

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES ZOLLICOFFER and NORMAN GREEN,
on behalf of themselves and similarly situated
laborers,

Plaintiffs,

v.

GOLD STANDARD BAKING, INC.,
PERSONNEL STAFFING GROUP, LLC d/b/a
MOST VALUABLE PERSONNEL d/b/a MVP,

Defendants.

Case No. 13 CV 1524

Honorable Sara L. Ellis

Magistrate Judge Kim

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR FINAL
APPROVAL OF THE PARTIES' CLASS ACTION SETTLEMENT AGREEMENTS,
AUTHORIZATION TO DISTRIBUTE SETTLEMENT FUNDS, AND AWARD OF
ATTORNEYS' FEES AND COSTS**

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. BACKGROUND	4
A. Procedural Background.	4
B. Parties’ Settlements.	5
C. The Terms of the Settlement Agreement.	7
1. Monetary Terms	7
2. Notice	9
3. Class Representatives Service Award and General Release Payments	10
4. Class Member Releases	10
III. PRELIMINARY APPROVAL AND NOTICE	11
IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	14
A. Legal Standard.	14
B. Application of the Seventh Circuit’s Factors Strongly Supports Final Approval of the Settlement Agreement	15
1. Plaintiffs’ case on the merits, balanced against Defendant’s settlement offer.	15
2. The likely complexity, length, and expense of further litigation and the public interest.	16
3. The amount of opposition to the settlement and the reactions of members of the class to the settlement.	17
4. The opinion of competent counsel.	17
5. The stage of the proceedings and the amount of discovery completed.	18

V.	THE NOTICE PROVIDED TO THE CLASS SATISFIES RULE 23(e) AND DUE PROCESS	18
VI.	THE AGREED UPON ATTORNEYS' FEES ARE REASONABLE AND WITHIN THE RANGE OF POSSIBLE APPROVAL	19
VII.	THE PROPOSED PAYMENTS TO THE NAMED PLAINTIFFS ARE REASONABLE AND WITHIN THE RANGE OF POSSIBLE APPROVAL	24
	CONCLUSION	25

TABLE OF AUTHORITIES

	<u>Page</u>
CASES	
<i>Anderson v. AB Painting and Sandblasting Inc.</i> , 578 F.3d 542 (7th Cir. 2009)	22
<i>AT & T Mobility Wireless Data Servs. Sales Litig.</i> , 270 F.R.D. 330 (N.D. Ill. 2010)	15
<i>Berger v. Xerox Corp. Ret. Income Guar. Plan</i> , No. 00-584-DRH, 2004 WL 287902 (S.D. Ill. Jan. 22, 2004)	24
<i>Briggs v. PNC Fin. Servs. Grp.</i> , No. 1:15-cv-10447, 2016 WL 7018566 (N.D. Ill. Nov. 29, 2016).....	25
<i>City of Riverside v. Rivera</i> , 477 U.S. 561 (1986).....	22
<i>Cook v. Niedert</i> , 142 F.3d 1004 (7th Cir. 1998)	20, 24
<i>Eagle v. Vee Pak, Inc.</i> , No. 12-cv-9672 (N.D. Ill.)	1, 2, 8, 13
<i>Florin v. Nationsbank of Georgia, N.A.</i> , 34 F.3d 560 (7th Cir. 1994)	20
<i>Hispanics United of DuPage Cnty. v. Village of Addison, Ill.</i> , 988 F. Supp. 1130 (N.D. Ill. 1997).....	14, 17
<i>Isby v. Bayh</i> , 75 F.3d 1191 (7th Cir. 1996).....	14, 15
<i>Kaufman v. Am. Express Travel Related Servs. Co., Inc.</i> , 877 F.3d 276 (7th Cir. 2017)	15
<i>Kolinek v. Walgreen Co.</i> , 311 F.R.D. 483 (N.D. Ill. 2015).....	17, 20
<i>Lucas, et al. v. Ferrara Candy Co., et al.</i> , Case No. 13-cv-01525 (N.D. Ill.).....	2, 24
<i>Pickett v. Sheridan Health Care Ctr.</i> , 664 F.3d 632 (7th Cir. 2011)	22
<i>Silverman v. Motorola Solutions, Inc.</i> , 739 F.3d 956 (7th Cir. 2013).....	20
<i>Synfuel Techs., Inc. v. DHL Express (USA), Inc.</i> , 463 F.3d 646 (7th Cir. 2006).....	15
<i>Synthroid Marketing Litigation</i> , 264 F.3d 712 (7th Cir. 2001)	20
<i>Uhl v. Thoroughbred Tech. & Telecomm., Inc.</i> , 309 F.3d 978 (7th Cir. 2002).....	14

STATUTES

42 U.S.C. § 1981	4, 5
42 U.S.C. § 1988	20
42 U.S.C. § 2000e, <i>et seq.</i>	4

I. INTRODUCTION

After vigorous advocacy and negotiation involving extensive litigation conducted over a period of ten years, Plaintiffs James Zollicoffer and Norman Green (“Named Plaintiffs”), individually and on behalf of all others similarly situated (“the Class”), Defendant Gold Standard Baking (“GSB”), and Defendant Personnel Staffing Group, LLC d/b/a Most Valuable Personnel d/b/a MVP (“MVP”) (together, the “Settling Defendants”) (collectively, the “Settling Parties”) entered into two Settlement Agreements (“the GSB Settlement Agreement” and “the MVP Settlement Agreement,” collectively, “the Settlement Agreements”), which resolve the claims alleged in Plaintiffs’ Sixth Amended Complaint on behalf of the Class. Plaintiffs submit this Memorandum of Law in support of their Motion for Final Approval of the Parties’ Class Action Settlement Agreements, Authorization to Distribute Settlement Funds, and Award of Attorneys’ Fees and Costs.

The Settlement Agreements, attached hereto as Attachments 1 (the GSB Settlement Agreement) and 2 (the MVP Settlement Agreement), establish a total cash fund of One Million, Forty Thousand and 00/100 Dollars (\$1,040,000.00),¹ inclusive of settlement awards to Class Members, administration costs and service and general release awards to the Class Representatives, but exclusive of attorneys’ fees and costs. Plaintiffs have combined the notice and claims process for both settlement agreements into one process, so as to conserve settlement administration costs that would otherwise detract from the Class’s recovery.² If these Class

¹ The settlement amounts have been distributed into two separate Qualified Settlement Funds, one for each Settling Defendant (\$365,000 for MVP and \$675,000 for GSB).

² The Notice and Notice Plan are identical but are nevertheless appended separately to each Settlement Agreement. Additionally, as discussed *infra* at 7, Plaintiff Zollicoffer and MVP have also agreed to simultaneously settle the claims against MVP in the matter of *Eagle v. Vee Pak, Inc.*, No. 12-cv-9672 (“the *Vee Pak* Matter”), on a class-wide basis, as there is a significant overlap of members of the class in this case and the MVP Subclass in the *Vee Pak* Matter. Consistent with the Court-approved notice plan

Action Settlements are approved, the case will be fully resolved against both Defendants GSB and MVP and will result in dismissal of this matter with prejudice.

The parties negotiated payment of the costs and attorneys' fees expended by counsel for Plaintiffs and the Class separately in the combined amount of One Million, Three Hundred and Twenty-Five Thousand and 00/100 Dollars (\$1,325,000.00) ("Attorneys' Costs and Fees Fund"). In this matter which was aggressively litigated over the course of ten years during which 19 depositions were conducted, well over 100,000 documents were produced, hundreds of thousands of electronic records were produced and two separate expert reports were required, counsel for Plaintiffs and the Class expended \$625,614.87 out of pocket to achieve this successful result which will be reimbursed from this amount. In addition, the firms of counsel for Plaintiffs and Class were collectively required to expend more than 10,000 hours litigating this matter, resulting in a lodestar in excess of \$6 million.³ The remaining \$699,385.13 payment toward attorneys' fees from the Attorneys' Costs and Fees Fund represents just a fraction of the lodestar of counsel for Plaintiffs and the Class and will be the only compensation counsel will receive for their work on this matter.⁴

(see Dkt. No. 929), Plaintiff Zollicoffer sent a single notice to members of the classes in this matter and the *Vee Pak* Matter.

³ Compare, e.g., the matter of *Lucas, et al. v. Ferrara Candy Co., et al.*, Case No. 13-cv-01525 (N.D. Ill.), filed at the same time and involving nearly identical claims, which was resolved after three years (less than one-third of the time of this resolution) and in which the Honorable Judge Lee awarded Class Counsel Three Hundred and Seventy-Five Thousand and 00/100 (\$375,000.00) for attorneys' fees and costs. See Case No. 13-cv-01525, ECF No. 194 (Order of Final Approval, N.D. Ill., J. Lee, entered December 2, 2016) compared to this filing which is ECF No. 939 in this matter.

⁴ To maximize the amount available to members of the Class in this case, counsel for Plaintiffs and the Class in the *Vee Pak* Matter, which are the same here, are not seeking any part of settlement fund attributable to the class settlement with MVP in the *Vee Pak* Matter, despite having equally significant expert and other case costs and attorneys' fees in that matter. Litigation in the *Vee Pak* Matter continues against Vee Pak and one of its other staffing agency labor suppliers. See, e.g. Mem. Op. and Order Granting Class Certification, ECF No. 640 (N.D. Ill., J. Tharp, N.D., entered February 21, 2023) (*Rule 23(f) permission to appeal denied on 3/24/23*).

The terms of the Settlement Agreements are fair, reasonable, and adequate and fall within the range of possible approval. The Settlement Agreements were reached as a result of arm's length negotiations conducted over ten years with the assistance of private mediators, Judge Morton Denlow, Retired, and Hunter Hughes, as well as with Magistrate Judge Kim. Through discovery in this matter and in settlement discussions, the parties conducted extensive discovery, exchanging substantial information relevant to Plaintiffs' claims. In October 2021, counsel for GSB contacted Plaintiffs' counsel and Mediator Hunter Hughes to make a settlement offer. GSB provided documentation marked "Confidential – Attorneys' Eyes Only" from December 2020 and July 2021, indicating that it was in financial distress. On that basis, the parties agreed to settle all class claims against GSB, and executed a settlement agreement on May 2, 2022. In November 2021, counsel for MVP contacted Plaintiffs' counsel to advise that MVP had sold many of its assets and was preparing to wind down the company. The negotiations were facilitated by an experienced mediator, Morton Denlow, who was very familiar with the case, as he mediated earlier attempts to resolve the litigation.

The Settlement is fair and reasonable for the class as a whole and provides substantial benefits to members of the class now, avoiding further delay, risk, and expense that would be inevitable if the litigation continued.

Plaintiffs believe that these Class Action Settlement Agreements with GSB and MVP are in the best interests of the class based on their assessment, in consultation with their attorneys, of GSB's and MVP's ability to pay a larger judgment, the strengths and weaknesses of the case, and the benefits of settling this matter with GSB and MVP at this time. In addition, Plaintiffs' notice plan has been successfully executed, resulting in the submission of more than 1,900 claim forms as of the date of this filing for a particularly difficult to reach class. Moreover, the fact that no

Class Members have opted out or objected to the Settlement Agreement provides evidence that there is wide support for the Settlement. Accordingly, Plaintiffs respectfully request that the Court grant their Motion and enter the proposed Order of Final Approval of the Parties' Class Action Settlement attached to their Motion for Final Approval as Exhibit 1.

II. BACKGROUND

A. Procedural Background.

On February 27, 2013, certain plaintiffs, on behalf of themselves and all other similarly situated individuals, filed a Class Action Complaint in the United States District Court for the Northern District of Illinois, alleging violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII") and 42 U.S.C. § 1981 ("Section 1981"). On August 10, 2017, Plaintiffs James Zollicoffer and Norman Green filed their Sixth Amended Class Action Complaint ("Complaint"), alleging violations of Section 1981, which is the operative Complaint in this matter. ECF No. 466. On July 13, 2020, this Court entered an order certifying a class defined as:

African American laborers who sought work assignments through MVP to work at GSB, but on one or more occasion were not assigned to work at GSB when a position was available during the period of two years prior to the filing of Plaintiffs' original complaint for the § 1981 claims, or February 27, 2011, up through and including December 31, 2014.

ECF No. 795 at 4.⁵

The Settling Defendants deny all liability and wrongdoing associated with the claims alleged in Plaintiffs' Complaint. Specifically, the Settling Defendants deny that they discriminated against the Plaintiffs or other African Americans on the basis of race in violation

⁵ In the July 13, 2020 Order, the Court appointed Plaintiff Norman Green as a class representative but declined to appoint Plaintiff James Zollicoffer as a class representative. *Id.* On October 19, 2020, the Court entered an order reconsidering the decision not to appoint Mr. Zollicoffer as a class representative and appointed Mr. Zollicoffer as a class representative along with Mr. Green. ECF No. 827.

of Title VII, Section 1981, or any other state or federal law. The Settling Defendants also deny that litigation of the Action as a class action is appropriate and reserve the right to appeal the certification of the Class in the event these Settlement Agreements are not approved.

B. Parties' Settlements.

In an effort to determine whether the Settling Parties could settle this dispute prior to a lengthy litigation, the Parties' counsel, who are experienced class action attorneys, participated in detailed settlement negotiations on multiple occasions throughout this litigation. After engaging in extensive discovery and motion practice about the claims and Class Members, in 2015 and 2016, the parties engaged the services of the Honorable Morton Denlow, Ret., a well-respected former magistrate judge in the Northern District of Illinois, who was familiar with the underlying allegations in this Action, as he previously served as a mediator in another case involving similar allegations and parties. While the parties made some progress in resolving this matter with Judge Denlow, the settlement discussions were ultimately not successful. In 2020, the Honorable Magistrate Judge Young B. Kim, conducted a settlement conference with all the parties in this matter but, again, the parties were unable to reach a settlement agreement. In 2021, all parties again engaged the services of a well-respected mediator, Hunter Hughes, who, like Judge Denlow and Judge Kim, was familiar with the underlying allegations in this Action, as he previously served as a mediator in another case involving similar allegations and parties. After multiple mediation sessions between Plaintiffs and Defendants, the parties again made progress toward settlement but were unable to resolve the matter.

In October 2021, following the close of discovery and after this Court had certified the Class, counsel for GSB advised counsel for Plaintiffs and the Class that GSB was in financial distress and provided documentation to that effect. As a result, Plaintiffs and GSB engaged in settlement negotiations. On November 2, 2021, these discussions resulted in a tentative partial

class action settlement with GSB only, and counsel for Plaintiffs and the Class and counsel for GSB executed a term sheet. On May 2, 2022, Plaintiffs and GSB finalized and fully executed the Class Action Settlement Agreement between Plaintiffs, on behalf of the Class, and GSB, which was subsequently amended on September 30, 2022. *See* Attachment 1.

In November 2021, after the parties had commenced briefing on summary judgment, counsel for MVP advised counsel for Plaintiffs and the Class that MVP had sold nearly all of its assets to a third party in August 2021 and was preparing to wind down the company. Plaintiffs moved for discovery to be reopened for the limited purpose of investigating the financial health of MVP, and this Court granted Plaintiffs' motion. *See* ECF No. 898. Plaintiffs requested discovery related to the asset transfer in 2021 and any preceding transfer or sale of assets, and deposed former Director of Operations at MVP Stuart Nitzkin, who had since become President of Workflex, LLC, which had purchased some of MVP's assets. Given the complexity of these issues and the worsening financial state of MVP, Plaintiffs and MVP engaged in a mediation session with Judge Morton Denlow, Ret. On May 9, 2022, Plaintiffs and MVP participated in a full-day mediation with the assistance of Judge Denlow and reached a tentative class settlement agreement in this matter, resolving all claims alleged in the lawsuit against MVP. On July 11, 2022, Plaintiffs and MVP finalized and fully executed the Class Action Settlement Agreement between Plaintiffs, on behalf of the Class, and MVP. *See* Attachment 2.

Throughout the extensive litigation and settlement discussions in this matter, counsel for the Settling Parties have vigorously pursued their positions and the rights of their clients through extensive briefing, legal and factual analysis, and discovery. In light of the novel legal issues briefed to date and the potential risk and delay in the event this case proceeded to trial, the Parties elected to engage in settlement discussions. During the negotiations, counsel for the

Plaintiffs, GSB, and MVP bargained vigorously on behalf of their respective clients. Among other considerations, the precarious financial condition of both GSB and MVP, based on publicly available information and confidential financial information produced by GSB and MVP, led the Plaintiffs to settle with GSB and MVP at this time. All negotiations were conducted at arm's length and in good faith. The Class Representatives and the Settling Defendants believe that the Settlement Agreements are fair and reasonable, and that it is in their best interests and the best interests of the Class to resolve this matter at this time. The Settling Parties and their counsel recognize that, in the absence of approved settlement agreements, following more than ten years of litigation, they would face further litigation, including renewal of summary judgment briefing, trial, and potential appellate proceedings that would consume time and resources and present each party with ongoing litigation risks and uncertainties. The Settling Parties wish to avoid these risks and uncertainties, as well as the consumption of time and resources, and have decided that an amicable settlement pursuant to the terms and conditions of these Settlement Agreements are more beneficial to them than continued litigation.

C. The Terms of the Settlement Agreement.

1. Monetary Terms

On November 2, 2021 and July 11, 2022, the Plaintiffs reached agreement on the final terms of class action settlement agreements with GSB and MVP, respectively, in this matter for the Class certified by this Court as defined *supra* at II(A). *See also* Attachment 1 § III.A.8; Attachment 2 § III.A.8. The Settlement Agreements establish a total Settlement Fund of One Million, Forty Thousand and 00/100 (\$1,040,000.00), separate from payment of attorneys' fees and costs, to resolve claims of race discrimination against the Settling Defendants arising out of the Named Plaintiffs' and/or Class Members' non-assignment from MVP's Cicero Office to GSB during the Class Period that the Named Plaintiffs and Class Members have or may have

against the Settling Defendants. Explicitly not released and excluded from this settlement are any claims regarding any conduct or omissions occurring after the Class Period, or any rights that cannot be waived by law, including a right to file a charge of discrimination with an administrative agency, such as the United States Equal Employment Opportunity Commission (“EEOC”) and any right to participate in any agency investigation or proceeding.⁶

Pursuant to the terms of the Settlement Agreements, each Class Member who filed a valid, timely Claim Form,⁷ will be allocated a proportionate share of the Settlement Amount, up to a maximum recovery of Five Thousand and 00/100 Dollars (\$5,000.00)⁸ after the Settlement Amount has been reduced by: (1) a \$10,000.00 service award to each of the Named Plaintiffs from both Settlement Agreements in exchange for executing a full release of all claims as to both of the Settling Defendants and for helping to litigate this Lawsuit and reach a settlement with both Defendants; (2) the costs of administering the settlement up through final approval of the settlement; and (3) the employer’s share of payroll taxes on the portion of the settlement award designated as back wages. GSB Settlement Agreement, § III.A.13; MVP Settlement Agreement, § III.A.13. The Settlement Amount, as reduced by the foregoing amounts, is referred to as the

⁶ Also explicitly not released are claims against MVP for alleged discrimination in the making of assignments to Vee Pak which are being resolved with MVP in a separate class action settlement agreement preliminarily approved by the *Vee Pak* Court on the December 7, 2022 and for which a fairness hearing will be held on April 7, 2023. *See Vee Pak* Matter, ECF No. 637.

⁷ To effectuate the claims process more efficiently, the claim form for all class members is identical, despite the fact that each Settling Defendant has entered into a separate class action settlement with Plaintiffs. The claims process also incorporates reference to the partial settlement between Plaintiff Zollicoffer and MVP in the *Vee Pak* matter. The population that will be receiving the notice overlaps, as they all sought referrals through the MVP Cicero Office during similar time periods.

⁸ The maximum recovery from both Qualified Settlement Funds is \$5,000. The maximum recovery from the GSB Qualified Settlement Fund alone is capped at \$3,000. Class Members who sought work from MVP and on one or more occasions were not assigned to Vee Pak during the *Vee Pak* Class Period (which largely overlaps with the *GSB* Class Period) will be eligible to recover additional monies from resolution of the *Vee Pak* Matter if Plaintiffs prevail against Vee Pak on their claims for discriminatory assignments from MVP.

“Class Settlement Fund.” GSB Settlement Agreement, § III.A.13; MVP Settlement Agreement, § III.A.13. The settlement payments are intended to compensate Class Members for the alleged harm they suffered from MVP’s alleged failure to refer them from its Cicero, Illinois branch office to GSB for employment. Exhibit C to Attachments 1 and 2, at ix. Class Counsel has estimated that there are more than 1,000 individuals in the Class. Each Class member may receive two awards from the Settlement Fund: (1) back pay in the amount of the “Average Wage of MVP Laborer Assigned to GSB,” less the actual amount of any wages earned by that Class Member through an assignment from MVP during the Class Period (MVP Settlement Agreement § VI.A.3.b); and (2) if the Class Settlement Fund is less than the total claims for back pay, the funds will be distributed to each Class Member on a *pro rata* basis reflecting a payment for compensatory damages.

In the unlikely event that there is any portion of the Class Settlement Fund that is not distributed, it will be donated as *cy pres* to a tax-exempt organization under Section 501(c)(3) of the U.S. Tax Code as selected by counsel for Plaintiffs and approved by the Court. GSB Settlement Agreement, § VI.A.3.f; MVP Settlement Agreement, § VI.A.3.f. Award checks that are issued to Claimants but are not negotiated and become void pursuant to Sections VI.A.3(e) of both Agreements shall be remitted to the Office of Illinois Treasurer – Unclaimed Property Division and shall follow the procedures set forth by the Illinois Treasurer to associate the unclaimed amounts with the Class Member. GSB Settlement Agreement, § VI.A.3(g); MVP Settlement Agreement, § VI.A.3(g).

2. Notice

The Settlement Agreements established a consolidated notice process by which Class Members received information about the settlement, how the Settlement Funds will be distributed, how to file claims, and the deadline for filing a claim, objection, or opt-out. MVP

Settlement Agreement at 12, n.2. The Settlement Agreements also provided that notice would be provided by mail—to a list of assignees from MVP’s Cicero Branch Office during the Class Period—and by publication in the Chicago Sun Times and The Voice Newspapers, using notice language included in the parties’ settlement. GSB Settlement Agreement § IV.C; MVP Settlement Agreement § IV.C. Details about the notice process implemented by the Settlement Administrator is included below. *See infra* Sec. III.

3. Class Representatives Service Award and General Release Payments

Each of the Settlement Agreements contemplates a Service Award and General Release Payment of \$10,000 for each of the two Class Representatives to acknowledge their service to the Class as approved by the Court. *See* GSB Settlement Agreement, § VII.B; MVP Settlement Agreement, § VII.B. Additional information about the proposed Service Award and General Release Payments are included below in Sec. VII.

4. Class Member Releases

Except for those Class Members who timely and properly exclude themselves, as set forth in the Class Notice (attached as Exhibit A to each Settlement Agreement), all Class Members will be bound by the final approval order, the judgment, and the release set forth in the Settlement Agreement. *See id.* Such Class Members will grant Defendant a release as specified in Section V of each Settlement Agreement. *Id.* The Class Representatives will execute a general release. *See* GSB Settlement Agreement, § V.B; MVP Settlement Agreement, § V.B; *see also infra*. Sec. VII.

III. PRELIMINARY APPROVAL AND NOTICE

On November 17, 2022, the Court preliminarily approved the parties' Settlement Agreement and ordered notice to be issued to the class. Dkt. No. 929.

Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Atticus Administration, LLC ("Atticus"),⁹ received data on MVP assignees from its MVP Cicero Branch Office during the Class Periods, updated this information with records from a prior class settlement Atticus administered involving the same MVP branch office, and generated an "MVP Assignee List" of 27,644 individuals to process for mailing.¹⁰ Attachment 3, (Atticus Decl.), ¶ 4. After updating the addresses on the MVP Assignee List through the United States Parcel Service's National Change of Address databank, Atticus sent the approved notice and claim form (collectively, "Notice Packet") to 27,619 individuals on the MVP Assignee List via U.S. first class mail on January 5, 2023 (25 assignees were excluded from the distribution due to no identifiable mailing address). *Id.* ¶¶ 5-6. If a Notice Packet was returned by the USPS as undeliverable and without a forwarding address, then Atticus performed an advanced address search (i.e. skip trace) on that address. *Id.* ¶ 8. Of the 27,619 Notice Packets mailed, 6,960 initially were returned as undeliverable. *Id.* Ultimately, after forwarding, skip trace research, and re-mailing, only 4,082 Notice Packets were deemed undeliverable, or 14.77%, meaning that more

⁹ With Court approval, the parties substituted Atticus as the settlement administrator following the Court's preliminary approval order. Dkt. Nos. 930, 932.

¹⁰ During the course of the litigation, it was established that MVP (1) did not track the race of laborers it assigned to its client companies, including GSB, and (2) did not create a record of individuals who sought work from the MVP Cicero Branch Office but did not receive an assignment. Therefore, to provide the best notice under the circumstances to all individuals who meet the class definition, the parties instructed the Settlement Administrator to send notice packets to all individuals who received an assignment from MVP during the Class Period (race unknown) (the "MVP Assignee List") and to publish the notice in area newspapers serving the African American community. As the MVP Assignee List included and the published notice would reach individuals who are not African American (and therefore are not in the Class), the Claim Form requires each Claimant to attest, under oath, that she or he is African American.

than 85% of Notice Packets were successfully mailed. *Id.* In addition to the mailed Notice Packets, Notice of the settlement also was published in the newspapers the *Chicago Sun-Times* on January 12, 2023 and *The Voice* the week of January 11, 2023. *Id.* ¶ 9.

In addition, on January 5, 2023, simultaneous with the mailing of the Notice Packets, Atticus activated a settlement website at URL www.MVPSettlement.com (printed in the Abridged Notice and Claim Form and in the publication of the settlement) which contained a downloadable and printable copies of the Abridged Notice, Claim Form, Settlement Agreements and Preliminary Approval Orders, answers to frequently asked questions, key dates and important deadlines, and Atticus' contact information. *Id.* ¶¶ 10-11. The website has remained active and as of March 27, 2023, has received 887 visits. *Id.* ¶ 10. The website will remain operational until after the negotiation period for any applicable monetary recovery dispersed has expired. *Id.* The Notice Packet also included the toll-free telephone number (1-888-212-3832) established by Atticus and managed by its customer service support team. *Id.* ¶ 11. The email address and telephone number have been active and available to potential Class Members since the date of the Notice mailing and continue to remain operational at this time and, as of March 27, 2023, Atticus has received 29 calls and 43 emails from potential Class Members. *Id.*

As of March 30, 2023, Atticus has received 2,105 completed claim forms of which 383 were from individuals who were not on the original MVP Assignee List. *Id.* ¶ 12. Atticus issued a *Notice of Deficient Claim* letter ("Cure Letter") that was approved by the parties to 318 potential Class Members who did not sign the Claim Form, excluded answers to one or more of the questions on the form, or did not provide their social security number on the form ("Incomplete Claim Forms"). *Id.* ¶ 13.

As of March 29, 2023, Atticus is still awaiting deficiency cures for 37 of those forms who

have until March 31, 2023 to respond. *Id.* ¶ 14. Of the remainder, 1,621 individuals identified that they sought work at MVP during the GSB Class Period and submitted otherwise valid claim forms (the Claimants submitted a timely claim forms, attested under oath that they are African American and that they sought work from the MVP Cicero Branch Office during the *GSB* Class Period).¹¹ *Id.* ¶ 16(b). In addition, five (5) claim forms are under review for class inclusion consideration and 413 have been deemed invalid because they contained a “no” in response to the first question on the claim form inquiring whether they were African American, contained a “no” in response to questions 2A and 2B on the claim form inquiring whether they sought work from MVP during the *GSB* or *Vee Pak* Class Periods, were untimely submissions, were duplicate submissions, did not adequately respond to the deficiency notice, or a timely deficiency notice response was not received. *Id.* ¶ 15.

Class members had until March 6, 2023 to submit a request to opt-out of the Settlements and, as of March 29, 2023, Atticus has not received any objections to or requests to opt-out of the Settlements. *Id.* ¶ 17.¹²

If the Court grants final approval to the Settlement, Class Member awards are estimated to be \$585 for each Class Member who filed a valid, timely claim form under the two settlement agreements in this matter, less any amount of wages earned by the Class Members for an assignment from MVP during the Class Period.¹³

¹¹ The notice and claim process was combined in this matter with the *Vee Pak* Matter. Between the two matters, there were 1,650 claims filed that were deemed valid, 1,517 identified that they worked during both the *GSB* and *Vee Pak* Class Periods, and another 29 identified that they worked only during the *Vee Pak* Class Period. Atticus Decl., ¶16.

¹² If any objections or requests to opt-out are received prior to the final approval hearing, Class Counsel will inform the Court at the fairness hearing.

¹³ Net Class Settlement Fund (after reduction for Settlement Administration Costs and Service Awards) of approximately \$967,600 ÷ 1,650 valid, timely claim forms, less a *pro rata* share of the difference between

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. Legal Standard.

The standard against which a proposed class settlement should be evaluated is whether the settlement taken as a whole is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). The determination whether to grant approval of a class action settlement is within the sound discretion of the Court. *See id.* at 1196-97 (applying abuse of discretion standard to review of district court’s approval of class action settlement).

Federal courts “naturally favor the settlement of class action litigation.” *Id.* at 1196. *See also Uhl v. Thoroughbred Tech. & Telecomm., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002) (“Federal courts favor settlement, so the district court’s inquiry into the settlement structure is limited to whether the settlement is lawful, fair, reasonable and adequate.”). “[C]ourts look upon the settlement of lawsuits with favor because it promotes the interests of litigants by saving them the expense and uncertainties of trial, as well as the interests of the judicial system by making it unnecessary to devote public resources to disputes that the parties themselves can resolve with a mutually agreeable outcome.” *Hispanics United of DuPage Cnty. v. Village of Addison, Ill.*, 988 F. Supp. 1130, 1149 (N.D. Ill. 1997) (internal citations omitted).

Courts within the Seventh Circuit generally evaluate five factors when determining whether a class action settlement meets the standard of being fair, reasonable, and adequate. These include: (1) the strength of plaintiff’s case compared to the amount of defendant’s settlement offer, (2) an assessment of the likely complexity, length, and expense of the litigation, (3) an evaluation of the amount of opposition to settlement among affected parties, (4) the

the “Average Wage of PSG Laborer Assigned to GSB” and actual wages earned from MVP during the GSB Class Period. *See* PSG Settlement at III.A(2) and VI.A(3).

opinion of competent counsel, and (5) the stage of the proceedings and the amount of discovery completed at the time of settlement. *See Isby*, 75 F.3d at 1198-99. All of the above factors weigh in favor of final approval of the settlement in this case.

B. Application of the Seventh Circuit’s Factors Strongly Supports Final Approval of the Settlement Agreement.

1. Plaintiffs’ case on the merits, balanced against Defendant’s settlement offer.

“The most important factor relevant to the fairness of a class action settlement . . . is the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.” *Kaufman v. Am. Express Travel Related Servs. Co., Inc.*, 877 F.3d 276, 284 ((7th Cir. 2017) (citing *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006); *Isby*, 75 F.3d at 1198-99. Here, the proposed Settlement Agreements strike an appropriate balance between the strength of Plaintiffs’ case and the benefit to the Class of securing a settlement. The Settlement Agreements also came at a point at which, based on information publicly available and confidential information produced by GSB and MVP, there are serious questions about the Settling Defendants’ ability to pay a large judgment—or stay solvent—should this matter go to trial.

The Settlement Agreements provide guaranteed monetary relief for members of the class. *See In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (“Even if Plaintiffs were to succeed on the merits at some future date, a future victory is not as valuable as a present victory. Continued litigation carries with it a decrease in the time value of money . . .”) (citation omitted). Specifically, the Class Settlement Fund encompasses One Million, Forty Thousand and 00/100 (\$1,040,000.00) from which Class Members may recover a share of the total Class Settlement Fund based on the formula set out in § VI.A.3.b. of each settlement agreement: the number of claims made after this Fund is reduced by the cost of claims

administration, the employer's share of payroll taxes on the portion of settlement awards designated as back pay, and any service award to the Named Plaintiffs as approved by the Court. Based on the number of valid claim forms submitted, Plaintiffs' counsel anticipate payments of \$600. *See supra*, fn. 12. In contrast, if litigation continued to trial, Plaintiffs would have faced complex, continuing litigation posing a host of factual and legal questions at summary judgment and trial, any of which could have undermined their ability to recover anything at all for their claims, especially given the financial state of the Settling Defendants.

Plaintiffs and their counsel believe that the Settlement Agreements reached in this case represent a reasonable compromise, particularly in light of the procedural posture, the novelty of the legal issues, the potential risks at trial, and questions about GSB's and MVP's ability to pay a large judgment. The Settlement Agreements will provide immediate and tangible benefits to African American laborers who were unable to obtain job assignments at GSB from MVP's Cicero Branch Office during the Class Period.

2. The likely complexity, length, and expense of further litigation and the public interest.

A settlement allows Plaintiffs and the Class to recover lost earnings while avoiding what certainly would continue to be complex, long, and expensive litigation against the Settling Defendants. Indeed, these Settlement Agreements come ten years after the lawsuit was filed; undoubtedly continued summary judgment briefing, trial and even appeals could add more years to the litigation, at which point the current iterations of the Settling Defendants' entities may no longer exist. The web of overlapping, complex legal issues in this case cannot be overstated, including purported individualized issues with respect to class recovery, and the Settling Defendants' challenges to the manageability of these claims through a class action. Although Plaintiffs have been and remain prepared to actively litigate these issues, the Settlement

Agreements yield a comparable result without the risks and costs associated with continued litigation.

3. The amount of opposition to the settlement and the reactions of members of the class to the settlement.

Notice was mailed to more than 20,000 individuals and published in two prominent Chicago area newspapers the *Chicago Sun-Times* and *The Voice*. *See supra*. Sec. III. Not a single person of those over 20,000 individuals objected to the settlement. *Id.* The absence of objectors supports the reasonableness of the Settlement. *See, e.g., Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 495 (N.D. Ill. 2015) (collecting cases) (finding objection rates of between 0.1% to 0.0032% to be low enough to support settlement). In addition, following certification of the Class by this Court, notice of the class action was sent to putative class members in Spring 2021 and only two class members chose to opt-out of the litigation. Plaintiffs' Motion for Preliminary Approval, ECF No. 919 at 16. That number did not increase with notice of the settlement.

4. The opinion of competent counsel.

Class Counsel are experienced and accomplished class action litigators. *See* Declaration of Joseph M. Sellers ("Sellers Decl."), ¶¶ 1, 12, attached hereto as Attachment 4; Declaration of Christopher J. Wilmes ("Wilmes Decl."), ¶¶ 15-18, attached hereto as Attachment 5. In the considered opinion of counsel, the settlement achieves a favorable result for the Class Members under the circumstances. *See id.*, ¶¶ 6-9; Sellers Decl. ¶¶ 4-7. Class Counsel's recommendation, while not conclusive, should be given a presumption of reasonableness and is entitled to significant weight. *See Hispanics United of DuPage Cnty.*, 988 F. Supp. at 1170 (internal citations omitted).

5. The stage of the proceedings and the amount of discovery completed.

The Settlement Agreements come after extensive discovery, briefing, and decisions from this Court about the case—critical information that has allowed Class Counsel, with the assistance of highly trained and skilled mediators, to evaluate Class claims and the proposed settlements. The Settlement Agreements also occur prior to risky trial, bringing a significant benefit to Class Members by allowing monetary recovery for Class Members without the risks associated with trial. The Settlement yields a fair and reasonable result without the risks and financial burden of discovery and future litigation, and Plaintiffs respectfully urge this Court to approve it.

V. THE NOTICE PROVIDED TO THE CLASS SATISFIES RULE 23(e) AND DUE PROCESS

The manner and form of notice provided to the Settlement Class is fully compliant with the requirements of Rule 23(e)(1) and due process.

Rule 23(c)(2)(B) requires the Court to direct the parties to give the “best notice that is practicable under the circumstances.” In its Preliminary Approval Order, the Court held that the form, content and proposed distribution of the Class Notice met the requirements of federal law and due process, and was the best notice practicable under the circumstances. Dkt. No. 929 ¶ 7. Now, the actual distribution of class notice has followed through to satisfy Rule 23(e)(1)’s requirement to “direct notice in a reasonable manner to all class members who would be bound by the proposal.”

Indeed, pursuant to the Court’s Preliminary Approval Order, the Settlement Administrator, Atticus, compiled a comprehensive, overinclusive list of 27,644 potential class members (the “MVP Assignee List”) and mailed, via first class mail, the Notice of Proposed Class Action Settlement (the “Class Notice”), to all but 25 individuals with no viable address.

See Section III, *supra*.¹⁴ When a notice was returned, Atticus forwarded the notice to any forwarding address provided by the U.S. Postal Service. *Id.* Where no forwarding address was available, Atticus attempted to find alternative address information through skip tracing. *Id.* Ultimately 23,537, or 85% of the Notice Packets were successfully mailed. *Id.* In addition, the Notice was published in both the *Chicago Sun-Times* and *The Voice* newspapers, and the long form notice and claim forms were published on the settlement website, resulting in submission of hundreds of claim forms from individuals not present on the original MVP Assignee List. *Id.*; see also <https://www.mvpsettlement.com/>.

Rule 23(e) and the Due Process Clause require that notice be “reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.” 4 Newberg on Class Actions § 11:53 (4th ed. 2010). Given the difficulty of identifying and reaching transient temporary laborers who have worked over a multi-year period, that standard has been more than satisfied here.

VI. THE AGREED UPON ATTORNEYS’ FEES ARE REASONABLE AND WITHIN THE RANGE OF POSSIBLE APPROVAL

Rule 23 provides that in a certified class action, “the court may award reasonable attorney’s fees that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Here, the *GSB* Settlement Agreement provides that Class Counsel will apply to the Court for the payment of litigation costs and attorneys’ fees of up to \$1,325,000 from an Attorneys’ Costs and

¹⁴ Since a list of African American laborers assigned from the MVP Cicero Branch was not available, the MVP Assignee List utilized a broader list of assignees and directed recipients that only African American laborers could participate in the settlement and required them to respond to claim form questions under oath. *Id.*

Fees Fund established under the Settlement (separate from the Class Settlement Fund).¹⁵ This amount, if approved by the Court, will partially compensate Class Counsel for the very significant legal costs they have fronted for this ten-year litigation as well as a small portion of their attorneys' fees, which together total nearly \$4 million.

Class Counsel is entitled to fees and costs based on two principles: the common fund doctrine and under Section 1981's fee-shifting provisions, *see* 42 U.S.C. § 1988(b-c). In a common fund case—where defendants pay a specific sum in exchange for release of liability to all plaintiffs—equitable principles allow the Court to determine the attorneys' fees that plaintiffs' counsel may recover “based on the notion that not one plaintiff, but all those who have benefitted from the litigation should share its costs.” *Kolinek*, 311 F.R.D. at 500. The Seventh Circuit directs that when reviewing the reasonableness of a fee award in a common fund case, courts should award fees consistent with the market rate. *See Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 957 (7th Cir. 2013) (“[A]ttorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services.”); *In re Synthroid Marketing Litigation*, 264 F.3d 712, 718 (7th Cir. 2001) (“[W]hen deciding on appropriate fee levels in common-fund cases, 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.”).

In the Seventh Circuit, district courts may exercise discretion in choosing either the lodestar or percentage-of-the-fund approach to calculating common-fund attorney's fees.

Kolinek, 311 F.R.D. at 500, *citing Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 566 (7th

¹⁵ Though these amounts are in separate funds, they are both part of this global class settlement and any amount of the Attorneys' Costs and Fees Fund not approved to reimburse the counsel for Plaintiffs and the Class's costs shall become part of the Class Settlement Fund. *See* GSB Settlement Agreement § III.A(12); MVP Settlement Agreement § III.A(13).

Cir. 1994) (also recognizing that common fund principles may apply even if claims are brought pursuant to statutes with fee-shifting provisions); *Cook v. Niedert*, 142 F.3d 1004, 1012-13 (7th Cir. 1998). Here, the lodestar method is most appropriate given: (1) the advanced posture of the litigation and attendant high costs and fees expended by counsel, and (2) the nature of the settlement, which reflects Defendants' depressed finances. Critically, the lodestar method also best reflects the market rate. When they retained their counsel, Named Plaintiffs executed fee agreements that entitles Plaintiffs' Counsel to *the greater of* counsel's lodestar or at least 33% of any recovery. *See* Sellers Decl., ¶ 13, attached hereto as Attachment 4; *see*, also, Declaration of Christopher J. Wilmes ("Wilmes Decl., ¶ _"), ¶ 10, attached hereto as Attachment 5; *see*, also, Declaration of Christopher J. Williams ("Williams Decl., ¶ _"), ¶ 11, attached hereto as Attachment 6. This is strong evidence that the requested award of \$625,614.87 to reimburse counsel for Plaintiffs and the Class for their actual case costs and of \$699,385.13 as a fee award when the firms' lodestar is collectively in excess of \$6,000,000.00 in this matter which has been so aggressively litigated over the course of ten years is exceedingly reasonable. Indeed, because of Settling Defendants' precarious financial circumstances, counsel for the Plaintiffs and the Class seek *far* less than their actual combined lodestar, *discounting their request by 88%*.¹⁶

Counsel for Plaintiffs and the Class have tenaciously litigated this case for more than a decade, extracting an advantageous settlement for the class from GSB and MVP's financial distress through protracted negotiations and mediation, despite the complexity of both companies' circumstances. After ten years of vigorous advocacy, litigation expenses and attorneys' fees are necessarily high: exceeding \$635,000 in actual costs and \$6,000,000 in attorneys' fees totaling more than \$6,635,000. *See* Sellers Decl., ¶¶ 12-17; Wilmes Decl., ¶¶ 10-

¹⁶ In comparison, the Class is recovering approximately two-thirds of the value of its claims for back pay.

13; Williams Decl., ¶¶ 8-13. Counsel for Plaintiffs and the Class have incurred these fees on work including: investigating and researching class claims; preparing and filing the complaint; engaging in discovery comprising written responses, analyzing more than 100,000 pages of documents and hundreds of thousands of electronic records; defending or taking 19 depositions; resolution of a host of discovery disputes; working with Plaintiffs' experts; successfully obtaining class certification; briefing summary judgment; and engaging in protracted settlement negotiations and mediation at different points over several years. *See* Sellers Decl., ¶¶ 12, 15; Wilmes Decl., ¶¶ 11-13; Williams Decl., ¶¶ 4-5, 12. Likewise, costs in this case include nearly \$500,000 in expert, consultant, and professional service costs alone and tens of thousands of dollars more just for transcript fees, court fees, and legal research. *See* Sellers Decl., ¶ 16; Wilmes Decl., ¶ 11; Williams Decl., ¶¶ 9-10. Class Members' settlement awards come at a high cost—a high cost that Plaintiffs' counsel has advanced for years without any remuneration.

Despite a decade of obstacles, Counsel for Plaintiffs and the Class have obtained an excellent settlement given the circumstances. Awarding counsel fees based on the *significantly* discounted lodestar not only reflects the market rate for services but also Section 1981's fee-shifting provisions, which permits prevailing plaintiffs to recover attorneys' fees and costs. *See City of Riverside v. Rivera*, 477 U.S. 561, 580 (1986) (recognizing statutory fee awards must be adequate to attract competent counsel but not produce windfalls to attorneys, and lodestar recovery may be larger than damages awards); *see also Anderson v. AB Painting and Sandblasting Inc.*, 578 F.3d 542, 546 (7th Cir. 2009) (“measuring fees against damages will not explain whether the fees are reasonable in any particular case”).

Under the lodestar approach, the starting point for calculating the amount of a reasonable attorney fee is the number of hours reasonably expended on the litigation multiplied by a

reasonable hourly rate. *See City of Riverside*, 477 U.S. at 568. *See also Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 639 (7th Cir. 2011) (“There is a strong presumption that the lodestar calculation yields a reasonable attorneys' fee award.”).

Over the decade of litigation, CMST has dedicated more than 4,864 attorney hours and 396 paralegal hours to this case, resulting in a lodestar of more than \$3,500,612. *See Sellers Decl.*, ¶ 17. HSPRD has dedicated more than 277.20 attorney hours to this case, resulting in a lodestar of more than \$136,950.¹⁷ *Wilmes Decl.*, ¶ 12. While the Court declined to appoint Christopher J. Williams, formerly of Workers' Law Office and now of National Legal Advocacy Network, NFP, as class counsel, he initiated this case, litigated it alone for years, advanced a significant share of the costs of experts, deposition transcripts and other required case costs and was critical in developing the case for the Named Plaintiffs who required the same proof as for the class as a whole. *See Williams Decl.*, ¶¶ 5, 9; *see, also, Sellers Decl.*, ¶ 12 (“this excellent result for Plaintiffs and the Class could not have been achieved without the dedication and critically important work of Plaintiff's attorney, Christopher J. Williams, on this matter.”). These fee amounts are calculated based on actual attorney billing rates that are in line with those prevailing in the community *See Sellers Decl.*, ¶ 12, 14; *Wilmes Decl.*, ¶ 14-18; *Williams Decl.*, ¶ 13.

In sum, the requested award of award of \$625,614.87 to reimburse counsel for Plaintiffs and the Class for their actual case costs and of \$699,385.13 as a fee award attorneys' fees award

¹⁷ The Sellers, Wilmes and Williams Declarations provide total hours expended on this litigation by each attorney and paralegal who has worked on the case. Since the firms seek only approximately 12% of their total lodestar and there are no objections to the requested amount, they have not filed itemized billing records. To the extent there is some time that could be considered appropriate to exclude due to duplication or other concerns, it is subsumed in the 88% of their lodestar – or more than \$5 million that counsel for Plaintiffs and the Class will forgo. Should the Court wish to review other materials supporting the reasonableness of the fee request, Plaintiffs' counsel will provide it.

is eminently reasonable and should be approved because it is less than the amounts Class Representatives agreed to pay in advance of the litigation, is consistent with Section 1981's fee-shifting provisions, and reflects a discount of more than 88% of Class Counsel's actual lodestar.

VII. THE PROPOSED PAYMENTS TO THE NAMED PLAINTIFFS ARE REASONABLE AND WITHIN THE RANGE OF POSSIBLE APPROVAL

Under the Settlement Agreement, subject to Court approval, Mr. Zollicoffer and Mr. Green each will receive a \$10,000 Service Award and General Release Payment from each of the Settlement Funds. Such payments are warranted in light of the Class Representatives' efforts in this case, which resulted in two Class Action Settlements that benefit the Class and because they are being asked to release all of their claims against the Settling Defendants, something no other Class Member is being asked to do. GSB Settlement Agreement, § V.B; MVP Settlement Agreement, § V.B. Indeed, in this case, over the course of several years Mr. Zollicoffer and Mr. Green have participated in the case, provided information and documents through discovery responses, sat for depositions, participated in multiple mediations, and performed everything that was asked of them. Without the efforts of the Class Representatives, this case would not have been filed and the Settlement Agreements would not have been achieved. *See* Sellers Decl., ¶ 11; Wilmes Decl., ¶ 19.

“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.” *Cook*, 142 F.3d at 1016. “In deciding whether such an award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.” *Id.* Decisions in this Circuit have approved service awards as high as \$20,000 per named plaintiff. *See, e.g., Berger v. Xerox Corp. Ret. Income Guar. Plan*, No. 00-

584-DRH, 2004 WL 287902, at *3 (S.D. Ill. Jan. 22, 2004); *see also*, *Lucas v. Ferrara Candy Co.*, No. 13 C 01525, ECF No. 194 ¶ 4 (N.D. Ill.) (awarding \$6,500 enhancement award in a similar race discrimination case arising under Title VII and Section 1981 resolved before class certification); *Briggs v. PNC Fin. Servs. Grp.*, No. 1:15-cv-10447, 2016 WL 7018566, at *3 (N.D. Ill. Nov. 29, 2016) (approving service awards of \$12,500 in FLSA/IMWL overtime case and citing empirical study finding that the mean incentive award in employment class actions is approximately \$12,000).

Here Plaintiffs were required to actively participate in the litigation and settlement of this case over years. Each spent hours answering discovery requests and sitting for depositions as well as participating in multiple settlement conferences. Based on the efforts, the results achieved and the robust release of claims the Class Representatives will execute, which no other Class Member is being asked to do, the requested Service Awards are well justified.

CONCLUSION

For all the reasons stated above, Plaintiffs request that the Court enter the parties' proposed Order of Final Approval of the Parties' Class Action Settlement attached to Plaintiffs' Motion for Final Approval as Exhibit 1.

DATED: March 30, 2023

Respectfully submitted,

/s/ Christopher J. Wilmes

One of the Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2023, I electronically filed the foregoing document with the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

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