IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

RYAN STRASSBURGER, individually, and on behalf of all others similarly situated, Plaintiff, v. SIX FLAGS THEME PARKS INC., a Texas corporation, SIX FLAGS ENTERTAINMENT CORPORATION, a Delaware corporation, and GREAT AMERICA LLC, d/b/a SIX FLAGS GREAT AMERICA, an Illinois limited liability company, Defendants.	No. 2020CH06208 CLASS ACTION

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS

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INTRODUCTION

In this putative class action, Plaintiff Ryan Strassburger ("Plaintiff") alleges that Defendants wrongfully charged their customers monthly membership fees while their parks that otherwise would have been open were shut down due to the COVID-19 pandemic. On September 10, 2021 the Court preliminarily approved the class action settlement in this case, a copy of which is attached as Exhibit A to the Declaration of Yeremey Krivoshey (the "Krivoshey Decl.").[1] Plaintiff and Class Counsel now respectfully move the Court to approve the requested attorneys' fees of $1,200,000.00 and incentive awards of $1,500.00 to Plaintiff and non-parties Francis Ruiz, Shariyar Rezai-Hariri, and Sophia McConnell. As explained below, the Court should approve the requested attorneys' fees and incentive awards in full. If finally approved, the Settlement will bring certainty, closure, and significant and valuable relief for individuals to what otherwise would likely be a contentious and costly litigation.

I. BACKGROUND OF THE LITIGATION

In March 2020, as a result of the COVID-19 pandemic, Defendants were forced to temporarily close their amusement and theme parks that were open at the time. Krivoshey Decl. ¶ 4. On October 8, 2020, Plaintiff Strassburger filed a Class Action Complaint in the Circuit Court of Cook County, Illinois, Chancery Division, Case No. 2020CH06208, alleging that Defendants wrongfully charged their customers monthly membership fees while their parks that otherwise would have been open were shut down due to the COVID-19 pandemic. Plaintiff Strassburger asserted claims for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2, *et seq.*, and for breach of express warranties, negligent

[1] Unless otherwise defined herein, all capitalized terms have the same force, meaning, and effect as ascribed in Section 1 ("Definitions") of the Settlement Agreement.

misrepresentation, fraud, unjust enrichment, money had and received, conversion, and breach of contract. *Id.* ¶ 5.

The Parties exchanged and met and conferred concerning a number of discovery requests in the context of mediation. *Id.* ¶ 7. In response, Defendants provided critical information concerning their sales and pricing of their membership plans, the dates and time periods when Defendants were forced to shut down each of their relevant parks due to the pandemic, the amount of money Defendants charged their customers while their parks were closed, the number and identity of class member accounts that were charged, the types and nature of their memberships, and their membership cancellation and pause policies and practices. Plaintiff's counsel also conducted extensive independent investigation of the memberships, Defendants' corporate structure, Defendants' advertising and sale of the memberships, Defendants' COVID-19 response and public statements, Defendants' membership cancellation and pause policies and practices, class member response to Defendants' pandemic-related closures, and have corresponded with hundreds of class members as part of their investigation. *Id.*

Counsel for Plaintiff and counsel for Defendants have engaged in substantial arm's-length negotiations in an effort to resolve this action. On September 4, 2020, the Parties participated in a full-day mediation with Jill Sperber, Esq. of Judicate West. The September 4, 2020 mediation did not result in settlement. *Id.* ¶ 8. The Parties attended a second mediation with Ms. Sperber on September 9, 2020, where the Parties executed a binding term sheet setting out the material terms of the Settlement Agreement. *Id.* On June 30, 2021, Plaintiff filed his Motion for Preliminary Approval of the Settlement. After hearing argument on Plaintiff's Motion, on September 10, 2021 the Court granted that Motion and preliminarily approved the Settlement. *Id.* ¶ 10.

II. SUMMARY OF THE SETTLEMENT

The Settlement in this case provides substantial material benefits to the Settlement Class in that it makes Class Members whole. Each Class Member that had an active membership during the Class Period will automatically receive a free month of membership for each month their park was closed, as well as an upgrade to the next tier of membership through the end of 2022. Settlement Agreement ¶ 42(i). Importantly, these free months will be applied as credits without Class Members having to file a claim. *Id.* As an alternative to receiving free months, a Class Member with an active membership can request and receive a gift card for the monthly membership charges (including taxes, but excluding miscellaneous fees) to the Class Member while his or her Home Park was closed due to the pandemic but was otherwise scheduled to be open. *Id.* Similarly, for those Class Members who paused their membership, but were charged prior to doing so, will automatically receive for each such membership 1 month of free membership for each 30 days between the closure of the Class Member's Home Park due to the pandemic and the date that Class Member paused that membership. *Id.* ¶ 42(iii). All membership add-ons (such as parking or dining benefits) paid for by Class Members during the Class Period will also be automatically extended for the same duration and available during the free months. *Id.* ¶ 42. Further, Class Members may also submit a valid Claim Form to receive either 1 Golden Ticket or 5,000 Membership Rewards points. *Id.* ¶ 43. As for Class Members who cancelled their memberships, they are eligible to receive one voucher for a complimentary admission ticket for each six months they were charged for a membership while their Home Park was closed but scheduled to be open. *Id.* ¶ 42(iv).

The Parties estimate that the amount available simply from the credits to Class Members is equivalent to $83,635,365.92 in value to Class Members. *See* Krivoshey Decl. Ex. W, 6/29

Declaration of Mark Kupferman, ¶ 6. Further, the 5,000 membership points can be redeemed for items ranging from $8 to $50, while a single day pass ticket (Golden Ticket) is valued at $74.99. *Id.* ¶¶ 7-8. The Settlement also provides significant injunctive relief designed to ensure that Class Members with active accounts had the opportunity to pause their accounts. Settlement Agreement ¶ 44. In particular, Defendants automatically provided direct notice by email or mail (where no email address is available) to Class Members of their right to pause any payments due under their membership(s) for the duration of time that their Home Park was closed due to COVID-19 or March 1, 2021, whichever was later. *Id*. Defendants performed their obligations pursuant to this "Pause Option," Section 43(i), on September 24, 2020. *Id*.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

"Illinois follows the 'American Rule,' which provides that absent statutory authority or a contractual agreement, each party must bear its own attorney fees and costs." *McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 405 (4th Dist. 2008) (quotations omitted). "If a statute or contractual agreement expressly authorizes an award of attorney fees, the court may award fees 'so long as they are reasonable.'" *Id.* (citing and quoting *Career Concepts, Inc. v. Synergy, Inc.*, 372 Ill. App. 3d 395, 405 (1st Dist. 2007)). Here, the Parties have entered into a contractual agreement – the Settlement Agreement – expressly authorizing an award of attorney fees, costs, and expenses up to $1,200,000.00.[2] Settlement Agreement ¶ 54.

[2] *See* William B. Rubenstein, 5 Newberg on Class Actions § 15:12 (5th ed.) (parties to suit may have private agreements concerning fees which may include agreement between class counsel and defendant whereby defendant agrees to pay a certain fee requested by class counsel); *see also Evans v. Jeff D.*, 475 U.S. 717, 738 n.30 (1986) (parties may simultaneously negotiate a "defendant's liability on the merits and his liability for his opponents' attorney's fees"); *Browne v. Am. Honda Motor Co., Inc.*, No. CV 09-06750 (C.D. Cal. Oct. 10, 2010) ("A settlement agreement is a binding contract" and "contractual provisions providing for the payment of attorneys' fees . . . provide a basis for awarding fees."); *In re TJX Cos. Retail Secs. Breach Litig.*,

II. THE COURT SHOULD APPLY THE PERCENTAGE-OF-THE-FUND METHOD IN THIS CASE

"When awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235, 244 (1995). "The decision to award fees based on the lodestar or percentage method is a matter within the sound discretion of the trial court, considering the particular facts and circumstances of each case." *Id.* However, the Court is not required to perform a lodestar cross-check on Class Counsel's fees. *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.,* 2016 IL App (2d) 150236, ¶ 58, 52 N.E.3d 427, 441 (citing *Brundidge,* 168 Ill.2d at 246) (rejecting an objector's argument that the trial court was required to perform a lodestar cross-check on class counsel's fees and awarding class counsel fees totaling 33% of the common fund, or $7,600,000); *Perez v. Rash Curtis & Associates*, 2020 WL 1904533, at *18 (N.D. Cal. Apr. 17, 2020) ("Generally, a district court is 'not required' to conduct a lodestar cross-check to assess the reasonableness of a fee award."). Indeed, the "[p]ercentage analysis approach eliminates the need for additional major litigation and further taxing of scarce judicial resources." *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 924-25 (1st Dist. 1995).

A. The Requested Attorneys' Fees, Costs, And Expenses Are Reasonable As A Percentage Of The Class Benefit

In class action settlements, courts typically award attorneys' fees based on a percentage of the total value settlement, which includes any litigation expenses incurred. *Brundidge*, 168 Ill. 2d at 238. "[T]he percentage of the fund method…reflects the results achieved." *Id.* at 244; *see Taubenfeld v. AON Corp.,* 415 F.3d 597, 600 (7th Cir. 2005) (approving fees of 33% of total settlement, noting "thirteen cases in the Northern District of Illinois where counsel was awarded

584 F. Supp. 2d 395, 399 (D. Mass. 2008) (noting that basis for awarding fees was "part of the Agreement, [in which Defendant] agreed to pay court-approved attorneys' fees not to exceed $6,500,000").

fees amounting to 30–39% of the settlement fund"). *See, e.g., Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-cv-7694, U.S. Dist. LEXIS 20397, at *10 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Schulte v. Fifth Third Bank*, 805 F.Supp.2d 560, 599 (N.D. Ill. 2011) (same); *Meyenburg v. Exxon Mobil Corp.*, No. 05-cv-15, U.S. Dist. LEXIS 52962, at *5 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); *see also, e.g., Shaun Fauley, Sabon, Inc.*, 2016 IL App (2d) 150236, at ¶ 59 (upholding an attorneys' fees award of one-third of a reversionary fund recovered in light of the "substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]").

Here, an award to Class Counsel of $1,200,000.00 represents just 1.2% of the $83,635,365.92 in benefits being made available to Class Members. 6/29 Declaration of Mark Kupferman, ¶ 6. That is well within the range of fees typically awarded to class counsel by Illinois courts in comparable all-cash class action settlements.[3]

1. <u>The Total Value Of The Settlement Is Over $84,000,000</u>

To calculate attorneys' fees based on the percentage of the benefit, the Court must first determine the value of the Settlement Fund. In doing so, the Court must include the value of the benefits conferred to the Class, including any attorneys' fee, expenses, service award and notice and claims administration payments to be made. *See*, *e.g.*, *Brundidge*, 168 Ill.2d at 238; *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 816 (E.D. Wis. 2009) (citing *Boeing Co. v. Van Gemert,* 444 U.S. 472, 480 (1980)) ("The court will similarly base its award

[3] As explained below, the requested award of fees to Class Counsel of $1,200,000 is inclusive of the $12,650.26 in out-of-pocket litigation expenses incurred in the prosecution of this action.

of attorneys' fees on the entire common fund amount in the instant case."); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (ruling that a district court abused its discretion in basing attorney fee award on actual distribution to class instead of amount being made available). Thus, the Court should consider the *entire benefit* conferred by the Settlement, including the monetary relief agreed on attorneys' fees, costs, and expenses, cost of notice and claims administration, and the incentive awards, amounting to a total value of at least $84,835,365.92 (the value of the relief available to Class Members and $1,200,000 available for attorney's fees, expenses, and costs). *See* 6/29 Declaration of Mark Kupferman, ¶ 6.

2. <u>The Requested $1,200,000 Fee Is Reasonable</u>

Here, the requested $1,200,000.00 fee, inclusive of costs and expenses, is just 1.4% of the more than $84 million in benefits the Settlement generates for the class, which falls within the range awarded in class actions by courts throughout the country. As aforementioned, courts have recognized that fee awards as high as 50% of the gross settlement fund are reasonable. *See* NEWBERG ON CLASS ACTIONS, *supra*, §15:83 (5th ed. Dec. 2016 update) ("Usually, 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, . . . though somewhat larger percentages are not unprecedented."). "When assessing the reasonableness of fees, a trial court may consider a variety of factors, including the nature of the case, the case's novelty and difficulty level, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges for similar work, and the connection between the litigation and the fees charged." *McNiff,* 384 Ill. App. 3d at 407 (quoting *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314-15 (1st Dist. 2007)) (quotations omitted). Here, each of these factors shows the requested fee of $1,200,000 is reasonable in light of the substantial relief obtained by Class Counsel here – despite significant risk – and should be awarded.

a. *Plaintiff's Claims Carried Substantial Litigation Risk*

As detailed above, this case presented substantial litigation risk. Nonetheless, despite knowing the risks, Class Counsel took on the case, worked on the case, and even undertook a significant financial risk, with no upfront payment, and no guarantee of payment absent a successful outcome. In addition to attorney time spent on the case, Class Counsel also advanced $12,650.26 in out-of-pocket expenses, again with no guarantee of repayment. *See* Krivoshey Decl. ¶ 23; Khashayar Decl. ¶ 10; Marron Decl. ¶ 10; Aschenbrener Decl. ¶ 6. If the case had advanced through class certification, these expenses would have increased many-fold, and Class Counsel would have been required to advance these expenses potentially for several years to litigate this action through judgment and appeals.

Despite these risks, the Settlement Agreement makes Class Members whole by giving them exactly what they bargained for. Each Class Member that had an active membership during the Class Period will automatically receive a free month of membership for each month their park was closed, as well as an upgrade to the next tier of membership through the end of 2022. Settlement Agreement ¶ 42(i). Importantly, these free months will be applied as credits without Class Members having to file a claim. *Id.* As an alternative to receiving free months, a Class Member with an active membership can request and receive a gift card for the monthly membership charges (including taxes, but excluding miscellaneous fees) to the Class Member while his or her Home Park was closed due to the pandemic but was otherwise scheduled to be open. *Id.* Similarly, for those Class Members who paused their membership, but were charged prior to doing so, will automatically receive for each such membership 1 month of free membership for each 30 days between the closure of the Class Member's Home Park due to the pandemic and the date that Class Member paused that membership. *Id.* ¶ 42(iii). All membership add-ons (such as parking or dining benefits) paid for by Class Members during the

Class Period will also be automatically extended for the same duration and available during the free months. *Id.* ¶ 42. Further, Class Members may also submit a valid Claim Form to receive either 1 Golden Ticket or 5,000 Membership Rewards points. *Id.* 43. As for Class Members who cancelled their memberships, they are eligible to receive one voucher for a complimentary admission ticket for each six months they were charged for a membership while their Home Park was closed but scheduled to be open. *Id.* ¶ 42(iv).

The Parties estimate that the amount available simply from the credits to Class Members is equivalent to $83,635,365.92 in value to Class Members. 6/29 Declaration of Mark Kupferman, ¶ 6. Further, the 5,000 membership points can be redeemed for items ranging from $8 to $50, while a single day pass ticket (Golden Ticket) is valued at $74.99. *Id.* ¶¶ 7-8. That is an excellent result, particularly in comparison with other false advertising settlements, where cases were litigated for years before settling for substantially less relief to the class. *See, e.g.*, *DiFrancesco v. UTZ Quality Foods Inc.*, 1:14-cv-14744 (D. Mass. Sept. 13, 2019) (settlement of $1.25 million to resolve a proposed class action asserting that certain of the defendant's snack foods were deceptively labeled as being "all natural" after more than four years of litigation).

b. *The Skill And Standing Of The Attorneys Supports The Requested Fee*

The attorneys handling this case are in good standing in their respective jurisdictions. Class Counsel are well-respected attorneys with significant experience litigating similar class action cases in federal and state courts across the country, including other consumer product cases. *See* Krivoshey Decl. ¶ 30, Ex. R (firm resume of Bursor & Fisher, P.A.); Khashayar Decl. ¶ 4, Ex. A (firm resume of Khashayar Law Group); Marron Decl. ¶ 4, Ex. A (firm resume of Law Offices of Ronald Marron). Indeed, Class Counsel has been recognized by courts across the country for their expertise. *See id*; *see also Famular v. Whirlpool Corp.*, 2019 WL 1254882, at

*4 (S.D.N.Y. Mar. 19, 2019) ("Class counsel are experienced and qualified class action lawyers. Bursor & Fisher, P.A., has been appointed class counsel in dozens of cases in both federal and state courts, and has won several multi-million dollar verdicts or recoveries.") (internal quotation omitted); *Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) (Rakoff, J.) ("Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. … The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in [six] class action jury trials since 2008."). Furthermore, "[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). Here, Defendants were represented by the prominent and well-respected law firm of Faegre Drinker Biddle & Reath LLP. Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement.").

c. *The Settlement Was The Result Of Arms'-Length Negotiations Between The Parties*

This action required considerable skill and experience to bring it to such a successful conclusion. The case required investigation of factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. In taking on this case, Class Counsel undertook the large responsibility of pursuing claims on behalf of a class of employees against their employer and experienced defense counsel. Class Counsel also undertook the large responsibility of funding this case, without any assurance that they would

recover those costs. Class Counsel not only took on the obligation to act on behalf of the Plaintiff, but also the class as a whole.

Class Counsel worked with Defendants' Counsel to gather critical information in advance of the mediation, including the size and scope of the putative class. Krivoshey Decl. ¶ 7. Class Counsel also prepared for and participated in two mediations with Jill R. Sperber, Esq. of Judicate West, where the Parties ultimately reached agreement on a binding term sheet setting out the material terms of this Settlement Agreement. *Id.* ¶¶ 7-9. Through the undertaking of a thorough investigation, informal discovery, and substantial arm's-length negotiations, Class Counsel obtained a settlement that provides a real and significant monetary benefit to the Class. Since that time, Class Counsel has moved for preliminary approval, applied for attorneys' fees, and diligently monitored the successful notice program and claims administration process.

Defendants are represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case and oppose class certification. Even assuming a class was certified, and summary judgment defeated, the case would then have moved on to pretrial briefing, a pretrial conference, and then a jury trial, which would have been costly, time-consuming, and very risky for Class Members and for counsel. Class Counsel undertook this representation understanding that the risk of losing on class certification, or summary judgment, or at trial were significant. But for this settlement, Defendants likely would have moved to dismiss and/or stay the case, resulting in rounds of briefing and a risk of dismissal or substantial delay.

d. *The Usual And Customary Charges For Similar Work*

When Class Counsel undertake major litigation such as this, it necessarily limits their ability to undertake other complex litigation cases. During the course of this litigation, Class Counsel devoted significant time and resources to succeed in this case. To date, Class Counsel

incurred out-of-pocket costs and expenses in the amount of $12,650.26 in prosecuting this litigation on behalf of the Class. *See See* Krivoshey Decl. ¶ 23; Khashayar Decl. ¶ 10; Marron Decl. ¶ 10; Aschenbrener Decl. ¶ 6. Each of these expenses was necessarily and reasonably incurred to bring this case to a successful conclusion, and they reflect market rates for various categories of expenses incurred. *See id*. Class Counsel had to make this commitment at the outset of this case without knowing how long the case would take to resolve, if ever. Therefore, Class Counsel's willingness to prosecute this action on a contingent fee basis and to advance costs diverted the time and resources expended on this action from other cases. *See id.* ¶ 22.

Further, as detailed above, the requested fees, costs, and expenses of 1.2% of the value of the settlement's benefits is well within the market range. And, indeed, courts customarily award one-third or more in fees in class actions settlements. *See e.g. Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 2001 WL 1568856, at *10 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered"); *Sekura v. L.A. Tan Enterprises, Inc.,* No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Ill. 2016) (awarding a 40% fee in BIPA class settlement); *Zepeda v. Intercontinental Hotels Group, Inc*., No. 2018-CH-02140 (Cir. Ct. Cook Cnty., Ill. 2018) (same); *Cowen v. Lenny & Larry's, Inc*., 2019 WL 10892150, at *1 (N.D. Ill. May 2, 2019) (awarding a 34.4% fee in a false advertising class settlement relating to nutritional content of food products); *Adkins v. Nestle Purina PetCare Co.*, 2015 WL 10892070, at *2 (N.D. Ill. June 23, 2015) (awarding a 33% fee in a false advertising class settlement relating to defective chicken jerky dog treats); *see also, e.g., Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236 at ¶ 59 (upholding award of one-third of a reversionary fund recovered in light of the "substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]").

B. A Lodestar Analysis Confirms The Reasonableness Of The Requested Fees

Should the Court choose to analyze the attorneys' fee award under the lodestar method, it also readily supports the reasonableness of the requested fee. A lodestar analysis begins with calculating the number of attorney hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Brundidge*, 168 Ill. 2d at 239.[4] This base amount is then increased by a weighted risk multiplier. *Id.* at 239-40; *see also Verbaere v. Life Investors Ins. Co.*, 226 Ill. App. 3d 289, 302 (1st Dist. 1992). The risk multiplier is generally calculated based on the benefits conferred upon the class and the contingent nature of the lawsuit. *Sampson v. Eastman Kodak Co.*, 195 Ill. App. 3d 715, 724 (1st Dist. 1990). The non-economic benefits accruing to the class and to the public at large may also be considered by the Court in assessing the benefits conferred upon the class. *Hamer v. Kirk*, 64 Ill. 2d 434, 442-43 (1976).

In this case, Class Counsel performed substantial work in this litigation, totaling more than 700 attorney and staff hours over the course of the litigation with still more work to be done to see the Settlement through Final Approval (and any appeals):

ATTORNEY	POSITION	HOURS	HOURLY RATE	TOTAL AT LOCAL HOURLY RATE
Yeremey Krivoshey	Partner	180.6	$700	$126,420.00
Frederick J. Klorczyk III	Partner	59.o	$700	$41,300.00
L. Timothy Fisher	Partner	13.5	$1,000	$13,500.00
Brittany S. Scott	Associate	23.4	$325	$7,605.00
Molly S. Sasseen	Paralegal	25.0	$375	$9,375.00
Daryoosh Khashayar	Partner	210.40	$695	$146,228.00
Taylor Marks	Associate	68.50	$495	$33,907.50

[4] A lodestar analysis is properly based on Class Counsel's current hourly rates. *See Skelton v. Gen. Motors Corp.*, 661 F. Supp. 1368, 1382 (N.D. Ill. 1987), aff'd in part and rev'd in part on other grounds 860 F.2d 250 (7th Cir. 1988). The rates charged by Class Counsel (as shown in the attached declarations) correlate to their respective experience, and are at or below the average rates of attorneys with similar backgrounds and experience practicing in the Chicago legal market. Lodestar calculation based on these rates have also been consistently awarded to Class Counsel by across the country. *See, e.g.,* Krivoshey Decl. ¶ 27.

Ronald A. Marron	Partner	47.1	$815	$38,386.50
Lilach Halperin	Associate	27.8	$490	$13,622.00
Michael Houchin	Sr. Associate	75.1	$550	$41,305.00
Scott A. Kamber	Partner	9.5	$1025	$9,737.50
Michael Aschenbrener	Associate	16	$875	$14,000.00
Adam C. York	Associate	21.7	$775	$16,817.50
	TOTALS:	**777.6 hours**		***$512,204.00***

As the chart above reflects, Class Counsel's base lodestar equals $512,204.00. The base lodestar amount is further subject to a multiplier based on two factors: "the contingent nature of the class's recovery . . . and the quality of the benefit to the class." *Langendorf v. Irving Trust Co.*, 244 Ill. App. 3d 70, 80 (1st Dist. 1992). As the Illinois Supreme Court has explained:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

Fiorito v. Jones, 72 Ill. 2d 73, 90, 377 N.E.2d 1019 (1978) (internal quotations omitted). Here, both factors warrant application of a multiplier to the base lodestar amount. As explained above, given that recovery in this case was far from certain, the unique nature of the negotiated recovery is even more significant. Under such circumstances, courts typically apply a risk multiplier of between 1 and 4. In Illinois' First District Court of Appeals, lodestar multipliers of 3 are routinely approved. *See Gambino v. Boulevard Mortg. Corp.*, 398 Ill. App. 3d 21, 68 (1st Dist. 2009) (finding a risk multiplier of 3 to be "eminently reasonable"); *Sampson*, 195 Ill. App. 3d at 724 (finding a trial court did not abuse its discretion when applying a risk multiplier of 3).

In this case, Class Counsel requests a total of $1,200,000.00 in attorneys' fees and costs from the Settlement Fund, which amounts to an exceedingly modest multiplier on their base lodestar of just 2.34, which is below the multiplier of 3 routinely approved in Illinois.

III. THE REQUESTED INCENTIVE AWARDS ARE REASONABLE AND SHOULD BE APPROVED

Defendants have agreed to pay incentive awards to Plaintiff Strassburger and non-parties Francis Ruiz, Shariyar Rezai-Hariri, and Sophia McConnell in the amount of $1,500 each. Settlement Agreement ¶ 53. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of class action litigation. *See* 299 F.R.D. 160 (2014), NACA Guideline 5 (West 2014) ("Consumers who represent an entire class should be compensated reasonably when their efforts are successful and compensation would not present a conflict of interest."). "Many cases note the public policy reasons for encouraging individuals with small personal stakes to serve as class plaintiffs in meritorious cases." 299 F.R.D. 160, Guideline 5 Discussion (citing cases). This case is no different. Prior to Plaintiff Strassburger's filing of his Complaint in this case, non-parties Francis Ruiz, Shariyar Rezai-Hariri, and Sophia McConnell litigated the related California Actions. Krivoshey Decl. ¶¶ 34-35. Without the assistance of the non-parties, and the time and energy they spent litigating the California Actions, this Settlement would not be possible. *Id.*; *see also id.*, Ex. S (Declaration of Ryan Strassburger); *id.* Ex. T (Declaration of Francis Ruiz); *id.*, Ex. U (Declaration of Shariyar Rezai-Hariri); *id.* Ex. V (Declaration of Sophia McConnell).

CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court approve an incentive award to Plaintiff and the non-parties of $1,500 each and approve an award of attorneys' fees, costs, and expenses of $1,200,000.00 to Class Counsel.

RYAN STRASSBURGER, individually,

and on behalf of all others similarly situated,

Dated: November 10, 2021

By: s/ Michael Aschenbrener
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of this document via email to the following:

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