UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VALESKA SCHULTZ, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:16-cv-1346-JAR
	)	
EDWARD D. JONES & CO., L.P., *et al.*,	)	
	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CASE CONTRIBUTION AWARDS

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Plaintiffs Valeska Schultz, Melanie Waugh, and Rosalind Staley (collectively, "Named Plaintiffs" or "Plaintiffs"), respectfully submit this Memorandum of Law in Support of Their Motion for an Award of Attorneys' Fees, Reimbursement of Expenses and Case Contribution Awards.

I. INTRODUCTION

After more than two and a half years of litigation, during which the legal landscape involving ERISA cases continued to evolve, Plaintiffs have presented for the Court's review and approval a proposed settlement that provides valuable benefits to the members the Class.[1] The Settlement creates a Settlement Fund in the amount of $3.175 million that will benefit Class members and also provides non-monetary relief in the form of the ongoing selection of the Plan's investments and recordkeeping costs. The Settlement Fund represents more than half of the Class's likely damages and avoids the delay and cost of continued litigation. Simply put, the Settlement is an excellent result for the Class.

Prosecution of this litigation on behalf of the Class has required considerable time by both Class Counsel and the Named Plaintiffs, as well as out-of-pocket litigation expenses. Under these circumstances, Class Counsel's request for an award of attorneys' fees of one-third of the Settlement Fund, $1,058,333, is reasonable. Similarly, Class Counsel should be reimbursed the $19,018.50 in litigation expenses they incurred while prosecuting this case on behalf of Plaintiffs and the Class. Finally, this Court should award each of the Class Representatives a case contribution award of $10,000 for their service to the Class. Without their efforts and willingness to pursue this case, the Settlement would not have been possible.

[1] All capitalized, undefined terms shall have the meaning ascribed to them in the Settlement Agreement and Release ("Settlement Agreement" or "Settlement").

II. FACTUAL AND PROCEDURAL BACKGROUND

The factual and procedural background of this litigation is described in detail in the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Settlement, Certification of Class and Approval of Class Notice (the "FA Brief") and the supporting declaration of Gregory Y. Porter. In the interests of brevity, Plaintiffs incorporate that discuss by reference here. Additional facts relevant to the Court's consideration for assessing Plaintiffs' requests for fees, expenses and case contribution awards are in the relevant sections of this memorandum.

III. THE COURT SHOULD APPROVE PLAINTIFF'S FEE REQUEST

Federal Rule 23(h) provides that courts in certified class actions may "award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The "amount of any [attorney fee] award rests within the sound discretion of the [district] court." *Wescott v. Agri-Prods., Inc. v. Sterling State Bank, Inc.*, 682 F.3d 1091, 1094 (8th Cir. 2012). Courts utilize two main approaches to analyzing a request for attorneys' fees: the "percentage of the fund" method and the "lodestar" method. *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996). The "percentage of the fund" method "permits an award of fees that is equal to some fraction of the common fund that the attorneys were successful in gathering during the course of the litigation." The "lodestar" method assesses the reasonableness of a fee award by totaling the hours that the attorneys worked and multiplying them by a typical hourly fee. *See, e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999). As set forth below, while courts in the Eighth Circuit prefer the "percentage of the fund" method when evaluating fee awards in "common fund" cases such as this one, a cross-check of the requested fee employing the lodestar method also demonstrates that Plaintiffs' requested fee award is reasonable.

A. The Requested Fee is Reasonable Under the "Percentage of the Fund" Method.

The Settlement provides that Class Counsel's fees will be paid from the Settlement Fund that the Settlement created, which is often called a "common fund." Settlement at § 7.2(a). The Supreme Court has "recognized consistently that a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In awarding attorneys' fees from the "common fund," courts look to what "percentage of the fund" the fees will represent. *Petrovic*, 200 F.3d at 1157; *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) ("We have approved the percentage-of-recovery methodology to evaluate attorneys' fees in common fund cases such as this."). Indeed, "where attorney fees and class members benefits are distributed from one fund, a percentage-of-the-benefit method may be preferable to the lodestar method." *Barfield v. Sho-Me Elec. Co-op.*, No. 2:11-CV-4321 (NKL), 2015 WL 3460346, at * 3 (W.D. Mo. June 1, 2015) quoting *West v. PSS World Med., Inc.*, No. 4:13-CV-574 (CDP), 2014 WL 1648741, * 3 (E.D. Mo. Apr. 24, 2014).

The Eighth Circuit has found that several factors are relevant when determining the proper percentage to award when employing the "percentage of the fund" method:

> (1) the benefit conferred on the class, (2) the risk to which plaintiffs' counsel was exposed, (3) the difficulty and novelty of the legal and factual issues of the case, (4) the skill of the lawyers, both plaintiffs' and defendants', (5) the time and labor involved, (6) the reaction of the class, and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases.

Caligiuri v. Symantec Corp., 855 F.3d 860, 866 (8th Cir. 2017). As described below, these factors support Class Counsel's requested fee of one-third of the Settlement Fund.

1. The Benefit Conferred on the Class.

The Settlement's primary benefit to the Class is the creation of the Settlement Fund, consisting of $3,175,000. Settlement at § 3.1. The Settlement Fund, which represents approximately half of the potential damages, will be used to compensate Class members for the underperformance of allegedly imprudent "Preferred Partner" mutual funds included in the Plan. *Id*. at § 3.2. Accordingly, the Settlement Fund provides a "substantial and immediate benefit to the class." *Caliguiri*, 855 F.3d at 866.

In addition, the Settlement provides that Defendants will retain an independent consultant to review the Plan's investment strategy and fund selection and issue a request for proposal (RFP) for Plan recordkeeping services. Settlement at § 6.1(b). While Plaintiffs have not estimated the value of this non-monetary relief, it will further benefit the Class.

2. The Risk to which Plaintiffs' Counsel was Exposed.

ERISA class actions alleging excessive fees or biased investment selection must survive a myriad of risks in order to provide any relief to the class. Since this case was filed in 2016, one brought against Wells Fargo for the use of proprietary funds in its 401(k) plan was dismissed: *Meiners v. Wells Fargo & Co.*, No. 16-3981, 2017 WL 2303968 (D. Minn. May 25, 2017). That dismissal was affirmed by the Eighth Circuit. *Meiners v. Wells Fargo & Co.*, 898 F.3d 820 (8th Cir. 2018). Two other cases survived motions to dismiss and summary judgment, only to end in defense verdicts. *See Wildman v. Am. Century Servs., LLC*, No. 16-737, 2019 WL 283382 (W.D. Mo. Jan. 23, 2019); *Brotherston v. Putnam Investments*, No. 15-13825, 2017 WL 2634361 (D. Mass. June 19, 2017), affirmed with respect to fiduciary breach allegations but vacated and remanded with respect to alleged prohibit transaction by *Brotherston v. Putnam Investments, LLC*, 907 F.3d 17 (1st Cir. 2018). In *Meiners, Wildman* and *Brotherston*, the plaintiffs had demonstrated

that the plan sponsors received payments from the proprietary funds in the plan, yet the plaintiffs were not able to establish a fiduciary breach. Here, Plan assets were excluded from revenue sharing payments received by Edward Jones from its Preferred Partners, making proof of fiduciary breach more difficult.

Dismissals have also been granted in cases alleging imprudent investment selection in 401(k) plans operated by John Deere, Chevron, Neuberger Berman and others. *See Hecker v. Deere & Co*., 556 F.3d 575, 585–86 (7th Cir. 2009); *White v. Chevron Corp*., --- Fed. Appx. ---, 2018 WL 5919670 (9th Cir. 2018); *Bekker v. Neuberger Berman Group LLC*, No. 16-cv-61232018, WL 4636841 (S.D.N.Y. Sept. 27, 2018) (dismissing complaint alleging fiduciary breaches from inclusion of proprietary investment in employee 401(k) plan). In *Kanawi v. Bechtel Corp*., the plaintiffs alleged the defendants operated the 401(k) plan for the financial benefit of Bechtel's owners, yet summary judgment was granted in the defendants' favor. *Kanawi v. Bechtel Corp*., 590 F. Supp. 2d 1213 (N.D. Cal. Nov. 3, 2008).

Defendants had a series of defenses that were known to Plaintiffs from the outset of the litigation. Defendants would argue that they provided participants with numerous Plan investments offering a "range of fees" to Edward Jones employees – an argument that was successful in the dismissal of several ERISA 401(k) fee cases. *See Hecker*, 556 F.3d at 586, *Renfro v. Unisys Corp.*, 671 F.3d 314, 327 (3d Cir. 2011), and *Loomis v. Exelon Corp.*, 658 F.3d 667, 672 (7th Cir. 2011) (holding that there could be no breach of fiduciary duty when the range of fees in a retirement plan fall within a specific range).

Defendants would also argue that they had a process to review the investments offered in the Plan, that the funds were no more expensive than similar funds, and that even if liability were found, damages would be much lower than Plaintiffs argue—or negative.

3. The Difficulty and Novelty of the Legal and Factual Issues of the Case.

ERISA 401(k) fiduciary breach class action alleging inclusion of imprudent proprietary funds in a 401(k) plan "is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation," *Krueger v. Ameriprise Financial, Inc.*, No. 11-2781, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015) (approving one-third fee request and case contribution awards of $25,000 per class representative), requiring counsel for a putative class to bear substantial litigation risk for a prolonged period. While some ERISA fiduciary breach cases concerning the selection and monitoring of plan investment options have settled, others have been dismissed entirely or have resulted in protracted legal battles even after findings of liability. In *Tussey v. ABB, Inc*., an ERISA fiduciary breach case concerning the inclusion of allegedly imprudent investment options, a decade of litigation, four weeks of trial, and a 2012 verdict for the plaintiffs has, thus far, resulted only in two appeals and continued litigation, with no payments to the class or their counsel. *See Tussey v. ABB, Inc*., 850 F.3d 951 (8th Cir. 2017). That case, originally filed in 2006, now has a docket with 858 entries. *Kennedy v. ABB, Inc*., No. 06-4305, Doc. 858 (W.D. Mo. Feb 5, 2019).

4. The Skill of the Lawyers.

Given the numerous challenges noted above, lawyers bringing a class action case under ERISA must be knowledgeable about this complex and developing area of law, the numerous potential substantive and procedural pitfalls, be willing to risk dismissal at any stage, and be prepared to pursue many years of litigation. ERISA has been described as a "comprehensive and reticulated statute." *Nachman Corp. v. Pension Ben. Guaranty Corp.*, 446 U.S. 359, 361 (1980). Class Counsel were able to successfully litigate this case because they are experts in this developing area of law.

Plaintiffs are represented by some of the most experienced ERISA lawyers in the country. The law firms of Bailey Glasser LLP ("Bailey Glasser"), Izard, Kindall & Raabe, LLP ("IKR"), and Kessler Topaz Meltzer & Check LLP ("KTMC"), are co-lead class counsel. At each firm, the responsible attorneys have been pioneers in ERISA class action litigation. Gregory Y. Porter of Bailey Glasser has been litigating ERISA fiduciary breach lawsuits since 1998, including representing plaintiffs in similar litigation brought by participants in the Fidelity, Principal Financial, Neuberger Berman, and TIAA-CREF employee 401(k) plans. Mark Boyko, the lead associate for Bailey Glasser, has twelve years of experience litigating 401(k) fiduciary breach class actions. Robert Izard, who has over thirty years of experience in complex litigation, has led the ERISA team at IKR for over 15 years, serving as lead or co-lead counsel in many of the nation's most significant ERISA class actions, including cases against UnitedHealth Group, CIGNA, Merck, Tyco International, Time Warner, Cardinal Health, AT&T and Sprint. Mark K. Gyandoh, with fourteen years of ERISA experience, is lead attorney for KTMC, which has been called "one of the most experienced ERISA litigation firms in the country." *In re Chesapeake Energy Corp.*, 286 F.R.D. 621, 624 (W.D. Okla. 2012). Porter Decl. at ¶ 4 and Exhibits A and B; Declaration of Robert Izard ("Izard Decl.") at Exhibit A (IKR Firm Resume); Declaration of Mark K. Gyandoh ("Gyandoh Decl.") at Exhibit 1 (KTMC Firm Resume).

Class Counsel are among the most prominent, experienced and well-regarded ERISA litigators in the nation. Class Counsel were able to navigate a legal minefield, leveraging their vast experience with similar matters and particular expertise to achieve a positive and meaningful benefit to the Class. The complexity of such litigation is substantial and supports Plaintiffs' fee request.

5. Time and Labor Expended by Counsel.

Plaintiffs are represented by three nationally recognized firms as lead counsel. All have expertise in this narrow area of law. Together, counsel have expended 1,452.4 hours, and incurred $19,018.50 in expenses. Porter Decl. at ¶¶ 7, 11; Izard Decl. at ¶¶ 7, 12; and Gyandoh Decl. at ¶¶ 5, 6.

Based on Class Counsel's experience with similar cases, at least 25 additional hours are expected for future interviews with an Independent Fiduciary, communications with class members, attendance at the Final Approval Hearing, and monitoring of Defendants' compliance with the Settlement. Porter Decl. at ¶ 13.

Counsel researched the litigation pre-filing, developed relevant facts, and worked with Plaintiffs on the complaints. Counsel reviewed discovery produced by Defendants and discussed such facts with experts. *Id*. at ¶¶ 16-19. Class Counsel minimized expenses by utilizing their own ERISA expertise located in St. Louis, controlling costs by virtually eliminating travel expenses without sacrificing the national expertise they brought to benefit the Class. With nearly 1,500 hours of time spent on this litigation, Class Counsel have been both diligent and efficient in obtaining a meaningful recovery for the Class and the Plan. As explained below in discussion of a lodestar cross check, the requested fee represents a risk multiplier of less than 1.6.

6. The Reaction of the Class.

On January 17, 2019, KCC, the settlement administrator, emailed notices to 38,569 Class Members who are current plan participants and who have elected to receive plan communications by email. On the same date, KCC mailed notices to 35,552 persons identified as class members who had either left the Plan or who had not elected to receive their Plan communications by email. Christman Decl. (Ex. B to Porter Decl.) at ¶¶ 7-10. Recognizing that the objection deadline has

not yet passed, Class Counsel is only aware of one objection. Porter Decl. at ¶ 20. The objection did not address fees at all.

7. The Comparison Between the Requested Attorney Fee Percentage and Percentages Awarded in Similar Cases.

In ERISA fee and proprietary fund litigation specifically, a one-third contingency fee is the market rate. In numerous prior settlements of 401(k) fee cases, class counsel were awarded one-third of the monetary recovery to the plans. *See Bilewicz v. FMR Co.*, No. 13-10636, 2014 WL 8332137, at *6 (D. Mass. Oct. 16, 2014) (approving a one-third fee from a $12 million recovery); *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016); *Spano v. The Boeing Co.*, No. 06-743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016); *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015); *Krueger v. Ameriprise Financial*, No. 11-2781, 2015 WL 4246879, at *4 (D. Minn. July 13, 2015); *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014). These fee awards from comparable ERISA 401(k) class actions filed around the time Plaintiffs filed this Action represent a recognition by those courts that awarding one-third of the monetary recovery as attorneys' fees is appropriate in cases of this type. This Court should reach the same conclusion here.

8. Public Policy Considerations.

Protecting workers' retirement funds is in the public interest. Public policy relies on private sector enforcement of the pension laws as a necessary adjunct to Department of Labor intervention. *Braden v. Walmart Stores, Inc.*, 588 F.3d 585, 598 (8th Cir. 2009) ("Congress intended that private individuals would play an important role in enforcing ERISA's fiduciary duties") (quotation marks omitted). Counsel's fees should reflect the important public policy goal of "providing lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 51 (2d Cir. 2000). While court awarded fees must be reasonable, setting fees too low or randomly will create insufficient incentives to bringing large

class action cases. *See In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695, 2007 WL 4115808, at *3, *8 (S.D.N.Y. Nov. 7, 2007) (citing *Goldberger*, 209 F.3d at 51). Courts must scrutinize the unique circumstances of each case with "a jealous regard to the rights of those who are interested in the fund," but also provide incentives to bring these cases in the future. *Goldberger*, 209 F.3d at 53.

B. A Lodestar Crosscheck Supports Class Counsel's Requested Fee.

The "lodestar" method of assessing a request for attorneys' fees calculate the fee by totaling the hours worked and multiplying them by a typical hourly fee. *Petrovic*, 200 F.3d at 1157. In cases where attorneys' fees will be paid from a "common fund," most courts prefer to use the "percentage of the fund" method, with the lodestar method as a "cross check." *Id.* at 1157.

The hourly rate to be applied in calculating the lodestar is that which is normally charged in the community where the attorney practices. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). Current rates are used, since such rates compensate for inflation and the loss of use of funds. *Id*. The Court should also take into account "the attorneys' legal reputation, experience and status." *In re Charter Communications, Inc., Sec. Litig*., 2005 WL 4045741 (E.D. Mo. June 30, 2005).

In addition, a multiplier is used "to account for, among other things, the results achieved, the quality of representation, the complexity and magnitude of the litigation, the consequent risk of nonpayment viewed as of the time of filing the suit, and the contingent nature of the expected compensation for services rendered." *Id*. (approving a fee request with a lodestar multiplier of 5.61). Courts have frequently approved multipliers between 5x and 6x. *In re RJR Nabisco Sec. Litig*., No. 88-905, 1992 WL 210138 (S.D.N.Y. Aug. 24, 1992) (multiplier of 6x); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172 (W.D.N.Y. 2011) (5.3x multiplier); *In re Rite Aid Corp. Secs. Litig*., 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001) (concluding that, under the cross-

check approach, a lodestar multiplier in the range of 4.5 to 8.5 was "unquestionably reasonable"); *In re Beverly Hills Fire Litig.*, 639 F. Supp. 915 (E.D. Ky. 1986) (5x multiplier); *In re Boston & Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A.*, 778 F.2d 890 (1st Cir. 1985) (6x multiplier)); *New Eng. Carpenters Health Benefits Fund v. First Databank*, No. 05-11148, 2009 WL 2408560 (D. Mass. Aug. 3, 2009) (awarding a fee representing a multiplier of approximately 8.3 times the lodestar).

Here, Class Counsel have collectively worked 1452.4 hours,[2] resulting in a base lodestar of $661,895 to date. Porter Decl. at ¶ 11; Izard Decl. at ¶ 7; and Gyandoh Decl. at ¶ 5 The basis for this calculation and the reasonableness of counsel's rates are attested to by the accompanying declarations and represent the customary hourly rates of the attorneys. ERISA class action litigators in the St. Louis area have commanded, and been approved at, higher rates. *See, e.g.*, *Spano v. Boeing Co.*, No. 06-CV-743, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016) (approving lodestar rates of $998 for attorneys with 25+ years of experience, $850 for attorneys with 15–24 years of experience, $612 per hour for attorneys with 5–14 years of experience, $460 for attorneys with 2–4 years of experience, $309 for Paralegals and $190 for Legal Assistants).

While the various class counsel have differing customary rates, all are below the rates approved for ERISA litigation attorneys in this geographical location in 2016 by the court in *Spano v. Boeing*. Indeed, the court in *Spano* found Mr. Boyko's rate of $612 to be reasonable, which is greater than his $600 per hour rate used to calculate his lodestar on this matter. *Id.* at *3 n.2. Likewise, in 2014 the Eighth Circuit affirmed a district court's finding that a blended rate of

[2] Counsel employed additional attorneys, paralegals and other professionals whose time spent on this litigation they have chosen to waive and are not included as part of this fee petition.

$514.60 for a firm of ERISA class litigators is reasonable. *Tussey v. ABB, Inc.*, 746 F.3d 327, 340 (8th Cir. 2014). The blended rate that Class Counsel seeks here is only $455.73.

Moreover, Class Counsel have been efficient in litigating this case. "Had the case not been settled, considerably more time would have been necessary to complete formal discovery . . . and to prepare this case for trial with no assurance that the outcome would have been any more successful." *In re Charter Communication, Inc. Sec. Litig.*, *supra*, at *18. The lodestar multiplier of Plaintiffs' requested fee is less than 1.6. Thus, a lodestar crosscheck confirms that the requested fee is indisputably reasonable.

IV. PLAINTIFFS' COUNSEL'S EXPENSES SHOULD BE REIMBURSED

Class Counsel should also be reimbursed the $19,018.50 in litigation expenses that they advanced in prosecuting this case under Fed. R. Civ. P. 23(h). As a leading treatise states:

> An attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved. The equitable principle that all reasonable expenses incurred in the creation of a fund for the benefit of a class are reimbursable proportionately by those who accept benefits from the fund authorizes reimbursement of full reasonable litigation expenses as costs of the suit in contrast to the more narrowly defined rules of taxable costs of suit under Fed. R Civ. P. 54 (d). . . . The prevailing view is that expenses are awarded in addition to the fee percentage.

Alba Conte, 1 *Attorney Fee Awards* § 2:19 (3d ed.); *see also Sprague v. Ticonic*, 307 U.S. 161, 166-67 (1939) (recognizing a federal court's equity power to award costs from a common fund); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991) ("In accordance with the well-established common fund exception to the American Rule, . . . class counsel. . . are entitled to an award of their . . . expenses out of the fund that has been created for the class by their efforts").

Counsel in common fund cases may recover those expenses that would normally be charged to a fee-paying client. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client."'). These costs and expenses "include such things as expert

witness costs, mediation costs, computerized research, court records, travel expenses, and copy, telephone, and facsimile expenses." *Krueger*, 2015 WL 4246879 at *3, citing Fed. R. Civ. P. 23; *Boeing*, 444 U.S. at 478; and *In re BankAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061, 1066–67 (E.D. Mo. 2002).

Counsel brought this case without guarantee of reimbursement or recovery, so they had a strong incentive to keep costs to a reasonable level, and they did so. *Krueger*, 2015 WL 4246879 at * 3 (citing *In re Marsh ERISA Litig*., 265 F.R.D. 128, 150 (S.D.N.Y. 2010) (recognizing that counsel with contingent fee agreement has a "strong incentive to keep expenses at a reasonable level")). Indeed, the long history of this case, during which time Counsel were not receiving reimbursement for expenses, was a compelling motivation to contain costs. An empirical study of the costs awarded in class action litigation found that the average cost award was equal to 4% of the relief obtained for the class. *See* Theodore Eisenberg and Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: an Empirical Study*, 1 J. OF EMPIRICAL LEGAL STUDIES 27, 70 (2004). This study suggests that "requests falling within one standard deviation above or below the mean should be viewed as generally reasonable." *Id*. at 74. The total amount of costs here is equal to just 0.6 percent of the total recovery; well within the range to be considered "generally reasonable."

A description of these costs and expenses, broken down by category, is contained in the accompanying declarations of Gregory Porter, Robert Izard and Mark Gyandoh. The costs and expenses are the types of costs and expenses that are routinely reimbursed by paying clients, such as experts' fees, travel, document management and photocopying costs. *Krueger*, 2015 WL 4246879 at *3. Of the $19,018.50 that sought in expenses, by far the greatest expense was the $12,302.75 for Plaintiffs' retention of an expert. Porter Decl. at ¶ 7. In light of the length and complexity of this litigation, Counsel's request for reimbursement of costs and expenses should be approved as fair and reasonable.

V. THE CASE CONTRIBUTION AWARDS ARE REASONABLE

Plaintiffs request that Class Representatives Waugh, Schultz, and Staley be granted a Case Contribution Award in compensation for the time and effort they expended in successfully

prosecuting this case to a successful resolution. Such awards acknowledge representative plaintiffs' hard work and sacrifices in support of the class, as well as their promotion of the public interest. "Courts often grant service awards to named plaintiffs in class action suits to promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits," and courts in this circuit regularly grant service awards for $10,000 or greater. *Caligiuri*, 855 F.3d at 867.

Here, Plaintiffs seek awards of $10,000 for each class representative, amounts that are well-deserved. Each of the Class Representatives have been closely involved in this litigation since its inception. They provided documents, reviewed the Complaint and Amended Complaints, and monitored Class Counsel and the progress of the litigation, including discussions about the terms of the Settlement. Porter Decl. at ¶ 21; Gyandoh Decl. at ¶¶ 8-9.

Moreover, Plaintiffs willingly put themselves forward in litigation against their former employer regarding their personal finances. "ERISA litigation against an employee's current or former employer carries unique risks, including alienation from employers or peers." *Krueger v. Ameriprise Financial, Inc.*, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015) (issuing incentive awards of $25,000 each to five named plaintiffs alleging former employer selected 401(k) funds for disloyal reasons). In recognition of their commitment to the class and selfless service, the requested incentive award is reasonable.

The total award for the three class representatives represents less than one percent of the total Settlement Fund. Substantially larger awards have been approved as well within the ranges that are typically awarded in comparable cases. *See, e.g.*, *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 1113291, at *21 (W.D. Mo. Nov. 2, 2012) (awarding $25,000 to each class representative in ERISA 401(k) fee class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upholding award of $25,000 to class representative); *Beesley v. International Paper*, 2014 WL 375432, at *4 (awarding $25,000 to each of the three named plaintiffs); *Nolte v. Cigna Corp.*, Case No. 07-2046, Doc. 413 at 9 (C.D. Ill. Oct. 15, 2013) (same); *Will v. Gen. Dynamics Corp.*, No. 06-698, Doc. 253 at 26 (S.D. Ill, Nov. 4, 2010) (same).

VI. CONCLUSION

For these reasons, Plaintiffs request that the Court approve a fee award of $1,058,333 and a cost award of $19,018.50 to Co-lead Class Counsel, and service awards of $10,000 to each of the class representatives: Valeska Schultz, Melanie Waugh, and Rosalind Staley.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mark G. Boyko, hereby certify that on this 19th day of March, 2019, a true and correct copy of the foregoing was served upon all counsel of record by operation of this Court's CM/ECF system.

/s/ Mark G. Boyko
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