IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ANITA F. ADAMS, individually, and on behalf of all others similarly situated, **Plaintiff,** **v.** **AZTAR INDIANA GAMING COMPANY, LLC d/b/a TROPICANA EVANSVILLE,** **Defendant.**	**Case No. 3:20-cv-00143-MPB-MJD**

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF RENEWED UNOPPOSED MOTION FOR ATTORNEYS' FEES AND EXPENSES TO CLASS COUNSEL AND SERVICE AWARD TO NAMED PLAINTIFF

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INTRODUCTION

Class Counsel's efforts in this case resulted in a $2,100,000 non-reversionary common fund representing 160% of class members' alleged unpaid wages recoverable under the Fair Labor Standards Act and Indiana Wage Payment Statute. Consistent with Seventh Circuit and Southern District of Indiana case law, Class Counsel seek an award of one-third of the common fund ($700,000) plus $24,141.94 in advanced litigation expenses. Plaintiff Adams seeks a $10,000 service award to be paid from the common fund. The primary benchmark for reasonableness of attorneys' fees is the result achieved on behalf of class members. In this case, the outstanding result warrants approving the requested fee and expense award as well as the service award.

The $2,100,000 common fund is allocated 90% to the Tip Credit Notice Class, 3% to the Timeclock Rounding Class, 1% to the Miscalculated Regular Rate Class, and 6% to the Gaming License Collective, which tracks the approximate distribution of damages between the four claims. After deducting all fees and costs, the average Tip Credit Notice Class settlement payment will be more than $4,500, the average Timeclock Rounding Class settlement payment will be more than $115, the average Miscalculated Regular Rate Class settlement payment will be more than $50, and the average Gaming License Collective settlement payment will be more than $500. All told, the average settlement payment is more than $3,500—these are meaningful settlement payments. Further, there is no claims process. All class members who do not request exclusion (none have thus far) will receive a check in the mail. Finally, the *Redman* Ratio of (at most) 34.5%, is well within the permissible range of a reasonable fee award.

This settlement is an outstanding result. The Court should approve the requested attorneys' fees and expenses to Class Counsel and the $10,000 service award to Plaintiff Adams.[1]

[1] As of the Friday, June 16, 2023 (the last business day prior to this filing), no class members have requested exclusion and one person has submitted two related objections to the settlement. *See*

ARGUMENT[2]

I. Class Counsel are Entitled to Payment of Their Reasonable Attorneys' Fees

A. The Court Should Award Attorneys' Fees as a Percentage of the Fund

The Court should award attorneys' fees as a percentage of the total fund made available to class members. When counsel's efforts result in the creation of a common fund, counsel is "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see Primax Recoveries, Inc. v. Sevilla*, 324 F.3d 544, 548 (7th Cir. 2003) (creation of common fund "entitles [counsel] to a share of that benefit as a fee"). This is "based on the equitable notion that those who have benefited from litigation should share in its costs." *Sutton v. Bernard*, 504 F.3d 688, 691-92 (7th Cir. 2007) (quoting *Skelton v. G.M. Corp.*, 860 F.2d 250, 252 (7th Cir. 1988)); *Kaplan v. Houlihan Smith & Co.*, 2014 WL 2808801, at *3 (N.D. Ill. June 20, 2014); *see also Boeing*, 444 U.S. at 478.

Although there are two ways to compensate attorneys for successful prosecution of statutory claims—the lodestar method and the percentage of the fund method, *see Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 565-66 (7th Cir. 1994)—the favored approach in the Seventh Circuit is to use the percentage of the fund method in common fund cases like this one.

Docs. 145-46. Class Counsel will address this and any other objections in a supplemental pleading at the conclusion of the objection and exclusion period, which runs through June 30, 2023. Although Class Counsel briefly provides context for this objection in the contemporaneously filed Renewed Unopposed Motion for Final Approval of Class Action Settlement, Class Counsel notes that the two related objections from the same individual do not address the proposed award of attorneys' fees and expenses or the service award.

[2] In support of this motion and Plaintiff's Renewed Unopposed Motion for Final Approval of Class Action Settlement, Plaintiff submits the Declaration of Alexander T. Ricke ("Ricke Decl."). The Declaration summarizes the procedural history of the litigation and the strength of the result obtained. These issues are also discussed at length in Plaintiff's Renewed Unopposed Motion for Final Approval of Class Action Settlement that Plaintiff is filing contemporaneously. Plaintiff does not repeat the entire factual history in this brief but that discussion supports the requested award of attorneys' fees, expenses, and service award in addition to supporting a finding that the settlement is fair, reasonable, and adequate.

Bell v. Pension Comm. of ATH Holding Co., LLC, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019) (citing *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998)). "Our court of appeals favors the percentage-of-the-fund fee in common fund cases because it provides the best hope of estimating what a willing seller and a willing buyer seeking the largest recovery in the shortest time would have agreed to *ex ante*." *In re FedEx Ground Package System, Inc. Employment Practices Litig.,* 251 F. Supp. 3d 1225, 1236 (N.D. Ind. 2017) (citing *In re Synthoid Mktg. Litig.,* 325 F.3d 974, 979-80 (7th Cir. 2003)); *see also McDaniel v. Qwest Commc'ns Corp.*, 2011 WL 13257336, at *3 (N.D. Ill. Aug. 29, 2011) ("Many courts have found the percentage-of-recovery method provides a good emulation of the real-world market value of attorneys' services provided on a contingent basis.").[3]

It is especially appropriate to use a common fund approach in cases based on fee shifting statutes—like the FLSA, *see* 29 U.S.C. § 216(b), and the IWPS, *see* Ind. Code § 22-2-5-1 *et seq.*—when the "settlement fund is created in exchange for release of the defendant's liability both for damages and for statutory attorneys' fees . . . ." *Skelton*, 860 F.2d at 256; *accord Florin*, 34 F.3d at 564. Here, class members will release all claims (including the attendant attorneys' fees related to the claims) asserted in the Complaint. *See* Settlement Agreement, Doc. 122-1 at ¶¶ 32-33, 49-52. This supports application of a common fund fee in this case.

There are several other reasons that courts in the Seventh Circuit favor the percentage of the fund method. First, the percentage of the fund method promotes early resolution, and removes the incentive for plaintiffs' lawyers to engage in litigation to increase their lodestar. *See In re Synthroid Mktg. Litig.*, 325 F.3d at 979-80. Where attorneys' fees are limited to a percentage of

[3] The trend in other circuits is to use the percentage of the fund method as well. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001).

the total, "courts can expect attorneys to make cost-efficient decisions about whether certain expenses are worth the win." *Gaskill v. Gordon*, 942 F. Supp. 382, 386 (N.D. Ill. 1996), *aff'd*, 160 F.3d 361 (7th Cir. 1998); *see also In re Amino Acid Lysine Antitrust Litig.*, 1996 WL 197671, at *2 (N.D. Ill. Apr. 22, 1996) (explaining "growing recognition that in a common fund situation . . . a fee based on a percentage of recovery . . . tends to strike the best balance in favor of the clients' interests while at the same time preserving the lawyers' self-interest").

Second, the percentage method preserves judicial resources because it saves the Court from the cumbersome task of reviewing complicated and lengthy billing documents. *Florin*, 34 F.3d at 566 (noting "advantages" of percentage of the fund method's "relative simplicity of administration"); *Gaskill*, 942 F. Supp. at 386 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (fee requests "should not result in a second major litigation")). Courts in this district routinely apply the percentage method to common fund settlements and have noted the advantages of this approach. *See, e.g.*, *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1040 (N.D. Ill. 2011) (using the percentage method because it did "not need to resort to a lodestar calculation, which would be costly to conduct, to reinforce the same conclusion"); *Gaskill*, 942 F. Supp. at 386 (describing advantages of the percentage method, including judicial efficiency and an "efficient check on the attorney's judgment" in economic decision-making). As the Second Circuit has explained, the "primary source of dissatisfaction [with the lodestar method] was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000) (citation omitted).

B. Analysis of the Market for Legal Services Supports Class Counsel's Request for Attorneys' Fees

In deciding the fee to award in common fund cases, the Seventh Circuit has "consistently directed district courts to 'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'" *Sutton,* 504 F.3d at 692, citing *In re Synthroid Mktg. Litig.,* 264 F.3d 712, 718 (7th Cir. 2001) (collecting cases). The Seventh Circuit has held that "[a]lthough it is impossible to know *ex post* exactly what terms would have resulted from arm's-length bargaining *ex ante*, courts must do their best to recreate the market by considering factors such as actual fee contracts that were privately negotiated for similar litigation, information from other cases, and data from class-counsel auctions." *Taubenfeld v. Aon Corp.,* 415 F.3d 597, 599 (7th Cir. 2005).

The percentage method is consistent with, and is intended to mirror, the private marketplace for negotiated contingent fee arrangements. *Kirchoff v. Flynn,* 786 F.2d 320, 324 (7th Cir. 1986) ("[w]hen the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee *is* the 'market rate.'") (emphasis in original). In the marketplace, the "contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains." *Id.*, 786 F.2d at 325; *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d. Cir. 1998).

Here, prior to filing the Complaint, Class Counsel executed a fee agreement with Plaintiff Adams whereby Plaintiff Adams agreed to a 35% contingency fee and reimbursement of advanced expenses. Ricke Decl. at ¶ 43. The Court, therefore, knows the amount Plaintiff Adams and Class Counsel negotiated for in the marketplace at the outset of the case. In an exercise of discretion, Class Counsel seeks less than the contracted-for percentage to align the attorneys'

fee request with the common one-third percentage often awarded in the Seventh Circuit. As a result, the presumption of market-rate reasonableness applies to the requested one-third percentage award of attorneys' fees. *See Briggs v. PNC Fin. Services Group, Inc.,* 2016 WL 7018566, at *4 (N.D. Ill. Nov. 29, 2016).

Further, a one-third fee is consistent with the standard contingent fee within the Seventh Circuit and in this district. *See Dobbs v. DePuy Orthopaedics, Inc.,* 885 F.3d 455, 459 (7th Cir. 2018) ("The typical contingent fee is between 33 and 40 percent") (*citing Gaskill v. Gordan,* 160 F.3d at 361, 362 (7th Cir. 1998)); *In re Ready-Mixed Concrete Antitrust Litig*., 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (finding the "market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time is a contingent fee in the amount of one-third (1/3) of the common fund recovered"); *Behrens v. Landmark Credit Union*, 2018 WL 3130629, at *6 (W.D. Wis. June 26, 2018) ("generally, a 33 to 40 percent contingency fee is considered consistent with the market rate and reasonable.").[4]

The request for one-third of the common fund is also consistent with or less than the percentage fees awarded to Class Counsel in similar casino wage and hour matters. *See*, *e.g.*, *Bartakovits* v. *Wind Creek Bethlehem, LLC*, 2022 WL 702300, at *3 (awarding Class Counsel one-third of $6 million fund in casino tip credit notice and gaming license deduction class action); *Stewart v. Rush St. Gaming, LLC*, Case No. 1:20-cv-02566, Doc. 46 (N.D. Ill.) (motion to award Class Counsel 35% of $9.8 million fund in FLSA collective action settlement against casino operator for failure to provide tip credit notice and wage deductions); *id*. at Doc. 48 (approving

[4] *See, e.g., Campbell v. Advantage Sales & Mktg. LLC*, 2012 WL 1424417, at *2 (S.D. Ind. Apr. 24, 2012) (awarding one-third of common fund in wage and hour settlement); *Burkholder v. City of Ft. Wayne*, 750 F. Supp. 2d 990, 997 (N.D. Ind. 2010) ("a counsel fee of 33.3% of the common fund 'is comfortably within the range typically charged as a contingency fee by plaintiffs' lawyers" in an FLSA action.'"); *Linnear v. Illincare Health Plan, Inc,* Doc. 138 at *5 (N.D. Ill. Dec. 17, 2019) (awarding 35% of common fund as attorneys' fees in overtime case).

settlement and awarding fees as requested based on Seventh Circuit case law); *Cruz-Perez v. Penn Nat'l Gaming, Inc*., Case No. 20-cv-02577, Doc. 58 (N.D. Ill. Nov. 16, 2021) (awarding Class Counsel 35% of $580,000 fund in wage and hour class action against casino operator based on Seventh Circuit case law); *Lipari-Williams v. Missouri Gaming Company, LLC*, Case No. 5:20-CV-06067, Doc. 149 (W.D. Mo. May 25, 2023) (awarding Class Counsel 35% of $5.5 million fund in casino wage class action).

C. The Risk of Non-Payment Supports the Requested Attorneys' Fees Award

Class Counsel's decision to seek the market rate is also reasonable in light of the significant risks of nonpayment that Class Counsel faced. At the outset of the litigation, Class Counsel took "on a significant degree of risk of nonpayment" in agreeing to represent Plaintiff Adams on contingency. *Taubenfeld,* 415 F.3d at 600 (approving of district court's reliance on this factor in evaluating attorneys' fees). Class Counsel took this case on a contingent fee basis and assumed the risk that they could potentially recover no fee for their services. Ricke Decl. at ¶ 44; *see also Sutton*, 504 F.3d at 694 (7th Cir. 2007) ("We recognized [in an earlier case] that there is generally some degree of risk that attorneys will receive no fee (or at least not the fee that reflects their efforts) when representing a class because their fee is linked to the success of the suit."). Here, Class Counsel faced risk in establishing that class and collective treatment was appropriate and proving class liability. As the Seventh Circuit has noted, Class Counsel "could have lost everything" they invested. *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992) (Posner, J.). These facts support Class Counsel's fee request.

D. The Results and the Benefits Conferred Upon the Settlement Class Members Justify the Requested Award

The benefit the settlement provides class members is excellent. Ricke Decl. at ¶¶ 22-36. Indeed, the settlement makes class members whole for their unpaid wages—even after the

common fund is reduced to pay attorneys' fees and expenses, a service award, and notice and settlement administration. *Id.* at ¶ 31. That fact alone warrants approving the requested fee.

Net of all fees and costs, the average Tip Credit Notice Class settlement payment will be $4,536, the average Timeclock Rounding Class settlement payment will be $119, the average Miscalculated Regular Rate Class settlement payment will be $53, and the average Gaming License Collective settlement payment will be $506. Given that most of the workers covered by the settlement are members of multiple classes or collectives, the average settlement check will be more than $3,500. *Id.*

In addition, the settlement fund will be distributed without a requirement to file a claim form. *Id.* at ¶ 32. Class members who do not request to be excluded from the settlement will be sent a check in the mail for their share of the settlement. *Id*. And no settlement funds will revert to Tropicana; any funds remaining from uncashed checks will be sent to the State of Indiana's unclaimed property fund to be held by the State of Indiana for the benefit of the class member. *Id.*

Nor will class members be required to provide a general release to participate in the settlement. *Id.* Instead, class members who do not request to be excluded from the settlement will release Tropicana from state wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, but class members will release federal wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint only if they negotiate their settlement checks or if they previously opted into the case. Thus, the settlement provides for an appropriately limited release tailored to the claims at issue in the Complaint. Settlement Agreement at ¶¶ 50-52. The absence of a general release exemplifies the results achieved for the Class. *See Ramah Navajo Chapter v. Babbitt,* 50 F. Supp. 2d 1091, 1103-04 (D.N.M. 1999) (noting the limited, rather than general, release as further evidence of an

exceptional result in favor of class members). This is an exceptional result by any measure. *See* Ricke Decl. at ¶¶ 33-37.

Based on the negotiated fee agreement in this case, the normal rate of compensation in similar cases, the risk Class Counsel undertook in engaging in this litigation, and the excellent result achieved for class members, Class Counsel is entitled to a reasonable attorneys' fees award of one-third of the $2.1 million common fund—*i.e.*, $700,000.

E. The Attorneys' Fees Request Satisfies the *Redman* Ratio Test

In 2014, the Seventh Circuit considered class action settlements with low class member participation and instructed district courts to consider the extent to which the parties and their counsel would benefit from the proposed settlement compared to absent class members ("the Consumer Cases"). *Pearson v. NBTY, Inc*., 772 F.3d 778, 781-82 (7th Cir. 2014); *Redman v. RadioShack Corp.,* 768 F.3d 622, 630 (7th Cir. 2014); *Eubank v. Pella Corp.*, 753 F.3d 718, 726 (7th Cir. 2014). In each of the Consumer Cases, the class recovery was small, the claims process was difficult, the claims rate was low, and other indicia evidenced that class counsel had discounted the class claims in furtherance of their own interests. This settlement stands in stark contrast to the Consumer Cases. It provides an outstanding result to class members both monetarily (more than make whole relief for the allegedly unpaid wages even after payment of attorneys' fees, expenses, and notice and administration) and procedurally (no claims process) as described above.

Based on the facts of the Consumer Cases, the Seventh Circuit instructed the district courts when approving settlements in consumer class actions to examine the ratio between the fee requested and the fee plus what class members received (the "*Redman* Ratio test"). *See Redman*, 768 F.3d at 630; *accord Pearson,* 772 F.3d at 781-82. Under the *Redman* Ratio test, the "ratio that is relevant" in determining reasonable attorney's fees "... is the ratio of (1) the fee to (2) the fee plus what the class members received" and the "attorney's fees awarded to class counsel should

not exceed a third or at most a half of the total amount of money going to class members." *Redman,* 768 F.3d at 630; *Pearson,* 772 F.3d at 781-82. In this case, Class Counsel is seeking $700,000 in attorneys' fees, and provided the Court finally approves the terms of the settlement and the $10,000 service award to Plaintiff Adams, the amount to be distributed to class members as settlement payments is $1,325,743.98.

The ratio is 34.3% ($700,000 / ($700,000 + $10,000 + $5,000 + $1,325,743.98)), which falls well within the permissible *Redman* Ratio. *Id.* Considering only the amount that will be distributed to class members from the net settlement fund (in other words, the excluding service award and the reserve fund), the ratio equals 34.5% ($700,000 / ($700,000 + $1,325,743.98)), within the permissible *Redman* Ratio. Thus, Class Counsel's fee request is reasonable under *Redman*.

F. Class Counsel's Fee Request Is Reasonable and Should Be Approved Without a Cross-Check

Class Counsel's fee request should be approved because it is reasonable based on the market rate, the results achieved, and the other factors explained above. No further showing or analysis is needed. *In re FedEx Ground Package Sys., Inc. Employment Practices Litig.,* 251 F. Supp. 3d at 1243 ("A lodestar cross-check … isn't encouraged in this circuit."); *Wright v. Nationstar Mortgage LLC*, 2016 WL 4505169, at *17 (N.D. Ill. Aug. 29, 2016) (courts can skip a lodestar check); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 n.27 (N.D. Ill. 2011) ("use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive"). This is because the recovery for class members is substantial, the entire net settlement fund is available to class members without the need for them to submit claim forms, and the settlement does not present indicia evidencing the settlement was the product of collusion between the parties at the expense of class members. *See Williams v. Rohm & Haas Pension Plan*,

658 F.3d 629, 636 (7th Cir. 2011) ("consideration of a lodestar check is not an issue of required methodology"). Although courts occasionally review counsel's lodestar as "a cross-check to assist in determining the reasonableness of the fee award," *Heekin v. Anthem, Inc.*, 2012 WL 5878032, at *2 (S.D. Ind. Nov. 20, 2012), the lodestar cross-check is of limited utility because "[u]ltimately. . .the market controls," *In re Trans Union Corp. Privacy Litig.*, 2009 WL 4799954, at *9 (N.D. Ill. Dec. 9, 2009); *Wright,* 2016 WL 4505169, at *17 ("Nor is the lodestar an accurate representation of the hypothetical market agreement between the plaintiffs and their attorneys"). As explained above, because Class Counsel's substantial work to date has "brought" a significant recovery for class members, the Court need not analyze Class Counsel's lodestar.[5]

And a lodestar crosscheck is particularly inappropriate in this case where the classes benefitted from Class Counsel's significant experience litigating casino wage and hour claims and the efficiencies to be gained from that work. That experience, leverage, and efficiency is not reflected by strictly multiplying hours expended by hourly rates.[6]

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[5] If requested by the Court, Class Counsel will submit their lodestar *in camera* for review. To that end, Class Counsel notes that Class Counsel's lodestar will almost certainly exceed the requested award of attorneys' fees by the time settlement administration is concluded.

[6] Class Counsel have recovered tens of millions of dollars for tipped and minimum wage casino workers through class and collective action wage and hour settlements. Ricke Decl. at ¶¶ 37-42. But, Class Counsel have also achieved significant litigation victories in casino wage and hour class and collective actions. *Id*. Through this earlier work, Class Counsel have a comprehensive understanding of the wage and hour policies at casinos around the country, how to value the claims, and how to successfully litigate these cases. *See, e.g., James v. Boyd Gaming Corp.*, 2021 WL 794899 (D. Kan. Mar. 2, 2021) (conditionally certifying tip credit notice and tip pooling claims across 13 casinos and 9 casinos, respectively); *Lockett v. Pinnacle Ent., Inc.*, 2021 WL 960424 (W.D. Mo. Mar. 12, 2021) (conditionally certifying tip pooling and gaming license wage deduction claims across 10 casinos and 8 casinos, respectively, while also certifying Missouri and Iowa state law claims under Rule 23); *MacMann v. Tropicana St. Louis, LLC*, 2021 WL 1105500 (E.D. Mo. Mar. 23, 2021) (conditionally certifying four FLSA claims at Lumiere casino, including tip credit notice and gaming license wage deductions, while also certifying Missouri state law claims under Rule 23); *Larson v. Isle of Capri Casinos, Inc.*, 2018 WL 6495074, at *1 (W.D. Mo. Dec. 10, 2018) (conditionally certifying tip credit notice and timeclock rounding claims at Isle of Capri casino); *Lockett v. Pinnacle Ent., Inc.*, 2019 WL 4296492, at *2 (W.D. Mo. Sept. 10, 2019) (finding out-of-state casinos subject to personal jurisdiction following transfer request on an issue of first impression in the Eighth Circuit); *Lockett v. Pinnacle Ent., Inc.*, 408 F. Supp. 3d 1043, 1049 (W.D.

Although a lodestar crosscheck is unnecessary, there can be no doubt that Class Counsel performed significant, high-quality work on behalf of the class leading directly to this Settlement Agreement. This work is detailed at length in the contemporaneously-filed Declaration of Alexander T. Ricke and Plaintiff's Renewed Unopposed Motion for Final Approval of Class Action Settlement, but is summarized briefly here. At the outset, Class Counsel defeated a motion to dismiss that raised several threshold issues, including whether Plaintiffs could use the IWPS to derivatively recover "amounts due" under the FLSA. *Adams v. Aztar Indiana Gaming Company, LLC*, 2021 WL 4316906 (S.D. Ind. Sept. 22, 2021). Class Counsel took and defended numerous depositions and conducted lengthy written and document discovery. Ricke Decl. at ¶ 7. Class Counsel won a near complete victory in obtaining class and conditional certification. *Adams v. Aztar Indiana Gaming Co., LLC*, 587 F. Supp. 3d 753 (S.D. Ind. 2022). Class Counsel defeated a Rule 23(f) Petition to the Seventh Circuit. *See* Doc. 88. In short, Class Counsel have performed material, quality work on behalf of class members, none of which has been compensated to date. Ricke Decl. at ¶¶ 4-18.

II. The Payment of Class Counsel's Litigation Expenses is Appropriate.

The settlement provides that Class Counsel may apply to the Court for payment of reasonable litigation expenses. Settlement Agreement at ¶ 49. The Notice to class members informed class members that Class Counsel could seek up to $35,000 in expense reimbursement. Class Counsel seek reimbursement of $24,141.94, which represents filing fees, *pro hac vice* fees, service fees, deposition transcript costs, the costs associated with travel for the case, and electronic

Mo. 2019) (holding that gaming licenses primarily benefit casino employers such that deducting costs associated with gaming licenses from employees' wages results in a minimum wage violation); *Lilley v. IOC-Kansas City, Inc*., 2019 WL 5847841, at *1 (W.D. Mo. Nov. 7, 2019) (same).

legal research fees, among others. Ricke Decl. at ¶¶ 43-47. Class Counsel's request of that amount from the common fund for costs and expenses is appropriate because such costs and expenses were necessarily incurred to litigate and settle this case and are of the type and character Class Counsel typically bill to hourly fee-paying clients. *Id*.

III. The $10,000 Service Award for Plaintiff Adams is Appropriate.

The settlement provides that Plaintiff Adams may apply for a service award of $10,000 to be paid from the common fund. *See* Settlement Agreement at ¶¶ 47-48. Given Plaintiff Adams' dedication to this litigation, the reputational risk she took on in placing her name on a Complaint against her current employer, and the significant work she performed in this case, the requested service award should be granted. Specifically, Plaintiff Adams responded to interrogatories and requests for production of documents, produced documents, and sat for her deposition. She also attended the mediation of this matter in person and played an important role in the investigation, litigation, and settlement of this case. She has earned her incentive award.

Named plaintiffs in class action lawsuits play a crucial role in helping to bring claims that might otherwise not be pursued. "Courts have found that a named plaintiff coming forward and potentially placing their careers at risk supports granting of service award." *Netzel v. W. Shore Grp., Inc.*, 2017 WL 1906955, at *7 (D. Minn. May 8, 2017); *see also Beesley v. Int'l Paper Co.,* 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014); *Sanchez v. Roka Akor Chicago LLC,* 2017 WL 1425837, at *3 (N.D. Ill. Apr. 20, 2017) ("Service awards are well suited in employment litigation because the plaintiffs assume the risk that future employers may look unfavorably upon them if they file suit against former employers."). The incentive award is designed to compensate the

plaintiffs for taking on such a risk. *Espenscheid v. DirectSat USA, LLC,* 688 F.3d 872, 877 (7th Cir. 2012).

Courts in the Seventh Circuit have regularly approved comparable incentive awards. *See Castillo v. Noodles & Co.,* 2016 WL 7451626, at *2 (N.D. Ill. Dec. 23, 2016) (approving $10,000 service award to four plaintiffs in FLSA settlement for a total of $40,000 in service awards); *Zolkos v. Scriptfleet, Inc.,* 2015 WL 4275540, at *3 (N.D. Ill. July 13, 2015) (awarding $5,000 - $10,000 in service awards to 20 named plaintiffs and $3,500 to four opt-in Plaintiffs), *Briggs v. PNC Fin. Services Grp., Inc.,* 2016 WL 7018566, at * 3 (N.D. Ill. Nov. 29, 2016) (approving $12,500 service awards to two named plaintiffs in FLSA settlement for a total of $25,000 in service awards); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upholding $25,000 service award); *Billings v. Ryze Claim Sols*., 2022 WL 2106138, at *5 (S.D. Ind. June 10, 2022) (granting $15,000 service award in wage and hour case); *Heekin v. Anthem, Inc.*, 2012 WL 5878032, at *1 (S.D. Ind. Nov. 20, 2012) (awarding $25,000 incentive fee each to two class representatives); *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019) (awarding $20,000 to class representatives).

The $10,000 service award is reasonable based on the efforts undertaken by Plaintiff Adams, the risk she undertook, and the meaningful recovery she helped achieve for the class members.

CONCLUSION

Class Counsel's request for an attorneys' fees award equal to one-third of the $2,100,000 common fund plus reimbursement of $24,141.94 in expenses is reasonable and should be approved in connection with final approval of the settlement. The $10,000 service award for Plaintiff Adams is reasonable and should be approved in connection with final approval of the settlement.

Dated: June 19, 2023

Respectfully submitted,

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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that, on June 19, 2023, a true and correct copy of the foregoing document was filed electronically through the Court's CM/ECF system, and therefore, will be transmitted to all counsel of record by operation of the Court's CM/ECF system.

/s/ Alexander T. Ricke
CLASS COUNSEL