UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

DOUGLAS LYNCH, JARIEL ARIAS, KYLE JOHNSON, JANNA LAVERDIERE, ROBERT MAHON, and JEFFREY SANDERS, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

MOTOROLA MOBILITY LLC d/b/a MOTOROLA and LENOVO (UNITED STATES) INC.,

Defendants.

Case No. 1:16-cv-4524

The Honorable Gary Feinerman

MEMORANDUM IN SUPPORT OF MOTION PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

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Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs Douglas Lynch, Jariel Arias, Kyle Johnson, Janna Laverdiere, Robert Mahon, and Jeffrey Sanders submit the following memorandum in support of their Motion for Attorneys' Fees, Expenses, and Service Awards.

I. PRELIMINARY STATEMENT

Plaintiffs filed this case because Motorola failed to provide the warranty service promised under its express warranty and to otherwise administer its warranty in a reasonable manner. Plaintiffs believe that when Lenovo acquired Motorola in 2014, overly-aggressive cost-cutting decimated Motorola's warranty department and led to lengthy delays in warranty service, the issuance of replacement phones that did not work, and in some instances a complete failure to provide repaired or replacement phones at all. And Motorola's Advanced Exchange Program—through which customers could purchase expedited service—was no better. Customers reported that they did not receive expedited service or have the security deposits they paid returned. The settlement Plaintiffs' counsel—Girard Gibbs LLP and Wexler Wallace LLP ("Class Counsel")—negotiated with Motorola requires Motorola to improve its warranty procedures to address these deficiencies and provides monetary relief to those groups of Motorola customers for whom class-wide relief could be negotiated.

The key terms of the settlement were agreed to after nearly a year of litigation. Plaintiffs researched their claims and prepared initial and amended complaints, interviewed consumers regarding their experiences, served discovery on Motorola and non-parties, responded to discovery requests from Motorola, reviewed documents produced by Motorola, and opposed Motorola's motion to dismiss. This work allowed Class Counsel to understand the strengths and weakness of Plaintiffs' claims and laid the foundation for the negotiations that led to the settlement. As part of the settlement, Motorola agreed to separately pay any attorneys' fees and expenses the Court awards without diminishing the relief afforded to the Settlement Classes.

Plaintiffs now request payment of the following amounts: $775,413 in attorneys' fees, $21,000 in expenses, and $600 in incentive awards for each of the Plaintiffs.

The fee-shifting statutes under which Plaintiffs brought their claims provide for the payment of attorneys' fees using the lodestar method. In a nearly identical case—a settlement under federal and state warranty laws where class counsel's fees were paid separately from the settlement and were opposed by defendants—the Seventh Circuit recently affirmed a district court's award of fees using the lodestar method. Class Counsel have written down their time to account for billing inefficiencies and adjusted their lodestar to prevailing market rates. Class Counsel's requested expenses are modest and were reasonably incurred, as are the $600 service awards sought for the class representatives. The application should be granted.

II. FACTUAL AND PROCEDURAL BACKGROUND

On April 21, 2016, Plaintiff Douglas Lynch filed a class action complaint alleging that Motorola failed to provide warranty service consistent with its warranty obligations. On May 18, 2016, Plaintiffs filed an amended complaint adding additional plaintiffs. The Amended Complaint includes claims for breach of warranty, violation of the Magnuson-Moss Warranty Act (MMWA), and violation of state consumer protection statutes.

On July 18, 2016, Motorola moved to dismiss Plaintiffs' amended complaint and to strike Plaintiffs' class action allegations on multiple grounds, including lack of standing and failure to state claims under Fed. R. Civ. P. 12(b)(6) and 9(b). Class Counsel opposed Motorola's motion and presented argument at the October 19, 2016 hearing. During the early stages of the litigation, Class Counsel also sought and obtained appointment as interim class counsel and prepared for and attended four conferences with the Court.

In the summer of 2016, the parties exchanged initial disclosures under Fed. R. Civ. P. 26(a)(1), prepared a confidentiality order, and exchanged and answered requests for production

of documents and interrogatories. Plaintiffs served two sets of requests for production and one set of interrogatories on Motorola. They also answered Motorola's discovery requests, which included 23 requests for production and 19 interrogatories to each of the seven named Plaintiffs. Class Counsel also served subpoenas on non-party resellers of Motorola devices and spent considerable time negotiating with those third-parties and reviewing the documents ultimately produced. In December 2016, after negotiations with Motorola over discovery stalled, Plaintiffs filed a motion to compel the production of documents responsive to Plaintiffs' Second Set of Requests for Production of Documents and provide a witness to testify in response to Plaintiffs' Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6). The Court directed the parties to continue to meet and confer.

The parties resolved the dispute and Motorola produced additional documents pursuant to the compromise. The information Motorola provided includes: Motorola's warranty claim fulfillment procedures, length of time in which Motorola responds to warranty claims, customer satisfaction rates, and the extent to which Motorola's records are sufficient to identify individuals subject to Motorola's alleged warranty failures and violations. This information, the arguments concerning Motorola's motion to dismiss, and the parties' in-person meetings enabled Class Counsel to evaluate the scope of Motorola's warranty service problems, how those issues may have impacted members of the proposed classes, and what settlement relief would address the classes' claims.

The parties negotiated the essential terms of the settlement over the course of several months, including multiple in-person meetings. Those meetings focused on developing a settlement structure, which included Class Counsel advocating for cash recoveries (instead of coupons) and discussing how Motorola's warranty service could be improved moving forward

(*i.e.*, injunctive relief that would flow to settlement class members). By January 25, 2017, the parties agreed to a settlement structure, and the Court deferred ruling on Motorola's pending motion to dismiss. The parties continued settlement negotiations, and reached agreement on a term sheet by March 16, 2017.

After reaching agreement on a term sheet, the parties turned to reducing the term sheet to a written settlement agreement. The parties met and conferred over a period of months to resolve settlement issues, including settlement class definitions, the relief provided to settlement class members, the scope of release, and notice to the settlement classes. Plaintiffs were prepared at all times to continue litigating this matter through class certification and trial if the parties could not reach agreement on terms that were fair and equitable to class members.[1]

During the period the parties were negotiating, Motorola went through ongoing corporate restructurings and personnel changes (although this case was only filed in 2016, three different in-house counsel have been responsible for the case at one time or another). Motorola often took weeks—and in some instances over a month—to respond to Plaintiffs' proposals. Motorola requested several continuances of scheduled status hearings as its attorneys waited for authority or attempted to resolve settlement-related issues.

Once the parties reached a settlement, Class Counsel drafted the settlement papers and the preliminary approval papers. Class Counsel also worked with Motorola and KCC to develop a notice plan and drafted the short and long-form notice documents. Class Counsel appeared at the August 17, 2017, preliminary hearing, after which the Court conditionally certified the settlement classes, preliminarily approved the settlement, and approved the notice plan.

[1] Class counsel, for example, issued and attempted to negotiate a non-party subpoena to preserve data (only relevant to litigation) well after the basic terms of the settlement had been agreed to in the event settlement negotiations were not successful.

III. RELIEF OFFERED IN THE SETTLEMENT

The relief Class Counsel obtained addresses the core issues in the amended complaint. One of the Plaintiffs' primary complaints is that Motorola frequently failed to repair devices or provide replacement devices in a reasonable amount of time. The long wait times were often caused by the unavailability of replacement devices. As part of the non-monetary relief provided by the settlement, Motorola representatives will be able to view Motorola's replacement device inventory before allowing a warranty claim to be initiated. Settlement Agreement, ECF 69-1, § 2.5.3(4). Motorola will also increase the availability of upgraded replacement devices to avoid long wait times when a regular replacement device is not available. *Id.*, § 2.5.3(5). And twice a day Motorola will review all open work orders and identify and contact customers whose warranty claims are at risk of being delayed. *Id.*, § 2.5.3(1).

The settlement also addresses the main consumer complaints regarding the Advanced Exchange Program. Under the program, if a consumer pays a fee and provides a security deposit, Motorola should ship a replacement device immediately and after receiving the replacement device the consumer sends his or her original device to Motorola for service. If the consumer never sends Motorola his or her phone original phone, Motorola retains the security deposit. Consumers complained that they were often placed into a Catch-22: if the replacement device Motorola ships proved defective, the consumer was forced to choose between sending in his or her original phone (leaving the consumer without any working phone) or risk losing the security deposit. Pursuant to the settlement, Motorola's customer service representatives will now be able to release security holds when a customer receives a replacement device that does not power on. *Id.*, § 2.5.3(3). And Motorola call center agents now have the ability to waive the Advanced Exchange Program fee. *Id.*, § 2.5.3(2).

In addition to its commitments to reform its warranty servicing practices, Class Counsel identified several types of claims for which monetary relief could be provided on a class-wide basis based on Motorola's records. Customers who experienced service delays will receive $15 or $20 cash without having to prove or quantify an out-of-pocket loss caused by the delay. *Id.*, §§ 2.5.1.4, 2.5.1.5. Advanced Exchange Program participants who did not receive expedited service are entitled to a full refund of the fee (*id.*, § 2.5.1.1) and participants who complied with the program rules but did not have their security deposits released will be eligible for a refund of the deposit amount (*id.*, § 2.5.1.2). Lastly, customers who never received a replacement device will be entitled to full relief (either a replacement device or the cash value of the device) plus an additional $20. *Id.*, § 2.5.1.3.

For the categories of customers for whom the settlement provides monetary relief, the parties agreed to use a claims procedure, given Motorola's desire to limit relief to those customers who actually experienced the service deficiencies at issue. To facilitate the filing of claims, the claim forms were prepopulated to the extent possible based on Motorola's records. Class members must simply verify the information on the prepopulated claim form or, if needed, provide their contact information and a brief description of their claim. As of November 6, 2016, KCC had received 1,232 claims. The claims period remains open until December 6, 2017, and the claims administrator and Class Counsel remain available to assist class members.

IV. LODESTAR AND EXPENSE SUMMARY

As detailed in the supplemental Grzenczyk and Miller declarations (¶34 and ¶18, respectively), Class Counsel spent a combined 1,534.6 hours prosecuting the case and achieving a favorable result for the classes, with a resulting lodestar of $775,413.50. The lodestar is based on hourly rates that have been adjusted for the Chicago market and further reduced following a detailed line-by-line review of daily time records and elimination of inefficient or duplicative

work. *Id.* Class Counsel also incurred $21,502.11 in expenses, for which they seek reimbursement. *Id.*

V. CLASS COUNSEL SHOULD BE AWARDED $775,413 IN ATTORNEYS' FEES

Class Counsel are entitled to reasonable compensation for their efforts to successfully resolve this matter. The statutes under which Plaintiffs brought and settled their claims include fee-shifting provisions. The MMWA, for example, "contains a fee-shifting provision that authorizes the court to award attorneys' fees and costs to the prevailing party." *Reid v. Unilever United States, Inc.*, No. 12 C 6058, 2015 WL 3653318, at *3 (N.D. Ill. June 10, 2015), *aff'd sub nom. Martin v. Reid*, 818 F.3d 302 (7th Cir. 2016). Plaintiffs are also entitled to their reasonable fees because their efforts have led to significant injunctive and monetary relief for the classes.

A. The Court Should Award Lodestar-Based Attorneys' Fees

The lodestar method for calculating fees is appropriate in this case for three reasons. First, the lodestar method applies where, as here, Plaintiffs obtained class-wide benefits pursuant to a fee-shifting statute. Second, the settlement provides primarily for injunctive relief. Lastly, the Seventh Circuit has recently affirmed that the lodestar method is appropriate even in damages cases where, as here, there is no risk that class counsel placed its interests in a fee award above those of the class.

1. The Lodestar Method is Appropriate in Fee-Shifting Cases

Courts employ the lodestar method for awarding fees in cases brought under fee-shifting statutes like the MMWA. *Unilever*, 2015 WL 3653318, at *5 ("In a statutory fee-shifting case, the court determines a reasonable amount of attorneys' fees by applying the lodestar method."). In *In re Sears, Roebuck and Co. Front-Loading Washer Products Liability Litigation*, for example, Magistrate Judge Rowland recently awarded lodestar-based fees in a case brought under the MMWA. 2016 WL 4765679, at *5 (N.D. Ill. Sept. 13, 2016); *see also Skeen v. BMW*

of North Am. LLC, 2016 WL 4033969, at *18 (D.N.J. July 26, 2016) (lodestar "is the proper method" for calculating fees under the MMWA); *Roberts v. Electrolux Home Prods.*, 2014 WL 4568632, at *8 (C.D. Cal. Sept. 11, 2014) (the "lodestar method of calculating fees is the appropriate method" where plaintiffs settled claims under the MMWA and state law); *Messana v. Mercedes-Benz of N. Am., Inc.*, No. 99 C 912, 2000 WL 988163, at *1 (N.D. Ill. July 18, 2000) (awarding fees under the MMWA based on the lodestar method).

2. The Lodestar Method is Appropriate in Cases with Injunctive Relief

The lodestar method is also appropriate here because the settlement provides for injunctive relief on behalf of the class. *See Harsch v. Eisenberg*, 956 F.2d 651, 663 (7th Cir. 1992) ("[T]he lodestar approach is best in cases with substantial injunctive or precedent-creating components." (quoting *Kirchoff v. Flynn*, 786 F.2d 320, 328 (7th Cir. 1986))); *Langendorf v. Conseco Senior Health Ins. Co.*, No. 08-CV-3914, 2009 U.S. Dist. LEXIS 131289, at **30-32 (N.D. Ill. Nov. 18, 2009) ("As a result of the difficulty in making an assessment of the Settlement's value in this case, the Court will utilize the lodestar method in awarding class counsel's attorneys' fees."). While the settlement also includes monetary compensation, the Injunctive Relief Class (over 375,000 class members) is much larger than the Damages Class (21,775 class members) and the primary relief of the settlement is injunctive. *See In re Ferrero Litig.*, 583 F. App'x 665, 668 (9th Cir. 2014) (rejecting argument that attorney's fees should be limited to a percentage of the settlement fund when the plaintiffs obtained both injunctive relief and cash compensation).

3. The Seventh Circuit Has Endorsed the Use of the Lodestar Method in Similar Cases

In *Front-Loading Washer*, the Seventh Circuit recently affirmed the use of the lodestar method in a nearly identical situation to this case. In that case the district court recognized that it

had "discretion to use the lodestar method to calculate attorney fees" where plaintiffs settled their warranty claims under the MMWA and state law. 2016 WL 4765679, at *5 (quoting *In re Southwest Airlines Voucher Litig.*, 799 F.3d 701, 707 (7th Cir. 2015)). It concluded that class counsel was entitled to a lodestar-based fee even though that amount was several times greater than the highest estimated class recovery because there was "no indications of class counsel being compensated at the expense of class members," and thus no need to tie class counsel's attorneys' fees to the class recovery. *Id.* The court noted that the settlement did not contain a clear-sailing provision, that the parties agreed on the terms of the settlement without discussing attorneys' fees, and that the defendants contested the plaintiffs' fee request. *Id.* at *8. The same features are present in this case, and Motorola will pay any attorneys' fees, expenses, and service awards in addition to the relief provided to the Settlement Classes. Thus, there is "not a single cent of relief that the class traded off for fees." *Id.* And, as was the case in *Front-Loading Washer*, the settlement was the result of "genuine adverseness between the parties." *Id.*

The district court further held that the Seventh Circuit's decision in *Redman v. RadioShack Corp.,* 768 F.3d 622 (7th Cir.2014) and *Pearson v. NBTY, Inc.,* 772 F.3d 778 (7th Cir.2014), which evaluated attorneys' fees based on the value of the class-wide recovery, were inapplicable because in those cases there was evidence of collusion between class counsel and defendants. *Front-Loading Washer*, 2016 WL 4765679, at *7 ("reject[ing] the notion that [the court] is precluded from awarding the lodestar"). Here, Class Counsel's interests are aligned with the classes' interests, not the defendants. *Pearson* and *Redman* are thus inapplicable.

On appeal, the Seventh Circuit affirmed the district court's holding that *Pearson* and *Redman* created only a presumption, not immutable rules, for how to calculate attorneys' fees. *In re Sears, Roebuck and Co. Front-Loading Washer Prods. Liability Litig.*, 867 F.3d 791, 793

(7th Cir. 2017). And although the Seventh Circuit held that class counsel was not entitled to a positive risk multiplier, it awarded class counsel its full lodestar even though that amount was several times greater than the estimated class recovery. *Id.* Similarly, in *Americana Art China Co. v. Foxfire Printing and Packaging, Inc.*, the Seventh Circuit affirmed the use of the lodestar method and rejected an argument that the district court was required to base fees on the recovery obtained for the class. 743 F.3d 243, 247 (7th Cir. 2014) ("it is legally correct for a district court to choose" either the percentage or lodestar method for calculating fees and affirming use of lodestar). Class Counsel are similarly entitled to receive their requested lodestar in this case.

B. Class Counsel's Lodestar Is Reasonable

"The starting point for determining fees based upon lodestar is calculated by multiplying the number of hours of work spent on the matter by the hourly market rates of the individuals. The lodestar amount is then subject to such adjustment as facts and circumstances may require." *Turner v. Beneficial Nat. Bank*, 405 F. Supp. 2d 929, 931 (N.D. Ill. 2005) (citations omitted). "[T]here is a 'strong presumption' that the lodestar figure is reasonable." *Fricano v. LVNV Funding, LLC*, No. 14 C 08225, 2015 WL 5331711, at *1 (N.D. Ill. Sept. 8, 2015) (quoting *Perdue v. Kenney A. ex rel. Winn*, 559 U.S. 542, 554 (2010)).

Here, Class Counsel efficiently prosecuted this case, reviewed their billing records to eliminate inefficiencies, and submitted hourly rates consistent with the prevailing market rates. Class Counsel's $775,413 lodestar is reasonable and the Court should award them attorneys' fees in that amount.

1. The Time Expended by Class Counsel is Reasonable

Class Counsel's requested lodestar is based on time that was "reasonably expended" in pursuit of Plaintiffs' claims. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). As detailed above and in the supplemental Grzenczyk and Miller declarations, Class Counsel developed the legal

and factual claims in the case, pursued discovery, opposed Motorola's motion to dismiss and strike class allegations, and negotiated a settlement. All of this work was necessary to achieve the result that was ultimately obtained for the classes.

The firms also efficiently staffed this matter. Girard Gibbs used a small team of lawyers that performed worked based on their skill and experience: research and initial drafting work was typically assigned to a junior associate (Mr. Grille), while more complex tasks and legal strategy were handled by more senior attorneys (Mr. Elias and Mr. Nafisi). Grzenczyk Supp. Decl., ¶¶26-32. Mr. Grzenczyk, a senior associate, handled settlement negotiations and related briefing, while Mr. Girard, the firm's senior partner, was responsible for overall strategy. *Id*. Of Wexler Wallace's time, 97% was spent by two attorneys: Mr. Miller and Mr. Prom. Miller Supp. Decl., ¶18.

Class Counsels' lodestar is also conservative. Class Counsel conducted a line-by-line review of their billing records and removed time that was inefficient, duplicative, or otherwise did not benefit the classes. Grzenczyk Supp. Decl., ¶35; Miller Supp. Decl., ¶19. Excessive time spent conducting legal research was, for example, eliminated. Grzenczyk Supp. Decl., ¶35. Through the exercise of billing discretion, Class Counsel reduced their lodestar by over $55,000. In addition, the lodestar includes time spent through August 17, 2017; the date the Court granted preliminary approval. *Id*. It thus does not include time that Class Counsel anticipates spending, or has already spent, to administer the settlement, respond to class member inquires, and prepare the final approval motion. And Class Counsel avoided any unnecessary activity once the parties agreed on the principle terms of the settlement in March 2017. Only a small portion of Class Counsel's hours were spent after that point, and those hours were devoted almost exclusively to finalizing the settlement. *Id*.

2. Class Counsel's Hourly Rates are Reasonable

Girard Gibbs's and Wexler Wallace's hourly rates, which are listed below, are reasonable and consistent with the prevailing market rates.

Attorney or Staff Member	Level	Rate	Attorney or Staff Member	Level	Rate
Girard Gibbs LLP			**Wexler Wallace LLP**		
Daniel Girard	Partner	$875	Mark Miller	Partner	$600
Jordan Elias	Partner	$625	Bethany Turke	Partner	$600
Esfand Nafisi	Sr. Associate	$450	Adam Prom	Associate	$340
Scott Grzenczyk	Sr. Associate	$450	Rose Campo	Paralegal	$150
Simon Grille	Associate	$375	Brian Micic	Law Clerk	$150

Courts in this District first look to the rate that a firm's fee-paying clients pay in non-contingent matters to determine a reasonable hourly rate. *Unilever*, 2015 WL 3653318, at *14 (citing *Pickett v. Sheridan Health Care Center*, 664 F.3d 632, 640 (7th Cir. 2011)). Girard Gibbs' requested hourly rates are below its customary rates, which reflect what the firm charges to its fee-paying clients in non-contingent matters (Grzenczyk Supp. Decl., ¶53). The firm's submission of hourly rates below its customary rates in this matter has decreased the firm's lodestar by over $81,000. *Id.* ¶54. Wexler Wallace's rates are the rates it charges to fee-paying clients in non-contingent matters. Miller Supp. Decl., ¶36.

Courts also look to "evidence of rates similarly experienced attorneys in the community charge paying clients for similar work and evidence of the fee awards the attorney has received in similar cases." *Spegon v. Catholic Bishop of Chi.*, 175 F.3d 544, 555 (7th Cir. 1999). Such evidence includes the United States Consumer Law Attorney Fee Survey Report (the "Report"). *See Unilever*, 2015 WL 3653318, at *25 (collecting cases citing the Report); *Front-Loading Washer*, 2016 WL 4765679, at *14. In the 2015-16 edition of the Report, the median rate for "Attorneys Handling Class Action Cases" in Chicago is $510. Grzenczyk Supp. Decl., Ex. 3.

Girard Gibbs' blended hourly rate is $518 and Wexler Wallace's is $476. The requested hourly rates are also within the range of median rates in the Report: junior associates billed near the 25% median of $350, senior associates near the 50% median of $450, and partners near the 75% median of $600. *Id*. While Mr. Girard's rate is higher than the 95% median rate ($700), he has been recognized as an expert on class actions and complex litigation. Grzenczyk Supp. Decl., ¶25.

The firms' customary rates have been approved by numerous courts in class actions throughout the country (Grzenczyk Supp. Decl., ¶56; Miller Supp. Decl., ¶36). And recent cases in this circuit have approved hourly rates similar to those requested here. *E.g. Chesemore v. Alliance Holdings, Inc.*, 2014 WL 4415919, at *6 (W.D. Wis. Sept. 5, 2014) (awarding fees from "$395 (for low-level associates) to $895 (for high-level partners)"). In *Front-Loading Washer*, the court approved a rate of $800 for a senior partner like Mr. Girard and $595 for a senior counsel with similar experience to that of Mr. Miller and Mr. Elias, both of whom are partners at their respective forms. 2016 WL 4765679, at *13. And in *Unilever*, the court approved a rate of $558 for an associate attorney with less experienced than Mr. Miller and Mr. Elias. 2015 WL 3653318, at *17-18; *see also Sanchez v. Roka Akor Chicago LLC*, 2017 WL 1425837, at 6 (N.D. Ill. Apr. 20, 2017) ($525 for a 10-year partner). The requested rates for senior associates Mr. Nafisi and Mr. Grzenczyk—$450 each—are also in line with recent decisions. *Front-Loading Washer*, 2016 WL 4765679, at *13 ($515 for 9-year attorneys); *Roka Akor*, 2017 WL 1425837, at *6 ($430 for 6-year attorney; attorney experience available at http://flsalaw.com/our-firm/); *Unilever*, 2015 WL 3653318, at *21 ($346.50 for 6-year attorney in 2014). The same is true of the requested rates for Ms. Vuong, Mr. Prom, Mr. Grille, and Mr. Marchese—$425, $340, $375, and $350, respectively. *See Roka Akor*, 2017 WL 1425837, at *6 ($400 for a 4-year attorney).

The requested paralegal rates of $150 (Ms. Campo, Mr. Micic, and Ms. Arghavani) and litigation assistant rate of $65 (Mr. Brown) are likewise supported by recent caselaw. *Front-Loading Washer*, 2016 WL 4765679, at *18 ($125 for support staff).

VI. CLASS COUNSEL SHOULD BE AWARDED $21,000 IN EXPENSES

Class Counsel are also entitled to payment of their reasonable litigation expenses. During the prosecution of this litigation, Class Counsel incurred $21,502.11 in out-of-pocket expenses. These expenses include filing and other court fees, legal research, copying costs, fees for serving third-party subpoenas, and transportation and lodging for attendance at hearings. Grzenczyk Supp. Decl., ¶¶58-60; Miller Supp. Decl., ¶39. Courts regularly provide for the payment of these types of expenses. *Cook v. McCarron*, No. 92 C 7042, 1997 WL 47448, at *19 (N.D. Ill. Jan. 30, 1997), *aff'd sub nom. Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998) (awarding costs for consulting experts, telephone charges, filing and service fees, photocopying, and computerized legal research); *City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 910 (S.D. Ill. 2012) (awarding requested expenses because "the costs sought here are of the type that are routinely reimbursed by paying clients, such as experts' fees, other consulting fees, deposition expenses, travel, and photocopying costs.").

Although Class Counsel incurred $21,502.11 in reasonable expenses, consistent with the notice provided to the classes, they request payment of $21,000 of their expenses.

VII. INCENTIVE AWARDS OF $600 TO THE CLASS REPRESENATIVES ARE APPROPRAITE

Plaintiffs also request that the six class representatives—Douglas Lynch, Jariel Arias, Kyle Johnson, Janna Laverdiere, Robert Mahon, and Jeffrey Sanders—each receive $600 in recognition of their efforts in this litigation. "Incentive awards are commonly awarded to those who serve the interests of the class." *Briggs v. PNC Financial Servs. Group, Inc.*, 2016 WL

7018566, at *2 (N.D. Ill. Nov. 29, 2016). They "serve the important purpose of compensating plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs." *Id*. (citing *Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 876-77 (7th Cir. 2012) and other cases). Courts routinely approve incentive awards greater than $600. *See Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 239 (N.D. Ill. Mar. 2, 2016) ($1,500); *Schulte v. Fifth Third Bank*, 805 F.Supp.2d 560, 601 (N.D. Ill. 2011) ($1,000); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015) ($5,000); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F.Supp.2d 1028, 1042 (N.D. Ill. 2011) ($5,000 and collecting cases).

Here, Plaintiffs took on the responsibility of serving as class representatives, worked with Class Counsel to develop the claims in this case, reviewed pleadings, produced documents, responded to interrogatories, and conferred with Class Counsel regarding the settlement. *See* Plaintiff Declarations; Grzenczyk Supp. Decl., ¶¶62-64. Plaintiffs' efforts warrant the modest requested incentive awards.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court award Class Counsel $775,413 in attorneys' fees and $21,000 in expenses, and award each Plaintiff $600 in service awards.

DATED: November 8, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2017, a true and correct copy of the foregoing document was filed on the Court's CM/ECF system, and was thereby made available to counsel of record.

Executed this 8th day of November, 2017 at Chicago, Illinois.

/s/ *Mark R. Miller*
Mark R. Miller