IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

THOMAS BELTON, MAURICE GREEN, and MONYAL McLARTY, individually and on behalf all others similarly situated,

Plaintiffs,

v.

ALAMO CLAIM SERVICE, PETER PERRINE, THORLIN LEE, DAVID SERFASS, and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendants.

1:12-cv-01306-JES-BGC

[AMENDED PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT AND CLASS CERTIFICATION, AND PLAINTIFFS' MOTION FOR APPROVAL OF CLASS COUNSEL'S FEES AND COSTS

The above-entitled matter came before the Court on the Plaintiffs' Motion for Final Approval of Proposed Settlement and Class Certification ("Motion for Final Approval"). (Docket No. 112), and Plaintiffs' Motion for Approval of Class Counsel's Fees and Costs ("Motion for Fees and Costs"). (Docket No. 114).

1. Plaintiffs Thomas Belton, Maurice Green, and Monyal McLarty (collectively, "Named Plaintiffs" or "Class Representatives") filed this action on behalf of themselves and all other persons similarly situated, alleging that Defendants Alamo Claim Service (hereinafter "Alamo"), Peter Perrine, David Serfass, and Thorlin Lee (collectively, the "Alamo Defendants") and State Farm Mutual Automobile Insurance Company ("State Farm") ("Defendants" collectively refers

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to "Alamo", "Alamo Defendants", and "State Farm") violated the Illinois Minimum Wage Law, 820 ILCS 105/1 – 15 ("IMWL"), and Fair Labor Standards Act, 29 U.S.C. §201 et seq. ("FLSA"), by classifying claims adjusters working in State Farm's Illinois offices as independent contractors and not paying them overtime wages. Doc. 49. After almost a year of litigation the Parties[1] mediated their dispute with the good offices of Magistrate Judge Byron Cudmore and reached a compromise on the claims asserted in the Lawsuit.

2. The Court preliminarily approved the Parties' proposed settlement, provisionally certified the class, appointed Plaintiffs' counsel as Class Counsel, and authorized the issuance of Notice to Class Members. Class Counsel now moves this Court for an order 1) entering final approval for the Parties' Master Settlement Agreement ("Settlement Agreement"); (2) certifying the proposed settlement class under Federal Rule of Civil Procedure 23(b)(3) in connection with the settlement process; 3) approving the Named Plaintiffs' incentive payments to the Named Plaintiffs; 4) approving Class Counsel's fees and costs in this matter; and 5) entering the Order attached as Exhibit 1.[2] Class Counsel has separately moved for approval Class Counsel's fees and costs in this matter.

Procedural Background

3. The procedural and factual history of this litigation is detailed in the Court's Order Granting Parties' Motion For Preliminary Approval Of Proposed Settlement And Class Certification, Doc. 109, and is not repeated here.

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[1] As part of the settlement, the Alamo Defendants agreed to resolve the case themselves and Plaintiffs agreed to dismiss State Farm as a Defendant upon the funding of the settlement fund. Accordingly, the term "Parties" refers to the Alamo Defendants and Named Plaintiffs.

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The Court's Preliminary Approval Order, Notice and Claim Administration

4. On October 4, 2013, the Court preliminarily approved the settlement and certified a settlement class consisting of

> All persons who were hired by Alamo Claim Service to work in State Farm offices in Illinois as claim representatives who were classified as independent contractors and paid a day rate for their work between August 21, 2009 and the date of final judgment in this matter (the "Class" or "Settlement Class").

The Court also designated Getman & Sweeney as Class Counsel and approved the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing and ordered the mailing of the Notice to the Class Members. *Id.* at ¶ 30. The Notice met the requirements of Fed. R. Civ. P. 23(c)(2)(B) and also informed Class Members of Class Counsel's intention to seek service payments of [redacted] for the named plaintiffs, up to 33% of the Settlement Fund for attorneys' fees, and their out-of-pocket expenses. Declaration of Danielle Behring ("Behring Decl.") Exhibit A.

Notice to the Class

5. On October 8, 2013, Simpluris received the Court-approved Notice from Counsel. Behring Decl. ¶ 4. On October 14, 2013, defense counsel provided Simpluris with a mailing list ("Class List") containing the name, last known address, Social Security number, and pertinent employment information during the Class Period for all 202 Class Members. Behring Decl. ¶ 5. The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service. The NCOA contains changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the

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[2] In a separate motion Class Counsel addresses attorneys' fees and costs.

NCOA was utilized in connection with the mailing of the Notices. Behring Decl. ¶ 6. Then on October 18, 2013, after updating the mailing addresses through the NCOA, Notices were mailed via First Class Mail to 202 Class Members contained in the Class List. Behring Decl. ¶ 7. Each Notice was pre-printed with the name and address of the Class Member and his or her estimated payment. Behring Decl. ¶ 4.

6. If a Class Member's Notice Packet was returned by the USPS as undeliverable and without a forwarding address, Simpluris performed an advanced address search (i.e. skip trace) on all of these addresses by using Accurint, a reputable research tool owned by Lexis-Nexis. Simpluris used the Class Member's name, previous address and Social Security Number to locate a current address. Through the advanced address searches, Simpluris was able to locate seven updated addresses and Simpluris promptly mailed Notices to those updated addresses. Ultimately, five Notices were undeliverable because Simpluris was unable to locate a current address. Behring Decl. ¶ 8. Simpluris received eighteen re-mail requests for the Notices from Class Members. Notices were promptly sent to those Class Members via First Class mail, fax, or email. Behring Decl. ¶ 9.

7. More than 98% of the Class remained in the settlement, with only three of the 202 Class Members opting out of the action. Behring Decl. ¶ 10. Throughout the notice period, Class Counsel received telephone calls from numerous Class Members and answered their questions about their claims and concerns about retaliation. Only three class members presented objections to the settlement Declaration of Michael J.D. Sweeney in Support of Plaintiffs' Motion for Final Approval of Proposed Settlement and Class Certification ("Sweeney Decl.") ¶ 6.

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8. On December 3, 2013, Plaintiffs filed their Motion for Final Approval. The same day, Plaintiffs also filed Motion For Approval Of Class Counsel's Fees And Costs. Defendants took no position with respect to any of these motions.

9. The Court held a fairness hearing on December 18, 2013. Of the 202 Class Members, only three requested exclusion, two objected to the settlement and one objected to Class Counsel's request for fees and costs. No Class Members appeared at the hearing to raise an objection.

10. Having considered the Motion for Final Approval, the Motion for Attorneys' Fees, the Motion for Service Awards, the supporting declarations, the oral argument presented at the December 18, 2013 fairness hearing, the objections, and the complete record in this matter, for good cause shown,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Certification of the Settlement Class

11. The Court certifies the following class under Federal Rule of Civil Procedure 23(e), for settlement purposes:

> All persons who were hired by Alamo Claim Service to work in State Farm Offices in Illinois as claim representatives who were classified as independent contractors and paid a day rate for their work between August 21, 2009 and the date of final judgment in this matter.

12. Plaintiffs meet all of the requirements for class certification under Federal Rule of Civil Procedure 23(a) and (b)(3).

13. The Plaintiffs meet the numerosity requirement of Rule 23(a)(1) because it includes 202 members. *See Chandler v. Southwest Jeep-Eagle, Inc.*, 162 F.R.D. 302, 307 (N.D. Ill. 1995) (most courts have found that a Class consisting of more than 40 usually satisfies the numerosity requirement).

14. The Plaintiffs meet the commonality requirement in Rule 23(a)(2) because all class members were classified as independent contractors, paid a day rate, and not paid overtime wages. *Kernats v. Comcast*, 2010 WL 4193219, *11-12 (N.D. Ill. Oct. 20, 2010) (commonality is met where "the class members' claims hinge on the same conduct of the defendants.").

15. The Plaintiffs meet typicality requirement of Rule 23(a)(3) for the same reasons. Typicality is met if the representatives' claims arise from the same practice or course of conduct and are based on the same legal theory as the class claims. *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998); *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983); *Miller v. Spring Valley Properties*, 202 F.R.D. 244, 248 -49 (C.D. Ill. 2001). Typicality and commonality are closely akin. *Rosario*, 963 F.2d at 1018. "Typical does not mean identical, and the typicality requirement is liberally construed." *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D. Ill. 1996); *Gesell v. Commonwealth Edison Co.*, 216 F.R.D. 616, 624 (C.D. Ill. 2003). In this case the claims of the Class Representatives and the Class Members all arise from the same practice. Therefore the claims are typical.

16. Rule 23(a)(4) requires that the Named Plaintiffs provide fair and adequate protection for the interests of the class. Fed. R. Civ. P. 23(a)(4). "That protection involves two factors: (a) the plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed litigation; and (b) the plaintiff must not have interests antagonistic to those of the class." *Shaver v. Trauner*, 1998 WL 35333713, *6 (C.D. Ill. 1998) *citing Rosario v. Livaditis*, 963 F .2d 1013, 1018 (7th Cir.1992). The Named Plaintiffs easily satisfy both factors. This Court has already found that Class Counsel is experienced and qualified, Order ¶ 25, Dkt. 109, and that the Class Representatives have no antagonistic interests that go to the subject matter of the lawsuit. *Id.* Thus, the adequacy of representation is easily satisfied.

17. As questions of law or fact common to the members of the class predominate over any questions affecting only individual members, Plaintiffs meet the predominance requirement of Rule 23(b)(3). An action demonstrates a "predominance" of common questions where "the group for which certification is sought seeks to remedy a common legal grievance." *Riordan v. Smith Barney*, 113 F.R.D. 60, 65 (N.D. Ill 1986). For the reasons set forth above with respect to commonality under Rule 23(a)(2) and typicality under Rule 23(a)(3), and consistent with the Court's previous determination, the Court finds that common questions of fact and law predominate in this action.

18. A class action is a superior method for the fair and efficient adjudication of the controversy between the Class and Defendants because it achieves judicial economy and efficiency and avoids the risk of inconsistent adjudications in individual actions. Order ¶ 28, Dkt. 109. This settlement will allow the Parties to resolve the claims of 202 persons in one coordinated proceeding, thus conferring significant benefits upon each Class Member. Defendants will also benefit by being spared the expense and potential inconsistency of scores of individual lawsuits. Id.

19. As set forth above, the claims raised in this case meet each of the statutory requirements for class treatment and therefore the Court certifies a class composed of: "All persons who were hired by Alamo Claim Service to work in State Farm Offices in Illinois as claim representatives who were classified as independent contractors and paid a day rate for their work between August 21, 2009 and the date of final judgment in this matter" for this settlement.

Approval of the Settlement

20. As a matter of public policy, federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and

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risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."); *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888-89 (7th Cir. 1985) (noting "the general policy favoring voluntary settlements of class action disputes"); *see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting that "strong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned"); 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.41 (3d ed. 1992) (collecting cases). The traditional means for handling claims like those at issue here — individual litigation — would unduly tax the court system, require a massive expenditure of public and private resources and, given the relatively small value of the claims of the individual Class Members, would be impracticable. The proposed Settlement, therefore, is the best vehicle for Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

21. The decision to approve a proposed settlement is committed to the Court's sound discretion. *See, Vought v. Bank of America, N.A.*, 901 F.Supp.2d 1071, 1083 (C.D. Ill. 2012). Settlements that are "fair, reasonable, and adequate" merit Court approval. Fed. R. Civ. P. 23(e)(1)(C); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652 (7th Cir. 2006); *Vought v. Bank of America, N.A.*, 901 F.Supp.2d 1071, 1083 (C.D. Ill. 2012). In considering a class settlement for approval, courts consider (1) the strength of plaintiffs' case compared with the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel,* 463 F.3d at 653; *Isby,* 75 F.3d 1191, 1199; *Vought*, 901 F.Supp.2d at 1083. Further, a court must not focus

on an individual component of the compromise, but must instead view the settlement in its entirety. *Isby,* 75 F.3d at 1199. Finally, a strong presumption of fairness exists when the settlement is the result of extensive arm's length negotiations. *In re Kentucky Grilled Chicken Coupon Marketing & Sales Practices Litigation*, 280 F.R.D. 364, 378 (N.D. Ill. Nov. 16, 2011); *Hispanics United of DuPage County v. Village of Addison, Ill.,* 988 F. Supp. 1130, 1150, n.6 (N.D. Ill. 1997). The Parties' settlement meets all these criteria and clearly falls within the range of possible approval.

22. One of the key considerations in evaluating a proposed settlement is the strength of the plaintiffs' case as compared to the amount of the defendants' offer. *See Isby*, 75 F.3d at 1199; *Vought*, 901 F.Supp.2d at 1083. A settlement is fair "if it gives [plaintiffs] the expected value of their claim if it went to trial, net of the costs of trial." *Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust*, 834 F.2d 677, 682 (7th Cir. 1987) (finding adequate a settlement of ten percent of the total sought due to risks and costs of trial). *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 891 (7th Cir. 1985) (settlement approved because "there [was] no showing that the amounts received by the beneficiaries were totally inadequate").

23. The Court previously found that the Parties' settlement falls "within the range of possible approval". Order ¶ 14, Dkt. 109. The consideration to be paid by the Alamo Defendants to the Class here is considerable and the plan of allocation is reasonable. The total Settlement Fund covers overtime pay awards and statutory damages, incentive awards, and legal fees and costs. Class Members will receive their *pro rata* share of the Settlement based on their length of employment with the Alamo Defendants and based on their weekly pay and hours worked. The highest Settlement Share to be paid is approximately [redacted] and the average Settlement Share to be paid is approximately [redacted] for an average of 35.6 weeks of work. The amount

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claimed accounts for approximately 99.62% of the Net Settlement Fund or [redacted].This factor militates in favor of approving the Settlement.

24. A second factor to be considered by the Court is the complexity, length, and expense of litigation that will be spared by the proposed settlement. *In re Mexico Money Transfer Litigation*, 164 F. Supp. 2d 1002, 1019 (N.D. Ill. 2000). Absent settlement, Defendants would continue to vigorously defend the case. Further litigation would require depositions and additional motion practice relating to discovery and certification and dispositive motions would be certain. Defendants raised several defenses to the class claims, including that Class Members were independent contractors and if they were employees, that they were exempt employees. If Defendants prevailed on either of these defenses, the Class would recover nothing. Even if the Class is victorious at the trial level the victory is likely to confront appeals. Additional litigation would make any recovery unlikely for several years and would increase the expenses of this litigation but would not have reduced the risks the litigation held for the Class. *See Isby*, 75 F.3d at 1199; *see also In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d at 1019; *In re Kentucky Grilled Chicken*, 280 F.R.D. at 377. Because this settlement provides Class Members with a substantial recovery now, without having to weather litigation risk or the time necessary to fully prosecute and collect on their claims, this factor favors the settlement.

25. Little or no opposition to the settlement is a significant factor weighing in favor of finding a proposed class settlement is reasonable to the class as a whole. *See Hispanics United of DuPage County v. Village of Addison, Illinois*, 988 F. Supp. 1130, 1169 (N.D. Ill. 1997) (finding the settlement fair where a small number of class members objected); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226-27 (S.D. Ill. 2001) (same); see also *Wal-Mart Stores, Inc. v. Visa*

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USA, Inc., 396 F.3d 96, 118 (2d Cir. 2005) (noting that "[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.").

26. The Class Representatives support the settlement, as do the overwhelming majority of the Class, Class Counsel, and the Defendants. This reaction strongly suggests the settlement is a good result for the class. Further, Class Counsel has spoken to many Class Members who have opined on the settlement and view it favorably. Sweeney Decl. ¶ 16. The near unanimous support from the class favors approval of the settlement. *Hispanics United of DuPage County v. Village of Addison, Illinois*, 988 F. Supp. 1130, 1169 (N.D. Ill. 1997).

27. The opinion of competent class counsel on the fairness of the settlement is relevant. As this Court previously recognized, Class Counsel is experienced in class action litigation and has a substantial amount of information to evaluate, negotiate and make well-informed judgments about the adequacy of the Settlement. Order ¶ 25, Dkt. 109.

28. Class Counsel has opined that the settlement is fair, reasonable and adequate. Sweeney Decl. ¶ 17. When experienced counsel supports the settlement, as they do here, their opinions are entitled to considerable weight. *See Isby*, 75 F.3d at 1200; *In re Mexico Money Transfer Litigation*, 164 F. Supp. 2d at 1020. Class Counsel's opinion weighs in favor of approving the settlement.

29. The stage of the proceedings and discovery at which settlement occurs is also a relevant consideration in approving the settlement. This complex class action was resolved only after 46 individuals in addition to the Named Plaintiffs opted into this action and the Parties had engaged in extensive discovery. Sweeney Decl. ¶ 18. The stage of litigation has sufficiently advanced so that Class Counsel could fairly and fully evaluate the value of the settlement and this factor weighs in favor of approval.

30. The Court has already concluded that the settlement was the result of adversarial, arm's length negotiations and substantial assistance from the Magistrate Judge. Doc. 109 ¶ 15. Such arm's length negotiations conducted by competent counsel constitute *prima facie* evidence of a fair settlement. *Berenson v. Fanueil Hall Marketplace*, 671 F. Supp. 819, 822 (D. Mass. 1987) ("where . . . a proposed class settlement has been reached after meaningful discovery, after arm's length negotiation by capable counsel, it is presumptively fair."). In the absence of any evidence of collusion, this factor favors final approval of the settlement. *See Winston v. Speybroeck*, 3:94 Civ. 150AS, 1996 WL 476662, *7 (N.D. Ind. Aug. 2, 1996). Moreover, the use of an experienced neutral also supports a finding that the settlement was non-collusive and reached through arm's length negotiations. *deMunecas v. Bold Food, LLC*, 09 CIV. 00440(DAB), 2010 WL 2399345 (S.D.N.Y. Apr. 19, 2010). Therefore, the Settlement meets the requirements of and was the result of arm's length bargaining.

31. Accordingly, the Court approves the Parties' settlement as "fair, reasonable, and adequate" as to both the Class claims arising under the Illinois Minimum Wage Law, 820 ILCS 105/1 – 15, and the Fair Labor Standards Act, 29 U.S.C. §201 *et seq*. Fed. R. Civ. P. 23(e)(1)(C); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652 (7th Cir. 2006); *see also, Clark v. Ecolab Inc.*, 07CIV.8623PAC, 2010 WL 1948198 (S.D.N.Y. May 11, 2010) (a settlement that is the result of a contested litigation and arm's length negotiation with an experience mediator meets the standard for approval under the FLSA).

The Incentive Payments Sought Are Appropriate

32. Class Counsel seeks incentive awards for the Named Plaintiffs for their work and willingness to represent the class. "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

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which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Cook v. Niedert,* 142 F.3d 1004, 1016 (7th Cir. 1998). In addition, the risks in bringing a lawsuit, such as reasonable fear of workplace retaliation, risk of reputation, risks of costs associated with litigation, expanded waivers and other post-settlement duties are all relevant factors weighing in favor of an incentive award. *See Cook,* 142 F.3d at 1016 (noting possible workplace retaliation as a risk); *Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 876-77 (7th Cir. 2012) (incentive awards are designed in part to compensate class representatives for risks they bear). Indeed, awarding a named plaintiff an incentive payment recognizes the individual's contribution for standing up for the rights of other employees who also have also been victims of discrimination. *See*, *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ("We also think there is something to be said for rewarding those drivers who protest and help to bring rights to a group of employees who have been the victims of discrimination.").

33. Here, the Named Plaintiffs performed substantial services to and bore substantial risks for the class. Their services began with their initiative in filing the state and federal claims that were eventually resolved in the Settlement and allowed 202 current and former claims adjusters to recover unpaid wages... The Named Plaintiffs represented the class by participating in discovery and settlement negotiations, working with Class Counsel in developing the case, modeling damage calculations, and ultimately concluding a successful settlement for the class. Although depositions and trial were unnecessary, all of the Named Plaintiffs were prepared to testify during a deposition and at trial. Sweeney Decl. ¶ 7. The Named Plaintiffs also assumed substantial risks in bringing the litigation.. The Named Plaintiffs remain in the claims adjustment industry. By suing two major players in that industry, they risked their good reputations in the

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industry—risks no other Class Members were required to bear. *Id.* ¶ 8. The Named Plaintiffs also risked being held responsible for litigation costs should they not have been successful; another risk they bore themselves. . Accordingly an incentive payment to each of the Named Plaintiffs is appropriate.

34. The incentive payments sought are consistent with the payments made to Named Plaintiffs in this District. *See, e.g., American International Group, Inc.*, 2012 WL 651727, *16 - 17 (approving $25,000 incentive award); *Berger v. Xerox Corp. Ret. Income Guar. Plan,* No. 00-584-DRH, 2004 WL 287902, *7 (S.D. Ill. Jan. 22, 2004) (approving $20,000 incentive award). They are also within the range granted in other wage-and-hour cases throughout the country. *See, e.g., In re Janney Montgomery Scott LLC Financial Consultant Litigation*, No. 06-3202, 2009 WL 2137224, *12 (E.D. Pa. July 16, 2009) ($20,000 incentive payments in FLSA and Pennsylvania wage and hour case); *Mentor v. Imperial Parking Systems, Inc.*, No. 05 Civ. 7993, 2010 WL 5129068, *1 (S.D.N.Y. Dec. 15 2010) $40,000 and $15,000 incentive payments in New York Labor Law class action and FLSA case); *Murillo v. Pacific Gas & Elec. Co.*, No. 2:08-1974 WBS GGH, 2010 WL 2889728, *12 (E.D.Cal. July 21, 2010) ($10,000 enhancement payment for class action under California law and the FLSA). Finally, neither Defendants nor any class member has objected to the incentive payments.

35. Accordingly, the Court approves the incentive payments as described in Section 2.C of the Settlement Agreement.

The Attorneys' Fees Sought by Class Counsel Are Reasonable

36. Court-appointed Class Counsel, the law firm of Getman & Sweeney, PLLC, seeks an award of attorneys' fees in the amount of [redacted] of the Settlement Fund, and reimbursement of expenses in the amount of [redacted].

37. Class Counsel is entitled to the fees sought and reimbursement of costs under the terms of the retainer agreement with the Class Representatives, the Consent to Sue forms executed by each of the opt-in Plaintiffs, and the Settlement Agreement which was agreed to by the Class Representatives on behalf of the class and described in the Notice mailed to each Class Member. Declaration of Michael J.D. Sweeney in Support of Plaintiffs' Motion for Approval of Class Counsel's Fees and Costs ("Sweeney Fee Declaration") at ¶ 13.

38. The fees sought by Class Counsel are reasonable. "The approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred on the class." *Williams v. Gen. Elec. Capital Auto Lease*, 94 C 7410, 1995 WL 765266, *9 (N.D. Ill. Dec. 26, 1995) *citing Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991). The percentage of the fund method is favored because it

> directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation, which clearly benefits both litigants and the judicial system. The percentage approach is also the most efficient means of rewarding the work of class action attorneys, and avoids the wasteful and burdensome process-to both counsel and the courts-of preparing and evaluating fee petitions, which the Third Circuit Task Force described as "cumbersome, enervating, and often surrealistic."

In re Lloyd's American Trust Fund Litigation, No. 96 Civ.1262 RWS, 2002 WL 31663577, *25 (S.D.N.Y. Nov. 26, 2002) *citing* Court Awarded Attorney Fees, Report of the Third Cir. Task Force, (Arthur F. Miller, Reporter), reprinted in 108 F.R.D. 237 (3d Cir.1985). "[T]he use of the percentage-of-the-fund method also relieves the court of the 'cumbersome, enervating, and often surrealistic process' of evaluating fee petitions." *Savoie v. Merchants Bank*, 166 F.3d 456, 461 (2d Cir. 1999) (quoting the Task Force Report, 108 F.R.D. at 258); *see also, Sutton v. Bernard*, 504 F.3d 688, 693 (7th Cir. 2007) ("In a common fund case, where the defendant's liability is

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limited to the amount paid into the fund, there is no danger of unduly burdening that party with payment of the plaintiffs' attorneys' fee for time spent on unsuccessful claims.").

39. Counsel's request for less than one-third of the Settlement Fund is well within the normal rate of compensation in contingency cases in this market. *Teamsters Local Union No. 604 v. Inter–Rail Transp., Inc.*, No. 02 Civ. 1109–DRH, 2004 WL 768658, *1 (S.D. Ill. Mar. 19, 2004) ("In this Circuit, a fee award of thirty-three and one-third (33 1/3%) in a class action is not uncommon."); *Schulte v. Fifth Third Bank*, 805 F.Supp.2d 560, 598-99 (N.D. Ill. 2011); *Beatty v. Capital One Financial Corp.*, No. 12 C 424, Dkt. 75 (N.D. Ill.); *Hardaway v. Employbridge of Dallas, Inc., et al.*, No. 11 C 3200, Dkt. No. 73 (N.D. Ill.). It is also the norm in other Circuits. *See*, *Fosbinder-Bittorf v. SSM Health Care of Wisconsin, Inc.*, No. 11 Civ. 592–wmc, 2013 WL 5745102, *1 (W.D.Wis. Oct. 23, 2013) (awarding class counsel 1/3 of the settlement fund for Hybrid FLSA and Rule 23 Class Action wage and hour case); *Rotuna v. West Customer Management Group*, LLC, 4:09 Civ. 1608, 2010 WL 2490989, *7-8 (N.D. Ohio June 15, 2010)(one-third).

40. Given that Class Counsel litigated this high-stakes case on a contingency basis with the risk of recovering no fees at all, recovered a favorable result for the class by competently litigating and then negotiating the claims, a contingency of less than one-third the Settlement Fund is warranted. *Stumpf v. Pyod, LLC*, 2013 WL 6123156, *1 (N.D. Ill. 2013) (*citing In re Synthroid Mktg. Litig.*, 264 F.3d at 721) (to determine what percentage of the fund should be awarded in fees, a court should consider the "the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case.").

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41. Accordingly, the Court approves Class Counsel's motion for attorneys' fees of [redacted] of the Settlement Fund.

Class Counsel's Costs Are Reasonable and Reimbursable

42. Class Counsel is entitled to be reimbursed its costs of litigating the claims pursuant to the Parties' Settlement Agreement, the retainer agreements with the Named Plaintiffs, and the Consent to Sue forms. Sweeney Fee Decl. ¶ 20. Moreover, Rule 23 of the Federal Rules of Civil Procedure permits the Court to "award reasonable … nontaxable costs that are authorized by law or by the parties' agreement." Fed.R.Civ.P. 23(h). Costs such as filing fees, copies, travel, and postage are typically recovered in class settlement cases, including wage and hour cases. *See, Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.1994); *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir.1988); *Heder v. City of Two Rivers*, 255 F.Supp.2d 947, 957 (E.D. Wis. 2003).

43. As Class Counsel has submitted an accounting of [redacted] in costs incurred in litigating this action along with receipts, Sweeney Fee Decl. ¶ 20, the Court approves reimbursement for those costs from the Settlement Fund.

The Objectors' Claims Will Not Be Given Credit

44. The Court has received and reviewed the three objections to the Settlement. All three object to the settlement's allocation of the settlement fund and one also objects to the fees requested by Class Counsel. Doc. No. 111. The Court declines to credit the objections to the allocation. The law does not required that settlements benefit offer a pro rata distribution to class members; instead the settlement need only be "'fair, reasonable, and adequate". *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 629 (6th Cir. 2007). The fact that another allocation would have provided the objectors with a greater recovery is not a valid objection to an allocation of the settlement fund that is rationally

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based on legitimate considerations, such as the allocation in this settlement. *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 979 (N.D. Ill. 2011); *UAW v. Gen. Motors Corp.*, No. 05–CV–73991, 2006 WL 891151, at *28 (E.D.Mich. Mar. 31, 2006); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 131 (S.D.N.Y.1997).

45. The single objection to Class Counsel's fees is without factual or legal support and does not overcome the Court's finding of reasonableness. *See*, 4 Newberg on Class Actions § 11:58 (4th ed.2002) ("General objections without factual or legal substantiation do not carry weight."); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 293 (W.D. Tex. 2007); Fed. Prac. & Proc. § 1797.1 (providing that in class action settlement dispute "[o]nly clearly presented objections ... will be considered"). Accordingly, the objection will not stand in the way of the fee award.

CONCLUSION

46. The Court approves the Settlement Agreement as final, fair, reasonable, adequate, and binding on all Plaintiffs who have not timely opted out, subject only to an application for relief under Federal Rule of Civil Procedure 60(b)(1) or 60(d).

47. The lawsuit is hereby dismissed with prejudice.

48. The Clerk of Court is directed to enter Final Judgment in this action.

49. Alamo shall deposit the Settlement Amount with the Settlement Administrator within thirty-three (33) days of this Order.

50. Within five (5) days after Alamo deposits the Settlement Amount with the Settlement Administrator, the Settlement Administrator shall (1) mail settlement checks to the Plaintiffs; (2) pay to Class Counsel attorneys' fees of [redacted] of the Settlement Fund and costs of [redacted] from the Fund; and (3) pay incentive payments as described in Section 2.C of the Settlement

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Agreement to Class Representatives Thomas Belton, Maurice Green, and Monyal McClarty from the Settlement Fund.

51. The Settlement Administrator shall further (1) provide verification to Class Counsel and Alamo's Counsel that it has distributed the Settlement Checks, (2) retain copies of all the endorsed Settlement Checks, and (3) provide Alamo's Counsel with the original of the endorsed Settlement Checks.

52. The Court will retain jurisdiction over the case following the entry of the Judgment for Dismissal until 30 days after the end of the Acceptance Period as defined in paragraph XI of Exhibit 3 of the Settlement Agreement.

53. The Parties shall abide by all terms of the Settlement Agreement and this Order.

It is so ORDERED this 18 day of Dec, 2013.

s/ James E. Shadid

Honorable James E. Shadid
United States District Judge