Ill. Sept. 20, 2017).

In light of the overwhelming precedent awarding attorneys' fees equal to one-third of the amounts recovered in ERISA class action settlements, this method weighs heavily in favor of approving the requested attorneys' fees.[2]

B. Several Market Factors Support the Requested Fee.

The market price for legal fees "depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case." *Sutton*, 504 F.3d at 693 (quoting *Synthroid I*, 264 F.3d at 721). Further, the actual agreement that each Named Plaintiff entered

[2] The requested award is reasonable even if one calculates the percentage of the fund after the deduction of expenses. When calculated as a percentage of the Settlement value net of expenses, the requested fee represents less than 35% of the Settlement value—well within the range of reason. *See Gaskill*, 160 F.3d 361 (approving a 38 percent fee award on a $20,000,000 settlement); *Garcia v. J.C. Penney Corp., Inc.*, 2017 WL 3449077, at *2 (N.D. Ill. Aug. 9, 2017) (awarding 35% in a wage & hour class action); *LaPlant v. Nw. Mut. Life Ins. Co.*, 2015 WL 13820474, at *4 (E.D. Wis. Oct. 5, 2015) (awarding 35% fee in state-law insurance class action); *Chesemore v. All. Holdings, Inc.*, 2014 WL 4415919, at *7 (W.D. Wis. Sept. 5, 2014), *aff'd sub nom. Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016) (finding an award representing "35% of the total settlement" is reasonable in an ERISA class action settlement).

into with Class Counsel is relevant to evaluating the market price for contingent representation. *See Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *8 (S.D. Ill. Dec. 16, 2018) (citing *Synthroid I*, 264 F.3d at 719).

1. The Risk of Nonpayment.

First, the risk of nonpayment to Class Counsel supports approval. "Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman*, 739 F.3d at 958; *see also Sutton*, 504 F.3d at 694 (finding abuse of discretion where court refused to account "for the risk of loss" and therefore "the possibility exists that Counsel . . . was undercompensated"). Class Counsel undertook this case on a purely contingent-fee basis; had Plaintiffs lost the case, Class Counsel would have received neither fees nor reimbursement of their expenses. *See* Yau Decl. ¶¶ 17, 32. While Class Counsel was confident in Plaintiffs' claims, the outcome of the litigation was uncertain, and Plaintiffs faced considerable risks. ERISA litigation entails significant risks, and it may span years (sometimes decades) and often ends in no recovery after trial. In particular, here, there was substantial time-bar risk because the challenged Transactions occurred more than six years before the filing of the case. Because the entire Class's fiduciary breach claims were arguably time-barred, Plaintiffs would have had to prove that Defendants took acts to conceal their violations of ERISA in order to obtain a recovery. *See* 29 U.S.C. § 1113.

Despite this significant risk of nonpayment, Class Counsel and their co-counsel together devoted $184,232.59 in litigation expenses and 9837.50 hours to this case, which equates to more than $6.8 million in lodestar when multiplied by their reasonable hourly rate. *See* Yau Decl. ¶¶ 24-25, 31; Stris Decl. ¶¶ 4-5, 10. The substantial risk that Class Counsel's work could have gone uncompensated (and their expenses unreimbursed) underscores that a one-third

common fund award, representing less than 35% of counsel's lodestar, is not only reasonable, but also is a bargain for the Settlement Class.

2. The Quality of Performance and Work Performed.

"Many courts have recognized the complexity of ERISA breach of fiduciary duty company stock claims." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 138 (S.D.N.Y. 2010); *see also Florin v. Nationsbank of Ga., N.A.*, 60 F.3d 1245, 1248 (7th Cir. 1995) ("Very few areas of the law are as unsettled and complex as ESOP valuation." (citations omitted)). Class Counsel here navigated unsettled law, secured important wins, and negotiated a Settlement that provides substantial value for the Class.

For example, Class Counsel defeated a motion to compel arbitration at a time when the law regarding the validity of arbitration motions that limited plan-wide ERISA remedies was unsettled. ECF 84. This Court agreed with Class Counsel that the arbitration provision Defendants sought to enforce was invalid. *Id.* Defendants then filed an interlocutory appeal in their continued attempt to force Plaintiffs to individualized arbitration. ECFs 85-87. That appeal was held in abeyance after Plaintiffs successfully opposed Defendants' attempt to consolidate the appeal with another appeal that dealt with a similar arbitration clause (and where Class Counsel also represented the class). After the Seventh Circuit ruled in plaintiffs' favor in that case, *Smith*, 13 F.4th 613, Defendants voluntarily dismissed their appeal in this case.

After resolution of the appeal, the case returned to the district court, ECF 109, and the Court ruled in Plaintiffs' favor again on Defendants' first motion to dismiss, ECF 48. On April 14, 2022, Plaintiffs filed the FAC, which, among other things, named additional Defendants to the action. ECF 144. On May 19, 2022, the original Defendants filed answers to the FAC, some of which included crossclaims, counterclaims, and third-party complaints. ECFs 153-154, 157. Plaintiffs filed an answer to the crossclaims on June 10, 2022. ECF 193. Charles Bidwill, III and

Timothy J. Rand filed two Motions to Dismiss the FAC, ECFs 155, 402, and the Court denied both motions, ECFs 426, 510. The newly named Defendants filed seven Motions to Dismiss the FAC between June and October 2022, ECFs 231, 234, 252, 267, 319, 327, 362, and the Court denied all of them, ECF 427. James G. Koman also filed a Motion for Judgment on the Pleadings, ECF 159, which the Court also denied, ECF 426. On December 16, 2022, Charles Bidwill, III and Timothy J. Rand moved to certify a class of counterclaim defendants, and Plaintiffs moved for class certification, ECFs 389, 391. The Court denied both Motions on February 26, 2024. ECF 510. After the Court denied Plaintiffs' motion for class certification, Plaintiffs petitioned for permission to appeal the denial to the Seventh Circuit under Federal Rule of Civil Procedure 23(f) on March 11, 2024, ECFs 512-514, which the Seventh Circuit granted on April 8, 2024. Class Counsel's success in these motions and appeals demonstrates that this Settlement is the direct result of Class Counsel's skill as well as many years' worth of Class Counsel's time and effort.

In addition to voluminous motion practice, Class Counsel completed extensive fact discovery, reviewed and analyzed tens of thousands of documents, took and defended fifteen depositions, and worked with a valuation expert to estimate potential damages. ECF 539 at 4-5; Yau Decl. ¶ 20.

To achieve this class-wide settlement, Class Counsel engaged in protracted settlement negotiations that lasted several years. The Parties have mediated formally on no less than ***three occasions*** and were unable to settle the case during those mediations. *See* Yau Decl. ¶ 20; ECF 539-1 ¶¶ 25-28. Finally, after the Seventh Circuit granted Plaintiffs' Petition for Permission to Appeal Under Rule 23(f), the Parties re-engaged in settlement discussions and reached this Settlement. *Id.* ¶ 29.

Class Counsel in this matter—Cohen Milstein Sellers & Toll PLLC ("CMST")—are national leaders in ERISA litigation. *See generally* Yau Decl. CMST is a national leader in class action litigation generally and has been named by *Law360* as one of the ten "Most Feared Plaintiffs Firms." *Id.* ¶ 5. For over 20 years, CMST has had a dedicated group of ERISA class action specialists. *Id.* ¶ 6. *Law360* also named CMST's ERISA practice "Benefits Group of the Year" in 2019, 2021, and 2022. *Id.* Michelle Yau chairs the ERISA practice group and was named an MVP in the area of Employee Benefits by *Law360* in 2024 and 2021. *Id.* Ms. Yau began her career as an Honors Attorney at the U.S. Department of Labor and has specialized in ERISA fiduciary breach cases involving complex financial transactions or investments for almost the last two decades. *Id.* ¶ 4. Ms. Yau also worked as a financial analyst on Wall Street prior to her legal career, where she performed valuations of private and public companies using similar methodologies at issue in this case. *Id*. Class Counsel's co-counsel from Stris & Maher are also well-respected ERISA counsel of the highest caliber. *See* ECF 391-16. In sum, the Class enjoyed representation of the highest quality, which further supports the requested attorneys' fees.

3. The Stakes of the Case.

This important case sought to remedy millions of dollars of losses to the retirement accounts of the Class Members. However, given the risks and expenses in ERISA litigation, it is highly unlikely that any individual Class Member would bring this case and pay an attorney on an hourly basis. Yau Decl. ¶ 16. This case faced unique obstacles, given that the suit was filed more than six years after the initial 2012 transaction, making Plaintiffs' fiduciary breach claims arguably time-barred. *See* ECF 539 at 17-19. Therefore, Class Counsel's willingness to litigate this case on a contingency fee basis was critical to the financial well-being of the Class Members.

4. The Contract Between Plaintiffs and Class Counsel.

Class Counsel's requested fee is consistent with representation agreements commonly entered into within this Circuit and District, including between Plaintiffs and Class Counsel here. Specifically, the customary contingency agreement in this Circuit is 33 1/3% to 40% of the total recovery. *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201 (N.D. Ill. 2018); *see also Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (observing that "40% is the customary fee in tort litigation" and noting, with approval, contracts providing for one-third contingent fee if litigation settled before trial); *Retsky Fam. Ltd. P'ship v. Price Waterhouse, LLP*, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (recognizing that customary contingent fee is "between 33 1/3% and 40%" and awarding counsel one-third of the common fund (citation omitted)).

Here, each Plaintiff entered into a contingency retainer agreement with Class Counsel for a fee of up to one-third (33 1/3%) of any recovery, plus expenses. Yau Decl. ¶ 17. Based on a review of "actual fee contracts that were privately negotiated for similar litigation[and] information from other cases," Class Counsel's request for a one-third fee award is standard and reasonable. *Taubenfeld*, 415 F.3d at 599 (citation omitted).

C. The Requested Fee Is Reasonable Under a Lodestar Crosscheck.

While not required, a lodestar crosscheck further underscores the reasonableness of the requested attorneys' fees. Under the lodestar approach, reasonable hourly rates are multiplied by the hours reasonably expended by the attorneys, which may then be multiplied by a risk multiplier that is determined at the district court's discretion. *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998). The Seventh Circuit has held that the hourly rates to be applied in calculating the lodestar are those normally charged for similar work by attorneys of comparable skill and experience in the community in which the attorney practices. *See Synthroid I*, 264 F.3d at 718-19. In ERISA class actions, federal courts recognize that reasonable hourly rates are based

on national, rather than local, rates. *See, e.g.*, *Beesley*, 2014 WL 375432, at *3; *see also Frommert v. Conkright*, 223 F. Supp. 3d 140, 151 (W.D.N.Y. 2016), *amended on other grounds*, 2017 WL 3867795 (W.D.N.Y. May 4, 2017).

As of December 16, 2024, Class Counsel and their paralegals collectively worked 7137.30 hours, for a total lodestar of $4,492,562.50 when multiplied by Class Counsel's standard hourly rates. Yau Decl. ¶¶ 21, 24. In light of Class Counsel's skill and experience, numerous federal courts have approved Class Counsel's hourly rates. *See, e.g.*, *Krohnengold v. New York Life Ins. Co.*, No. 1:21-cv-01778-JMF, ECFs 189, 202 (S.D.N.Y. June 5, 2024 & July 18, 2024) (approving $6.3 million fee based on CMST's hourly rates); *Smith v. GreatBanc Tr. Co.*, No. 1:20-cv-02350-FUV, ECF 163 (N.D. Ill. Aug. 23, 2023) (approving CMST's hourly rates as reasonable); *Ahrendsen v. Prudent Fiduciary Servs., LLC*, 2023 WL 4139151, at *7 (E.D. Pa. June 22, 2023) (same); *Becker v. Wells Fargo & Co.*, No. 0:20-cv-02016-KMM-BRT, ECF 285 (D. Minn. Sept. 1, 2022) (same); *Baird v. BlackRock Institutional Tr. Co., N.A.*, 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021) (same). Further, courts within the Seventh Circuit have approved awards of attorneys' fees where the underlying lodestar contained similar hourly rates for ERISA class counsel. *See, e.g.*, *Godfrey*, No. 1:18-cv-07918, ECFs 319-1 ¶ 25, 324 (N.D. Ill. Aug. 19, 2022 & Oct. 4, 2022) (approving attorneys' fees where class counsel's hourly rates were between $370 to $975 for attorneys and up to $275 for paralegals); *Spano*, 2016 WL 3791123, at *3 (approving hourly rates between $460 and $998 for attorneys and up to $309 for paralegals).

Meanwhile, Class Counsel's co-counsel from Stris & Maher LLP expended 2700.20 hours (worth $2,346,727.50 when multiplied by their standard hourly rates) to help litigate this

case and achieve the instant Settlement. [3] Stris Decl. ¶¶ 4-5. Courts have also historically approved Stris & Maher's hourly rates as reasonable. *See, e.g.*, *Tom v. Com Dev USA, LLC*, No. 2:16-cv-01363, ECF 166 (C.D. Cal. Dec. 4, 2017); *Dennard v. Transamerica Corp.*, No. 1:15-cv-00030, ECF 121 (N.D. Iowa Oct. 28, 2016).

Plaintiffs' Counsel's reported hourly rates used to calculate their lodestar amounts reflect their customary hourly rates and are consistent with the rates charged to each firm's hourly clients. Yau Decl. ¶ 26; Stris Decl. ¶ 5.

Thus, together, Class Counsel from Cohen Milstein and their co-counsel from Stris & Maher expended $184,232.59 in litigation expenses and more than $6.8 million in lodestar—almost ***three times*** the requested fee—on this case, and Class Counsel is requesting ***less than 35% of Plaintiffs' Counsel's total lodestar***—a significant negative adjustment. In light of the complexity of this case, the risk of total non-payment, and the excellent result obtained for the Class Members, the requested attorneys' fees—which are less than the lodestar invested by Class Counsel—are undoubtedly fair and reasonable.

II. PLAINTIFFS' COUNSEL'S REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE REIMBURSED FROM THE SETTLEMENT FUND.

In addition to the requested attorneys' fees, counsel who create a common fund are entitled to the reimbursement of out-of-pocket litigation expenses. *Beesley*, 2014 WL 375432, at *3 (citing Fed. R. Civ. P. 23); 29 U.S.C. § 1132(g)(1) (providing for recovery of the "costs of action"). The Seventh Circuit has held that litigation expenses should be awarded based on the

[3] Co-counsel from Stris & Maher will be reimbursed for their work on this case out of the attorneys' fees awarded to Class Counsel. Accordingly, it is appropriate to consider their lodestar as well.

types of "expenses private clients in large class actions (auctions and otherwise) pay." *Synthroid I*, 264 F.3d at 722.

Here, Class Counsel and their co-counsel Stris & Maher have together incurred $184,232.59 in out-of-pocket litigation expenses, which were documented in the firms' books and records. Yau Decl. ¶ 31; Stris Decl. ¶ 10. Such expenses included, *inter alia*, court filing fees, postage, online legal research, vendor expenses for electronic discovery storage and review, mediation expenses, expert witness fees, transcript and stenography expenses for depositions, and travel expenses in connection with depositions, mediation, and court hearings. Yau Decl. ¶ 31; Stris Decl. ¶ 10. These expenses were necessary for the successful prosecution of the case and are of the type routinely billed by attorneys to paying clients. Yau Decl. ¶ 34; Stris Decl. ¶¶ 10-11; *see also Koszyk v. Country Fin.*, 2016 WL 5109196, at *5 (N.D. Ill. Sept. 16, 2016) (approving out-of-pocket expense reimbursement "for case-related travel, electronic research, court fees, court reporters, postage and courier fees, working meals, photocopies, telephone calls, travel, and plaintiffs' portion of the mediator's fees"); *Beesley*, 2014 WL 375432, at *3 (reasoning that reimbursement of litigation costs and expenses is "well established" in common fund settlements, which may include expert witness costs, computerized research, court reports, travel expenses, copy and facsimile expenses, and mediation). Accordingly, Class Counsel request that the Court approve reimbursement in the amount of $184,232.59 in reasonable litigation expenses.

III. THE REQUESTED SETTLEMENT ADMINISTRATION EXPENSES ARE REASONABLE.

In addition to Class Counsel's out-of-pocket litigation expenses, Plaintiffs seek approval of the settlement administration expenses necessary for the effectuation of this Settlement. In order to be administered and effectuated, the Settlement requires time, resources, and expertise

from several non-parties. As such, the Settlement Agreement provides for disbursement from the Settlement Fund to cover (i) the amount required for settlement administration expenses, including the Class Notice fees and expenses (ECF 539-2, at § 7.1); (ii) all taxes and tax-related expenses incurred in connection with the taxation of the income of the Settlement Fund (*id.* § 6.3); and (iii) up to $20,000 of the cost of an Independent Fiduciary (*id.* § 6.9).

The total requested settlement administration expenses of $36,572 ($18,572 for the settlement administrator and $18,000 for the independent fiduciary) are reasonable and essential to carry out the settlement. The cost of $36,572 reflects just 0.52% of the total Settlement value, which is substantially below the settlement administration costs approved by other courts in similar ERISA class settlements. *See Reetz v. Lowe's Cos., Inc.*, No. 5:18-cv-00075-KDB-DCK, ECF 263, at 2 (W.D.N.C. Oct. 12, 2021) (approving settlement administration costs of $203,045, reflecting 1.6% of the gross settlement value); *Becker*, No. 0:20-cv-02016-KMM-BRT, ECF 285, at 2 (awarding $400,000 to settlement administrator and $15,000 to independent fiduciary, representing 1.28% of the gross settlement value); *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *14 (E.D. Pa. Feb. 28, 2020) (approving settlement administration expenses of $60,170.97, reflecting 0.8% of the gross settlement value).

The Parties' Settlement Administrator, Analytics Consulting, LLC ("Analytics"), has performed and will continue to perform settlement administration services, including (1) reviewing the Class Member information provided by Defendants; (2) preparing and mailing the Settlement Notices; (3) searching for valid addresses for any Settlement Class Members whose Notices are returned as undeliverable; (4) establishing a telephone support line and email support for Settlement Class Members; (5) creating and maintaining the Settlement website; and (6) managing the project and communicating with Class Counsel regarding the status of settlement

administration. Yau Decl. ¶ 36. Class Counsel selected Analytics after a competitive bidding process involving two additional settlement administration companies. *Id.*

Fiduciary Counselors Inc. ("FCI") was selected by Defendants as the Independent Fiduciary to review the Settlement. *Id.* ¶ 37. The cost for FCI's services was capped under the Settlement Agreement at $20,000 (with any excess cost paid by Defendants), and the final fee is anticipated to be $18,000, which is in line with industry standard. *Id.*

Therefore, this Court should approve the requested settlement administration expenses.

IV. THE REQUESTED SERVICE AWARDS OF $25,000 EACH FOR THE NAMED PLAINTIFFS ARE REASONABLE.

Finally, Class Counsel requests that the Court grant a service award of $25,000 to each Named Plaintiff for their efforts on behalf of the Class. Such awards are routinely granted to compensate named plaintiffs for their time spent prosecuting the claims, as well as to compensate them for the risks they incurred in stepping forward to vindicate the rights of others. *See Cook*, 142 F.3d at 1016 (recognizing in an ERISA class action that "because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit"); *Synthroid I*, 264 F.3d at 722 ("Incentive awards are justified when necessary to induce individuals to become named representatives."); *see also Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005) ("In employment litigation, the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers."). In evaluating service awards, the district court evaluates "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time

and effort the plaintiff expended in pursuing the litigation." *Camp Drug Store*, 897 F.3d at 834 (citation omitted).

Here, the Named Plaintiffs spent a significant amount of time and effort pursuing the litigation on behalf of the Settlement Class. The Named Plaintiffs communicated with Class Counsel throughout the litigation, including responding to questions, reviewing the pleadings, preparing for depositions, preparing declarations, and assessing the settlement. Yau Decl. ¶ 38; Hensiek Decl. ¶ 2; Gill Decl. ¶ 2; Wrobel Decl. ¶ 2. The Named Plaintiffs also sat for their depositions and responded to written discovery requests, including interrogatories and requests for the production of documents. Yau Decl. ¶ 38; Hensiek Decl. ¶ 3; Gill Decl. ¶ 3; Wrobel Decl. ¶ 3. Moreover, all three Named Plaintiffs understood the responsibilities as class representatives and were prepared to serve the best interests of the Settlement Class through trial, if necessary. Yau Decl. ¶ 38; Hensiek Decl. ¶¶ 4-5, Ex. A; Gill Decl. ¶¶ 4-5, Ex. A; Wrobel Decl. ¶¶ 4-5, Ex. A. In bringing this case, the Named Plaintiffs risked negative publicity associated with the litigation and risked adverse reactions from future potential employers. This active and continuous participation for the benefit of the Class supports the requested service awards.

The amount requested—$25,000 each—is comparable to other awards approved by courts within this Circuit in ERISA and other class action cases. *See, e.g.*, *Nistra v. Reliance Tr. Co.*, No. 1:16-cv-04773, ECF 291, at ¶ 12(N.D. Ill. June 19, 2020) (awarding $25,000 to named plaintiff in ERISA class action settlement); *Hale*, 2018 WL 6606079, at *15-16 (awarding $25,000 for each of three named plaintiffs); *Beesley*, 2014 WL 375432, at *4 (noting in ERISA case that "[a]wards of $15,000 to $25,000 for a Named Plaintiff award" are "typically awarded in comparable cases"); *Cook*, 142 F.3d at 1016 (upholding award of $25,000 to class representative based on plaintiff's time expended and results obtained for the class); *Heekin v.*

Anthem, Inc., 2012 WL 5878032, at *1 (S.D. Ind. Nov. 20, 2012) (approving $25,000 service award to lead class plaintiff over objection).

Because the requested service awards are reasonable in light of the Named Plaintiffs' contributions to the Class, the service awards should be approved.

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion and approve the requested amounts.

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Respectfully submitted,

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