

UNITED STATES COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CYNTHIA RUSSO, LISA BULLARD,)	Case No. 1:17-cv-02246
RICARDO GONZALES, INTERNATIONAL)	
BROTHERHOOD OF ELECTRICAL)	<u>CLASS ACTION</u>
WORKERS LOCAL 38 HEALTH AND)	
WELFARE FUND, INTERNATIONAL)	Judge Edmond E. Chang
UNION OF OPERATING ENGINEERS)	
LOCAL 295-295C WELFARE FUND, and)	
STEAMFITTERS FUND LOCAL 439, On)	
Behalf of Themselves and All Others Similarly)	
Situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
WALGREEN CO.,)	
)	
Defendant.)	
)	
_____)	

REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES AND EXPENSES, AND SERVICE AWARDS TO PLAINTIFFS

INTRODUCTION

Plaintiffs Cynthia Russo, Lisa Bullard, Richard Gonzales (the “Individual Plaintiffs”), International Brotherhood of Electrical Workers Local 38 Health and Welfare Fund, International Union of Operating Engineers Local 295-295c Welfare Fund, and Steamfitters Fund Local 439 (the “Fund Plaintiffs,” and with the Individual Plaintiffs, “Plaintiffs”) respectfully submit this reply in further support of Class Counsel’s Motion for an Award of Attorneys’ Fees and Expenses to Plaintiffs’ Counsel and Service Awards to Plaintiffs (the “Motion”) and response to the objections submitted by Donald Hodge (“Hodge”) and Kenneth J. Ries (“Ries”).¹

Following the Court’s preliminary approval of the Settlement, notice was provided to over 87 million individuals and 42,000 entities, stating Class Counsel would seek up to 30% of the \$100 million Settlement Fund, plus up to \$3 million in expenses and Service Awards of \$5,000 per Individual Plaintiff and \$15,000 per Fund Plaintiff. *See* ECF No. 683-4, 683-5, 683-6; Miller Decl., ¶¶5-16.² Class Counsel filed their fee motion on March 4, 2025. ECF Nos. 700 (Motion), 701 (Memorandum of Law in Support of Motion for Award of Attorneys’ Fees and Expenses, and Service Awards to Plaintiffs (“Fee Brief”). With an objection deadline of March 18, 2024, only two Class Members objected to attorneys’ fees, with no objections to expenses or Service Awards. The overwhelmingly positive Class response supports finding the requests fair and reasonable.

The two objectors, Hodge and Ries, mischaracterize case law and ignore Class Counsel’s submissions demonstrating seven years of work. *See* ECF Nos. 703 (Hodge Objection), 709 (Ries

¹ All capitalized terms not otherwise defined herein have the same meaning as those in the Stipulation of Settlement, dated November 1, 2024, ECF 681-01 (the “Stipulation”). Citations are omitted and emphasis added throughout unless otherwise indicated.

² References to “Miller Decl.” are to the Declaration of Eric J. Miller of A.B. Data, Ltd. Regarding Notification of Settlement, Opt-Outs Received, and Claims Received from Settlement Class Members, filed concurrently.

Objection). Contrary to Hodge's claim, Seventh Circuit law does not require a reduction of attorneys' fees in "mega-fund" cases. In fact, the work performed by Class Counsel and additional Plaintiffs' counsel evidence the truly exceptional result obtained and justify the award of Attorneys' Fees requested here. Ries ignores Class Counsel's detailed declarations while claiming insufficient work documentation. He then argues the outcome was certain from the outset, but the facts show significant risks—other similar class actions against CVS and Rite Aid resulted in no recovery, making this case unique in obtaining monetary relief. Moreover, neither objector addresses the actual work performed: drafting pleadings, discovery, class certification, expert testimony, and defending experts through completed fact discovery. *See* ECF 702 (Declaration of Joseph P. Guglielmo and Arthur L. Shingler in Support of Motion for Award of Attorneys' Fees and Expenses, and Service Awards to Plaintiffs ("Joint Decl. I"), ¶¶7-12). Their arguments for a fee reduction based on settlement size ignore the factual record and case law supporting a 30% award.

For these reasons and those in Plaintiffs' Motion, the objections should be overruled and the Motion granted.

I. ARGUMENT

A. The Size of the Settlement Warrants the Requested Attorneys' Fee Award.

Hodge and Ries do not object to an award of Attorneys' Fees, rather they object to Class Counsel's request for 30% of the Settlement Fund. Ries does not cite any authority for his objection, rather he appears to argue that in reviewing the time and rates charged by the attorneys, paraprofessionals, and staff who worked on this matter, he believes that 30% is excessive. Ries Objection at 3. Hodge argues that Class Counsel's request for 30% of the Settlement Amount is

“significantly higher than courts typically deem reasonable in ‘mega-fund’ cases, where the settlement exceeds \$100 million.” Hodge Objection at 1.

Contrary to Hodge’s claim, courts in this District and Circuit have rejected this very argument and noted that a one-third flat fee is routine for class action settlements asserting complex claims like those here. *See In re TikTok, Inc., Consumer Privacy Litig.*, 617 F. Supp. 3d 904, 941, 943 (N.D. Ill. 2022) (rejecting objector’s argument that a reduced percentage of attorneys’ fee was warranted given the size of the settlement and instead awarding 33.3% of \$92 million settlement); *In re Broiler Chicken*, 2021 WL 5709250, at *4-5 (N.D. Ill. Dec. 1, 2021) (rejecting argument by objector that mega-fund settlement warranted a sliding scale reduction in attorneys’ fees and instead awarding a flat 33% of a \$150 million common fund). In fact, the court in *TikTok* noted that courts have explicitly rejected the argument advanced by Hodge here: “[t]he Seventh Circuit, however, has ‘explicitly rejected’ the so-called ‘megafund rule,’ which caps fees at a given percentage (usually ten to fifteen percent) where the size of the fund exceeds a certain amount, ‘because it [creates] a perverse incentive.’” *See In re TikTok*, 617 F. Supp. 3d at 942 (citing *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (“Private parties would never contract for such an arrangement, because it would eliminate counsel’s incentive to press for more than [the threshold fund size] from the defendants.”)).³ *See also* Fee Brief at 4-6.

³ Hodge’s reliance upon factually distinguishable and out of Circuit authority does not support his contention that Class Counsel’s Attorneys’ Fees should be reduced. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552-53 (2010), does not address attorneys’ fees in a mega-fund case, and does not state that a lodestar cross-check is required when a common fund settlement is created. Rather, *Perdue* stands for the unremarkable proposition that when fees are requested and based on lodestar, an enhancement to the lodestar must be based on sufficient information. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 945 (9th Cir. 2011), is factually distinguishable and actually supports the use of the percentage of the recovery as opposed to a lodestar method. *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 357 (N.D. Ga. 1993), is distinguishable and did not involve a \$300 million common fund. Rather, the settlement included \$50 million in cash and approximately \$250 million in certificate value. The court awarded a reduced fee that amounted to 28% of the cash portion of fund and resulted in 1.8 multiplier of counsel’s lodestar. *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283 (3d. Cir. 1998) the Third

B. A Lodestar Cross-Check is Not Required.

Hodge's objection mistakenly asserts that any attorneys' fee award should be subject to a lodestar crosscheck.⁴ As set forth in Class Counsel's Motion, the lodestar approach should not be utilized, and a lodestar cross-check is both unnecessary and not required. *See* Fee Brief at 2-4; *see also Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019) ("In a common fund class action settlement, the Seventh Circuit Court of Appeals uses a percentage of the relief obtained rather than a lodestar or other basis."); *Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive."); *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012), *aff'd sub nom. Silverman v. Motorola Sols., Inc.*, 739 F.3d 956 (7th Cir. 2013) (stating it was unnecessary to consider lodestar); *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958–59 (7th Cir. 2013) (affirming without discussion of lodestar); *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 844, 849 (N.D. Ill. 2015) (finding the percentage method has "emerged as the favored method for calculating fees in common-fund cases in this district" and finding "no utility in considering"

Circuit remanded an attorneys' fee award where the district court did not properly determine the value of the settlement when awarding fees. It did not address whether a 30% award of a common fund would be reasonable. Thus, none of Hodge's cited cases warrant a reduction or departure from the requested fee.

⁴ Hodge also appears to believe that Plaintiffs' counsel have not provided any lodestar detail. He is mistaken. Plaintiffs' counsel detailed in their respective declarations in support of the Motion the hours billed by each timekeeper, as well as their applicable hourly rates, and provided detailed expense records broken down by category and amount. *See* Joint Decl. I, ¶33; ECF 702-1 at Exhibit A, Exhibit B; ECF 702-2 at Exhibit A, Exhibit B; ECF 702-3 at Exhibit A, Exhibit B; ECF 702-4 at Exhibit A, Exhibit B; ECF 702-5 at Exhibit A, Exhibit B; ECF 702-6 at Exhibit A, Exhibit B; ECF 702-7 at Exhibit A, Exhibit B; ECF 702-8 at Exhibit A, Exhibit B. Moreover, in addition to providing careful oversight and assignment control to all Plaintiffs' counsel to ensure work assignments were efficiently undertaken and not duplicative, Class Counsel carefully reviewed and audited all time records submitted by Plaintiffs' counsel, and reviewed all time and expense reports and declarations submitted by Plaintiffs' counsel, making adjustments and reductions as necessary based on Class Counsel's judgment, including eliminating nominally valuable time. *See* Joint Decl. I, ¶¶33-35.

lodestar); *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 816 (E.D. Wis. 2009) (“The ‘percentage of the fee’ method is preferable” to the lodestar method “because it more closely replicates the contingency fee market rate for counsel’s legal services.”); *Flynn v. Exelon Corp.*, 2023 WL 8291661, at *1 (N.D. Ill. Sept. 8, 2023) (awarding fee from class settlement fund without discussion of lodestar).⁵

Clearly, a lodestar analysis is inconsistent with prevailing authority in the Seventh Circuit. Nonetheless, if the Court were to utilize Plaintiffs’ counsel’s lodestar to crosscheck the requested fee’s reasonableness, such a cross check only reinforces the reasonableness of the fees requested. Plaintiffs Counsel’s lodestar (\$29,316,016.60 (*see* Supplemental Joint Declaration of Joseph P. Guglielmo and Arthur L. Shingler in Further Support of Application for Award of Attorneys’ Fees and Expenses (“Suppl. Decl.”), ¶14)) closely approximates the \$30 million fee sought, representing effectively no positive multiplier or enhancement of same, which is well below the range this Circuit has acknowledged as reasonable. *See Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991) (noting that in practice, most multipliers fall between one and four); *See In re TikTok*, 617 F. Supp. 3d at 943 (approving attorneys’ fee award of 33.3%, which amounted to a multiplier of 2.04).

⁵ Because the proper analysis for awarding fees in common fund class action cases like this in this Circuit is based on a percentage of the recovery basis, it also would be unreasonable for the Court – which is fully aware of the quality and extent of Class Counsel’s work in this case – or a specially appointed special master to engage, as Ries suggests, in what would amount to unnecessary and costly expenditure of time and potential further litigation concerning the fee request and, if that were the law in this Circuit (it is not), would result in precisely the kind of perverse incentives the Seventh Circuit has warned against. *See In re Synthroid*, 264 F.3d at 721 (stating the lodestar approach creates the “incentive to run up the billable hours”).

C. The Requested Attorneys' Fee Award of 30% of the Settlement Amount Is Appropriate and Consistent With Prevailing Seventh Circuit Authority

The Seventh Circuit has held that when evaluating the reasonableness of a request for attorneys' fees, a district court must "compare attorney fees to what is actually recovered by the class." *Id.* at 939 (citing *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, 867 F.3d 791, 793 (7th Cir. 2017)). Additionally, the Seventh Circuit has stated that a percentage fee award should be calculated against "the value received from the settlement by the members of the class"—*i.e.*, the net common fund after deduction of administrative expenses, litigation expenses, and service awards. *Id.* (citing *Williams v. Rohm and Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011)). Here, the Settlement Amount is \$100 million. Thus, the Attorneys' Fee request should be measured against the amount of this Settlement. Hodge and Ries ignore the fact that the Attorneys' Fee requested (30% of the Settlement Amount) is clearly within the range of fee awards by courts in this District and Circuit.

Ries claims that the Attorneys' Fee should be reduced or are unjustified arguing: (i) that not all of Plaintiffs' counsel – each of which performed important litigation tasks at the direction and with the oversight of Class Counsel – are entitled to remuneration or expense reimbursement for their efforts on behalf of the Class; (ii) that there was no analysis of "who-did-what" – ignoring the declarations submitted on behalf of each of the additional Plaintiffs' counsel detailing the work that each performed; and (iii) the hourly rates charged by Plaintiffs' counsel are inappropriate – despite offering no information or evidence as to what the market rate is or should be for attorneys litigating a complex class action who obtain a \$100 million settlement.⁶

⁶ Ries asserts "it had to have been reasonably clear from the outset that Walgreens was guilty of malfeasance," but nothing could be further from the truth. *See* Joint Decl. I, ¶¶7-16, 23-30 (describing seven years of work including opposing motions to dismiss, reviewing 80,000 documents, conducting 36 depositions, drafting class certification, and working with experts). Plaintiffs faced significant risks in class

And, contrary to Ries's suggestion, there is nothing out of the ordinary or questionable about the rates charged by Plaintiffs' counsel in this case. Indeed, defense rates are often much higher than those of Plaintiffs' counsel here. *See* Joint Decl. I, fn. 6 (citing research showing "big law" defense firm rates can exceed \$2,000 per hour).

Although a court may consider the reasonability of counsel's rates in conducting a lodestar crosscheck, in doing so it should take into account the attorneys' professional reputation and experience, as well as rates charged by other practitioners in the field. Here, Class Counsel are experienced complex class action practitioners with a track record of success, and the reasonableness of their billing rates has been confirmed in numerous recent contingent class action cases. Indeed, courts throughout the United States have approved the rates charged by Class Counsel as reasonable.⁷ Ries's unsupported objection to Class Counsel's hourly rates fails.

certification, summary judgment, *Daubert* challenges, trial, and appeal. Significantly in this regard, two similar U&C cases resulted in no recovery at all for those classes: *Washington v. CVS Pharmacy* ended in defense verdict after trial, 2022 WL 17430289 (9th Cir. Dec. 6, 2022), and *Stafford v. Rite Aid* terminated when Rite Aid filed bankruptcy after six years of litigation, Lead Case No. 3:17-cv-01340-TWR-AHG (S.D. Cal.).

⁷ Cases which have approved Class Counsel's hourly rates include: *Purple Mountain Tr. v. Wells Fargo & Co.*, No. 18-CV-03948-JD, 2023 WL 11872699, at *5 (N.D. Cal. Sept. 26, 2023) (approving attorneys' fee with Robbins Geller's prevailing hourly rates); *Fleming v. Impax Lab'ys Inc.*, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) (approving hourly rates of \$760 to \$1,325 for partners, \$895 to \$1,150 for counsel, and \$175 to \$520 for associates, and finding Robbins Geller's "billing rates in line with prevailing rates in this district for personnel of comparable experience, skill, and reputation"); Hr'g Tr. at 160:22-24, *In re Am. Realty Cap. Props., Inc. Litig.*, No. 15-MC-40 (AKH) (S.D.N.Y. Jan. 23, 2019) ("I find [Robbins Geller's] lodestar reasonable, the rates appropriate and, in relationship to the work that you did, reasonable.") (relevant portions are attached as Ex. E to the Suppl. Decl.); Hr'g Tr. at 25:12-16, *Kaess v. Deutsche Bank AG*, No. 09-cv-01714 (GHW) (RWL) (S.D.N.Y. June 11, 2020) ("I find that [Robbins Geller's] billable rates based on the timekeeper's title, specific years of experience, and market rates for similar professionals in its fields . . . to be reasonable in this context.") (relevant portions are attached as Ex. F to the Suppl. Decl.); *Barrett v. Apple Inc.*, No. 5:20-CV-04812, 2025 WL 1002786, at *3 (N.D. Cal. Apr. 3, 2025) (approving Scott+Scott attorney hourly rates between \$500 and \$1,545); *In Re: Robinhood Outage Litig.*, No. 3:20-cv-01626-JD (N.D. Cal. July 28, 2023), ECF No. 203 (approving attorneys' fees, including Scott+Scott partner rates between \$995 and \$1,295, associate / of counsel rates between \$695 and \$750, and paralegal rate of \$395, and specifically finding that plaintiffs' counsel "applied their customary professional rates" and that "the rates billed are consistent with rates that have been awarded in this District"); *In re Vaxart, Inc. Sec. Litig.*, No. 20 Civ. 05949-VC (N.D. Cal. Jan. 25, 2023), ECF No. 274 (approving fee award with Scott+Scott's rates ranging from \$795 to \$1,395 for partners or senior counsel,

D. The Results Obtained Support the Attorneys' Fee Award Requested.

Although Hodge or Ries do not appear to challenge the “the results obtained,” neither address the fact this \$100 million Settlement is, indeed, an excellent result, which supports the Attorneys' Fee requested here. *See* Fee Brief at 8-9; *see also Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (in awarding fees, courts should consider the “quality of legal services rendered.”); *Silverman*, 2012 WL 1597388, at *3 (noting that counsel’s representation “was significant, both in terms of quality and quantity”).

The quality of Class representation is unquestionable. Over seven years of hard-fought litigation, Class Counsel secured this \$100 million Settlement through substantial work including: drafting detailed pleadings and opposing Defendant’s motion to dismiss; conducting extensive discovery including massive document review and numerous depositions; completing contested class certification; and related motion practice and hearings. Given the stakes, cases like this rarely settle for substantial recovery before defendants exhaust all legal challenges. *See Glickenhous & Co. v. Household Int’l*, 787 F.3d 408 (7th Cir. 2015) (Robbins Geller case filed 2002, settled 2016 after trial and appeal). The \$100 million result is indisputably excellent and would not have been achieved without Class Counsel’s persistent, capable efforts.

Ries’s and Hodge’s objections fail to acknowledge the work performed by Plaintiffs’ counsel and the excellent result achieved. There is simply no basis or support for a reduction in

\$595 to \$750 for associates, and roughly \$395 for paralegals); *Steamship Trade Ass’n of Balt. – Int’l Longshoremen’s Ass’n Pension Fund v. Olo Inc.*, No. 1:22-cv-08228 (S.D.N.Y. June 11, 2024), ECF Nos. 123-2, 125-5 (approving fee award with Scott+Scott’s rates ranging from \$1,150 to \$1,975 for partners or senior counsel, \$525 to \$675 for associates, and roughly \$435 for paralegals); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13 Civ. 7789, 2018 WL 5839691, at *5 (S.D.N.Y. Nov. 8, 2018) (approving partner rates, including for Scott+Scott, of \$630 to \$1,375, and associate rates of \$325 to \$625), *aff’d sub nom. Kornell v. Haverhill Ret. Sys.*, 790 F. App’x 296 (2d Cir. 2019); *Abadilla v. Precigen, Inc.*, 2023 WL 7305053, at *15 (N.D. Cal. Nov. 6, 2023) (approving fee award with Scott+Scott’s rates ranging from \$1,095 to \$1,595 for partners or senior counsel, from \$625 to \$795 for associates, and \$395 to \$675 for paralegals and professional support staff (investigators)).

the requested Attorneys' Fee based on the results obtained. The requested 30% Attorneys' Fee award is entirely consistent with prevailing authority in this Circuit and appropriately recognizes the quality and extent of Class Counsel's efforts in securing a substantial recovery for the Class against formidable defense counsel and litigation obstacles.

E. The Reaction by the Class Supports that the Requested Fee Is Fair and Reasonable.

The Class's reaction is a significant factor in assessing fee reasonableness. Notice was extensive, including digital advertising and direct notice to over 87 million individual and 42,000 TPP Class Members and entities that represent TPP Class Members. *See* Miller Decl. at ¶¶5-19. Class Members were informed that Class Counsel would seek attorneys' fees up to 30% of the Settlement Fund, litigation expenses up to \$3 million (exceeding the \$2.49 million requested here), and service awards up to \$5,000 per Individual Plaintiff and \$15,000 per Fund Plaintiff. *See id.* and ECF No. 683-4, 683-5, 683-6. The Notice informed Class Members of their right to object by March 18, 2024. *Id.*

Class Members received ample notice and time to review the Settlement and object. Notice was disseminated from December 17, 2024 to January 16, 2025. *See* Miller Decl., ¶¶5-16. Class Counsel's fee motion was filed March 4, 2025 (ECF No. 700) and posted on the Settlement Website. Beginning December 17, 2024, the Notice, Proof of Claim, Stipulation, Notice Order, and other Settlement documents were posted on the Settlement Website and updated with new filings. *See* Miller Decl., ¶18. These papers—available on the public docket and Settlement website—fully document the Settlement, work performed, claim strengths and weaknesses, and support for the fee request. *See* ECF Nos. 700-702. Ries's claim of insufficient time is invalid—all Class Members had over three months' notice of the 30% fee request and the Motion was posted to the Settlement Website two weeks before the objection deadline.

The Class response has been overwhelmingly positive with over 17 million claim forms submitted. *See* Miller Decl. at ¶25. With over 87 million notices sent and 17 million claims filed, only two Class Members (0.00012% of claimants or 0.000002% of those notified) object concerning attorneys' fee. Notably, no TPP Class Member objected to the requested fees, expenses, or service awards. *See, e.g., Motorola*, 739 F.3d at 959 (noting lack of objection by sophisticated, institutional Class members in affirming fee over objection of individual objector).⁸ The overwhelmingly positive Class reaction confirms the fee request is fair and reasonable. *Cf. In re TikTok*, 617 F. Supp. 3d at 938 (four objections favored approval).

II. CONCLUSION

For the reasons stated herein and in the Motion, Class Counsel respectfully request the Court overrule the objections and award \$30 million in attorneys' fees, \$2,497,845.71 in expenses, plus interest on both amounts, and Service Awards of \$5,000 to each Individual Plaintiff and \$15,000 to each Fund Plaintiff. A proposed order granting such relief is submitted herewith.

DATED: August 6, 2025

Respectfully submitted,

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⁸ Further illustrating this point, while the Blues' and HCSC's objections are not the subject of this Reply, it is noteworthy that they, too, being large TPPs represented by counsel, do not object to the requested fees, expenses, or service awards.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically through the Court's Electronic Case Filing System, which will then send a notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

/s/ Arthur L. Shingler III
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