IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ELAINE ANN GOLD, AMY JACOBSON SHAYE, HEATHER HUNTER, and RODERICK BENSON, on behalf of themselves and all others similarly situated, **Plaintiffs,** **v.** **DEKALB COUNTY SCHOOL DISTRICT and DEKALB COUNTY BOARD OF EDUCATION,** **Defendants.**	**CIVIL ACTION FILE NO. 11-CV-3657-5**

PLAINTIFFS' BRIEF IN SUPPORT OF UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

Plaintiffs Elaine Ann Gold, Amy Jacobson Shaye, Heather Hunter, and Roderick Benson ("Plaintiffs"), through undersigned counsel ("Class Counsel"), submit this brief in support of their motion for an incentive award and an award of attorneys' fees and expenses for Class Counsel.

I. STATEMENT OF THE CASE.

After over nine years of litigation and four appellate decisions, this case has settled for $117,500,000 (117.5 million dollars). The settlement fund, or "common

fund" has been created through the efforts of Class Counsel and the Named Plaintiffs (Class Representatives). The Settlement Agreement preliminarily approved by the Court allows Plaintiffs to apply for (a) attorneys' fees of 33.0 percent of the common fund; (b) reimbursement of expenses incurred by Class Counsel in an amount to be set by the Court; and (c) an incentive award for the Class Representatives in the amount of $25,000 each to compensate them for their time and efforts spent on behalf of the class. The settlement fund is to be paid in five annual installments. The attorneys' fees and Class Counsel expenses will be split in the same way and paid out proportionally with each annual payment. Both expense reimbursements and fees to class counsel will thus be paid out in the same time frame and the same proportions as the settlement payments to Class Members. The incentive awards will be fully paid to the Class Representatives out of the first such settlement payment. The first settlement payment is slightly larger than the other installment payments to allow for payment of the representative awards, notice costs and costs of settlement administration. All of these payments are usual and customary, for a class action like this, in type and in amount.

II. PROCEDURAL HISTORY – A LONG FIGHT.

A. Investigation and Preparation of the Complaint:

In 2010, Class Counsel (initially Barnes Law Group ("BLG")) began an investigation into potential claims brought to the attention of BLG by Amy Shaye

and Elaine Gold. That investigation led to the claims at issue in this lawsuit. BLG conducted in-depth investigative analysis and research of publicly available documents, including Board meeting minutes and Board Resolutions and Policies. This investigation included meetings with the clients, both over the phone and in person. Because Shaye and Gold were interested in seeking a remedy that would benefit their co-employees who had been impacted similarly to them, this investigation also assessed the suitability of the potential case theories for potential class certification as well as the fit between the individual plaintiffs' situation and that of a potential class. *See* Affidavit of John Salter ("Salter Aff.") ¶ 8.

Beginning with the initial filing of the first Complaint and Petition on March 21, 2011, this putative action sought to represent a plaintiff class of similarly-situated persons. Salter Aff. ¶ 9.

The purpose of this lawsuit was to challenge an across-the-board cessation in the funding of contributions from the District for the benefit of the Class under the TSA Plan.

B. Motion to Dismiss and "*Gold I.*"

Defendants filed a motion to dismiss the lawsuit. Amongst other arguments, the Motion to Dismiss sought complete dismissal of the Plaintiffs' Complaint on the ground that it was barred entirely by sovereign immunity. Class Counsel reviewed and analyzed Defendants' briefing and evaluated whether to amend their

Complaint. Plaintiffs amended their Complaint for the first time on June 16, 2011. This was the first of several amendments, culminating in the Third Amended Complaint, filed on June 30, 2015.

Although their Motion to Dismiss was denied by the trial court, Defendants obtained a certificate of immediate review and filed an appeal. This appeal was briefed and argued by Class Counsel. By Opinion of November 20, 2012, the Court of Appeals affirmed in part and reversed in part, substantially holding that Plaintiffs stated a valid claim for breach of a written contract based upon the two-year notice language contained in the Board Policies, and dismissing other claims. *DeKalb Cty. School Dist. v. Gold*, 318 Ga. App. 633 (2012) ("*Gold I*"). *Gold I* was the first of four different appellate opinions issued in this case over the ensuing years. Defendants petitioned for a writ of *certiorari* from the Supreme Court for review of *Gold I*. Class Counsel responded. The petition was denied and the matter was remanded to the trial court.

C. Discovery and "*Gold II*."

Upon returning to the trial court after *Gold I*, the Plaintiffs pursued discovery to support their claims and in preparation to seek certification of a class. Class Counsel investigated the case further, identifying witnesses and obtaining documents from the Defendants through formal discovery and from other sources as well. Salter Aff. ¶ 13. Several depositions were taken, including of key

management personnel for the Defendant District and former Board members of the District's Board of Education. In addition, Plaintiffs Amy Shaye and Elaine Gold sat for depositions lasting several hours each. They were prepared by Class Counsel for these depositions. Shaye and Gold have actively participated in the process of this case from and even before its inception.

The Plaintiffs filed their first Motion for Class Certification on April 23, 2013. On May 2, 2013, Plaintiffs filed their first Motion for Partial Summary Judgment as to Liability. Defendants responded to these motions and, further, filed their own Motion for Summary Judgment on September 11, 2013. Over October 14 and 15 of 2013, the trial court conducted a two-day evidentiary hearing and oral argument. In early 2014, the trial court denied Plaintiffs' Motion for Class Certification.

This presented Plaintiffs and Class Counsel the dilemma of either quitting their quest for legal relief or persisting. The denial of class certification made the case, from a matter of the economics of litigation, a challenge. And given the deferential standard of review (abuse of discretion), overturning or reversing the trial court's denial of class certification on appeal made success far from assured. Despite the formidable obstacles, the Plaintiffs filed an appeal. To aid them, Plaintiffs sought and obtained the assistance of additional attorneys: Michael B. Terry and Naveen Ramachandrappa, with the law firm of Bondurant Mixson and

Elmore, LLP ("BME"). BME joined this case when a potentially fatal denial of class certification could have effectively ended the case if not revived on appeal (because the cost of pursuing purely individual claims for small amounts was a negative-value proposition). *See* Salter Aff. ¶ 17.

This appeal from the denial of class certification resulted in an opinion wherein one of the judges wrote that, "[i]f ever there was a question that ought to be resolved once and for all, it is whether this school district shortchanged these teachers unlawfully." *Gold v. DeKalb County School District* ("*Gold II*"), Georgia Court of Appeals Case No. A14A1557, March 30, 2015 (Concurring Op. of Judges McFadden and Phipps at 1). Reviving the Plaintiffs' hopes, in *Gold II* the Court of Appeals expressed that Plaintiffs might address some of the issues that had led to the denial of class certification with either subclasses or additional named plaintiffs. On remand, Jason Carter of BME also joined as counsel, as Class Counsel sought to add subclasses, additional named plaintiffs, and renew motions for class certification and summary judgment. Plaintiffs investigated the practicality of finding new plaintiffs to ensure adequate representation and filed a renewed motion for class certification. Class Counsel interviewed a series of prospective representatives to assess their suitability and personal willingness to act as a steward protecting the best interests of their fellow, similarly-situated co-workers.

D. Addition of Plaintiffs Hunter and Benson.

By motion filed on June 4, 2015, Plaintiffs moved to add two new Plaintiffs as prospective additional Class Representatives: Heather Hunter and Roderick Benson. In 2016, both sat for depositions wherein they submitted to extensive cross-examination by the defense as to their fitness or suitability as Class Representatives. Since 2015, Hunter and Benson have been actively and intensively involved with the original Plaintiffs—Shaye and Gold—in critical decisions regarding appeals, strategy and settlement negotiations.

E. Extensive Additional Discovery on Class-Wide Damages Methodology.

In furtherance of a second motion for class certification, Plaintiffs devoted months to a deeper investigation of the facts pertinent to class certification, with a special focus on issues such as: (1) how the District stored employee personnel and payroll data; (2) how that data was maintained by Fidelity Investments (the designated recordkeeper for the benefits plan at issue); and (3) how to combine, collate and reconcile voluminous data from various data-sets to calculate damages fairly and properly for all potential class members.

Extensive formal discovery ensued, including sometimes contentious motions practice. The intensity of the controversies over discovery and other issues caused the trial court to appoint Hon. Keegan Federal as a special master so that these disputes could be timely addressed. *See* Order Appointing Special Master

(May 11, 2015). Many additional depositions were taken, including those of key management personnel for the Defendant District and former Board Members of the District's Board of Education, and (eventually) expert witnesses.

Much of this investigation and discovery required Plaintiffs' counsel, by advancing substantial expenses, to inspect or gain access to Defendants' databases storing employee compensation and payroll data. *See, e.g.*, August 14, 2015 Order. To obtain such discovery required Plaintiffs to overcome determined resistance from the defense. *See, e.g*., Defendants' Motion for Limited Protective Order (Nov. 12, 2015). It was only by persistent effort that the Plaintiffs amassed evidence in the form of testimony, voluminous data and expert opinion that they could hope to carry the burden of showing this case satisfied the prerequisites for class certification. Salter Aff. ¶ 23. Upon seeking class certification a second time, Plaintiffs relied on the testimony of numerous additional witnesses deposed during 2015-2016 after *Gold II*, including Nefreteria Williams, Brenda Randolph, Brenda Hudgins, Rhonda Kelly, Tekshia Ward-Smith, James Redovian, Jay Cunningham, and Eugene Walker.

F. Another Adverse Decision, More Appellate Briefing and *Gold III*/*Gold IV*.

On June 1, 2017, Plaintiffs filed a second Motion for Class Certification together with a Motion for Partial Summary Judgment as to Liability for Breach of Written Contract. An Appendix that aggregated various relevant expert reports,

deposition excerpts, affidavits, etc., contained 63 separate items. *See* Plaintiffs' Appendix (Jan. 1, 2017); *see also* Plaintiffs' Second Supplemental Appendix (reflecting a total of 95 items). On that same day, Defendants renewed their previous motion seeking summary judgment on liability and damages.

Given the complex nature of the litigation and the extraordinary amount of data regarding payroll, employment status, and investment vehicles, proving that class-wide damages could be calculated for all class-members under a fair and reasonable methodology required extensive reliance on experts integrating multiple data-sets. Salter Aff. ¶ 27. Taking and defending the data-specific depositions of Plaintiffs' and Defendants' experts required extensive preparation and ongoing coordination among the litigation team to ensure an effective examination. In addition to the class certification and summary judgment motions, the parties also contested the admissibility and suitability of expert opinions that were submitted on various class-certification and summary judgment issues, filing and briefing multiple exclusionary motions. *See, e.g.*, Defendants' Motion to Exclude Plaintiffs' Expert Karen Fortune (Jan. 11, 2017); *see also* Plaintiffs' Response in Opposition to Defendants' Motion to Exclude Plaintiffs' Expert Karen Fortune (Feb. 6, 2017).

Throughout the course of discovery, Class Counsel diligently reviewed and analyzed voluminous documents, as well as massive data-sets extracted from multiple custodians that were produced by Defendants and their contractors and

vendors. Defendants made numerous, separate productions. A detailed review and analysis of the document production was crucial for Plaintiffs to prove their claims and to understand the almost three-decade history relevant to this particular case. Without a firm understanding of the documents and data-sets—both of which were voluminous and required substantial costs to obtain and properly analyze—Plaintiffs would have been unable to successfully prosecute this action. Salter Aff. ¶ 28.

Over two days in the spring of 2017, the parties argued these motions regarding evidentiary rulings, dispositive motions and class-certification. In an Order entered June 26, 2017, the trial court granted summary judgment to the Defendants, a potentially fatal blow to the cause for the Plaintiffs and the Class. The trial court also denied Plaintiffs' Motion for Partial Summary Judgment (as to liability for contractual breach) and denied Plaintiffs' Motion for Class Certification. Plaintiffs persisted, and commenced yet another appeal, setting the stage for what would become *Gold III* and *Gold IV*.

Plaintiffs had to appeal (a) the denial of class certification; (b) the grant of the Defendants' Motion for Summary Judgment and (c) the denial of the Plaintiffs' Motion for Partial Summary Judgment. After extensive briefing and oral argument, the Court of Appeals decided the two-year notice requirement applied to all District employees equally and, accordingly, reversed the trial court's decision and

awarded partial summary judgment on liability to the Plaintiffs, and vacated the denial of class certification. *Gold v. DeKalb Cty. Sch. Dist.*, 346 Ga. App. 108 (2018) ("*Gold III*"). However, the Defendants sought *certiorari.* Class Counsel briefed the petition for *certiorari, w*hich was ultimately granted by the Supreme Court. Again, the entire case was potentially imperiled. Class Counsel briefed the case extensively, and orally argued it in the Supreme Court. The Supreme Court agreed with the Court of Appeals, albeit for different reasons. *DeKalb Cty. Sch. Dist. v. Gold*, 307 Ga. 330 (2019) ("*Gold IV*"). The case was remanded to the trial court, still with no class certified.

G. Extensive Attempts at Negotiated Resolution.

The parties engaged in multiple efforts—informal and formal—to attempt a mutual resolution of this case. In April of 2016, the parties engaged Hon. Susan Forsling to assist them in a formal mediation. This was personally attended by all four of the putative Class Representatives: Gold, Shaye, Hunter and Benson. Salter Aff. ¶ 31. The parties did not reach agreement.

After the publication of *Gold III*, the parties engaged in another effort at a negotiated resolution, this time facilitated by renowned neutral Michael Loeb. On September 17, 2018, all four of the putative Class Representatives participated fully and in-person at the mediation at JAMS Mediation Service in Atlanta. The

parties remained far apart, and did not reach an agreement during the mediation session.

After the oral argument in the Supreme Court of Georgia (but before publication of the ultimate decision in October of 2019), the parties re-engaged in active negotiations in hopes of reaching a mutual settlement between the District and the putative Class. Between July and October of 2019, Class Counsel and the Plaintiffs engaged in many telephonic conferences and email communications internally, with Mr. Loeb as mediator, and with opposing counsel. These negotiations came close to yielding an agreement, manifested by many different drafts of a settlement agreement being exchanged by and between counsel. However, by October of 2019, the Plaintiffs and Defendants could not reach a mutual agreement. Salter Aff. ¶ 33. Plaintiffs and Class Counsel decided to await publication of the Opinion from the Supreme Court of Georgia that would become *Gold IV*.

H. *Gold IV* and Class Certification.

After *Gold IV* was published, the Defendants unsuccessfully sought reconsideration, which was denied by the Supreme Court after briefing by the parties. On remand to the trial court, the Plaintiffs renewed their Motion for Class Certification. With the permission of the trial court, the parties submitted supplemental briefs on the issue of class certification and the remaining pending

motions. Another day of oral argument was held. The parties also prepared proposed orders for consideration by the Court. On March 26, 2020, this Court entered an order granting Plaintiffs' Motion for Class Certification.

I. Renewed Negotiations and Eventual Class Settlement.

In March of 2020, the parties resumed negotiations with the renewed aid of Michael Loeb as mediator. Over the next three months, the parties negotiated by correspondence and telephone in efforts to resolve the matter on a class-wide basis. Again, the Plaintiffs fully participated in multiple phone calls with Class Counsel to discuss terms, offers and counter-offers. The parties' negotiations were protracted and at times contentious. At least ten different cycles of drafts of a potential Settlement Agreement were exchanged, marked up in redline, and returned again. Due to the COVID-19 pandemic, the parties met via several Zoom-facilitated calls including Mr. Loeb in an attempt to resolve issues regarding the potential settlement. After multiple discussions and conferences, the parties reached an agreement on all terms in May and June of 2020. Salter Aff. ¶ 35. Thus, the settlement in this case was the product of literally months of arms-lengths negotiations, and multiple days of mediations with two professional mediators. Terry Aff. ¶ 10. Prior to seeking preliminary approval of the class-action settlement, Class Counsel engaged in the preparation of numerous supporting settlement documents, including the class action notices, claim forms,

distribution plans and their motion for preliminary approval. These required coordination with the Defendants, and at times required the intercession of Mr. Loeb. Further, Class Counsel have coordinated the settlement with settlement administrators who are integral to the facilitation of the settlement, including drafting and revising "frequently asked questions" and answers thereto for the use of the settlement administrators, and reviewing and revising the settlement administration website. Salter Aff. ¶ 36. Because the Settlement Agreement envisions installments over five annual installments, Class Counsel expect to continue working on this case for several more years. Further, Class Counsel understand that the payment of expenses and fees will be made over several annual installments, without interest.

ARGUMENT AND CITATION OF AUTHORITY

I. THE ATTORNEYS' FEE REQUEST IS REASONABLE AND SHOULD BE GRANTED.

In a class action such as this one, the Court is to award a contingency fee based on a percentage of the total recovery ("common fund"), because virtually no individual possesses a sufficiently large stake in the litigation to justify paying his attorneys on an hourly basis. The Georgia Supreme Court has made it clear that a percentage of the common fund approach is to be used in Georgia class actions. "With respect to attorney's fees, Georgia adheres to the common-fund doctrine." *Barnes v. City of Atlanta*, 281 Ga. 256, 260 (2006) ("*Barnes III*"). Although the

factors to be considered in selecting a percentage from the common fund "may vary from case to case," *Friedrich v. Fid. Nat'l Bank*, 247 Ga. App. 704, 707 (2001), there are certain commonly used factors, which are discussed in detail below. Those factors are discussed in numerous cases, including particularly *Johnson v. Ga. Hwy. Express, Inc*., 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds*, *Blanchard v. Bergeron*, 489 U.S. 87 (1989), and *Camden I Condo. Ass'n v. Dunkel*, 946 F.2d 768, 774 (11th Cir. 1991). *See Friedrich*, 247 Ga. App. at 706 (referencing *Johnson* and *Camden* factors). We will thus discuss the pertinent *Johnson* and *Camden* factors as well as other factors specific to this case. *Friedrich*, 247 Ga. App. at 707. *See* Terry Aff. ¶ 11.

A. A 33.0 Percent Fee Award Is Customary and Supported by "Awards in Similar Cases."

Both *Johnson* and *Camden* suggest that the Court consider "awards in similar cases." *Johnson*, 488 F.2d at 717-19; *Camden*, 946 F.2d at 772 n.3. Class Counsel in this Action seek a recovery of 33.0 percent (not a full one-third or 33.33%).[1] This is slightly *less* than what is considered a customary fee in such a case. A "one-third recovery ... is a customary fee" for class actions. *Diakos v. HSS Sys., LLC*, No. 14-61784, 2016 WL 3702698, at *6 (S.D. Fla. Feb. 4, 2016). For

[1] This will not be paid up front, but in five annual installments, in the same percentages of the total Settlement Fund which are paid to class members in each installment. Thus, Class Counsel are subject to the same delays and risks as are class members.

that reason, a fee of 33.0% of the common fund—the amount Class Counsel seeks here—is consistent with, and even slightly below, what numerous other courts have awarded in similarly complex class actions and is appropriate here.

For example, most recently, in *Owens v. Metro. Life Ins. Co.*, No. 2:14-cv-00074 (N.D. Ga.), Judge Richard Story awarded class counsel **33.3 percent of the common fund of 80 million dollars** in 2019. In *Barnes III* (cited above), "the trial court awarded plaintiffs' counsel attorney fees of **33 1/3 percent** of the common fund, but provided that those who had opted out of the classes were not responsible for paying attorney fees." *Barnes v. City of Atlanta*, 275 Ga. App. 385, 386 (2005) ("*Barnes II*"), *rev'd*, 281 Ga. 256 (2006). The Supreme Court in *Barnes III* reversed the Court of Appeals' holding that the opt-outs did not have to pay fees to class counsel and left the 33 1/3 percent award intact. Further, "in *Friedrich v. Fidelity Nat. Bank*, the trial court awarded plaintiffs' counsel attorney fees of **33 1/3 percent** of the common fund." *Barnes II*, 275 Ga. App. at 392. Again, we seek 33.0 percent.

Federal Cases, including particularly those from Georgia, are in accord. "[E]mpirical studies show that ... fee awards in class actions average around one-third of the recovery[,]" and [t]he average percentage awarded in the Eleventh Circuit mirrors that of awards nationwide – roughly one third." *Wolff v. Cash 4 Titles*, No. 03-cv-22778, 2012 WL 5290155, at *5 (S.D. Fla. Sept. 26, 2012)

(collecting cases), adopted, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012); accord *George v. Academy Mortg. Corp*., 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (collecting cases in which fees were awarded in the amount of one-third of the recovery); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1294-95 (11th Cir. 1999) (affirming a fee award of one-third of a $40 million settlement plus expenses); *Muransky v. Godiva Chocolatier, Inc*., 922 F.3d 1175, 1195-96 (11th Cir. 2019) (affirming a fee award of one-third of a $6.3 million settlement), vacated on other grounds, 939 F.3d 1279. *See In re Clarus Corp. Sec. Litig*., No. 1:00-cv-02841 (N.D. Ga. Jan. 6, 2005) (**33.33%**); *In re Pediatrics Servs. of Am., Inc. Sec. Litig*., 1:99-cv-0670 (N.D. Ga. Mar. 15, 2002) (**33.33%**); *In re Profit Recovery Group Int'l, Inc. Sec. Litig.*, No. 1:00-CV-1416-CC (N.D. Ga. May 26, 2005) (**33.33%**); *In re Theragenics Corp. Sec. Litig*., No. 1:99-CV-0141-TWT (N.D. Ga. Sept. 29, 2004) (**33.33**%); *In re Harbinger Corp. Sec. Litig.*, No. 1:99-CV-2353-MHS (N.D. Ga. Oct. 18, 2001) (**33.33%**); *In re The Maxim Group, Inc. Sec. Litig.*, No. 1:99-CV-1280-CAP (N.D. Ga. July 20, 2004) (**33.33%**); *In re Medirisk, Inc. Sec. Litig.*, No. 1:98-CV-1922-CAP (N.D. Ga. Mar. 22, 2004) (**33.33%**); *Meyer v. Citizens & S. Nat'l Bank*, 117 F.R.D. 180 (M.D. Ga. 1987) (**33.3%**). *See also Zinman v. Avemco Corp.*, No. 75-1254, 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (**50%**); *Aamco Automatic Transmissions, Inc. v. Tayloe*, 82 F.R.D. 405 (E.D. Pa. 1979) (**43.87%**); *In re Ampicillin Antitrust Litig.*, 526 F.

Supp. 494 (D.D.C. 1981) (**40.4%**); *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987) (**40%**); *In re Terazosin Hydrochloride Antitrust Litig.*, 1:99-MD-01317-PAS (S.D. Fla. April 19, 2005) (**33 1/3%** of settlement of over $30 million); *In re Managed Care Litig.*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (fees and costs of **35.5%** of settlement of $100 million); *Gutter v. E.I. Dupont De Nemours & Co*., 1:95-cv-02152 [Dkt. 626] (S.D. Fla. May 30, 2003) (**33 1/3%** of settlement of $77.5 million); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291 (11th Cir. 1999) (**33 1/3%** of settlement of $40 million); *Morgan v. Public Storage*, No. 1:14-cv- 21559 [Dkt. 407] (S.D. Fla. Mar. 10, 2016) (awarding **33%**); *Grier v. Chase Manhattan Auto. Fin. Co*., No. 99-180, 2000 WL 175126, at *16 (E.D. Pa. Feb. 16, 2000) (**33.33%** of the net settlement fund); *Ratner v. Bennett*, No. 92-4701, 1996 WL 243645 (E.D. Pa. May 8, 1996) (**35%**); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320 (E.D.N.Y. 1993) (**33.85%** of settlement fund). Given the complexity, burden and risk associated with this case, the requested fee of 33.0% is well in line with the case law. *Johnson v. Midwest Logistics Sys., Ltd.*, No. 2:11-CV-1061, 2013 WL 2295880 (S.D. Ohio May 24, 2013) (approving **33%** attorneys' fees and expense award in common fund settlement); *In re Se. Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (approving **33%** attorneys' fees award [totaling $52.9 million] in common fund settlement and noting that "the percentage

requested is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Rotuna v. West Customer Mgmt. Grp.*, No. 4:09-CV-1608, 2010 WL 2490989, at *7 (N.D. Ohio June 15, 2010) (approving attorneys' fees award of **33%** in common fund case); *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-CV-95, 2007 WL 3173972, at *4 (W.D. Mich. Oct. 26, 2007) (approving **31-32%** attorneys' fees award and noting that "'[e]mpirical studies show that ... **fee awards in class actions average around one-third of the recovery**'") (citation omitted) (emphasis added); *Dallas v. Alcatel-Lucent USA, Inc.*, No. 09-14596, 2013 WL 2197624, at *12 (E.D. Mich. May 20, 2013) (preliminarily approving **33%** attorneys' fees award in common fund settlement of collective action and noting that "[v]arious courts have expressed approval of attorney fees in common fund cases at similar or higher percentages"). *See* Terry Aff. ¶ 12-13.

Factors discussed in more detail below that would suggest an even higher percentage than is customary in this particular case include the fact that the attorney fee recovery is purely contingent; has been pending for over nine years (delaying any fee and expense payment to Class Counsel for all of that time); the case was difficult and presented complex issues of immunity law, retirement plan law, data retrieval issues and class certification issues; the case has involved multiple interlocutory appeals with the extra risk, delay, expenses and attorney

time attendant thereto; class certification was denied twice in this case, which had to be reversed twice in order to prevail; summary judgment was granted to the Defendant, which had to be reversed to prevail; Class Counsel has expended over $800,000 in out of pocket expenses over the last nine years with no interim payment or guarantee of eventual repayment. Class Counsel expended thousands and thousands of hours on this case over nine years, precluding taking other profitable cases. Further, Class Counsel have obtained an extraordinary result for the class in this highly complex and problematic case. Finally, as noted above, Class Counsel have agreed to spread out the payment of the fee (and expenses) into five annual payments, taking the same risks of delay and creditworthiness as the class members. Thus, the present value of the fee award requested is less than 33.0% of the settlement amount. *See* Terry Aff. ¶ 14.

The Northern District of Georgia approved a fee award of 33.33% to class counsel who negotiated a $75 million common fund settlement, holding that percentage for such a sizeable settlement was "in keeping with fee awards in **highly complex, multi-year cases**." *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-3066-JEC, 2012 WL 12540344, at *1 (N.D. Ga. Oct. 26, 2012) (emphasis added). This is a "highly complex, multi-year case" such as that referred to in the *Columbus Drywall* opinion referenced above. This case has

been extensively litigated over the course of more than nine years, with four appeals, all as set forth in more detail above and in the Affidavit of John Salter.

The request is supported by the opinion of experienced class action attorneys that a fee award of 33.0 percent of the settlement amount is a reasonable fee under all of the circumstances and is, if anything, slightly below what is considered customary, despite the special circumstances of this case which would warrant a greater fee than is customary.

B. The Case Required Substantial Time and Labor.

Both *Johnson* and *Camden* list as a potential factor "the time and labor required." *Johnson*, 488 F.2d at 717-19; *Camden*, 946 F.2d at 772 n.3. Class Counsel have expended substantial time and resources to investigate, prosecute, and resolve this case. Terry Aff. ¶ 14, 17; Salter Aff. ⁋⁋ 37-38. The procedural history set forth above details the absolutely massive amount of work required for the successful prosecution of this case. Through more than nine years of such efforts on behalf of the class, Class Counsel finally obtained favorable rulings on summary judgment and class certification that allowed them to negotiate a favorable settlement. The time and resources devoted to this case by Class Counsel support their fee request.

C. The Case Involved Difficult Questions and Presented Significant Risk for Class Counsel.

Both *Johnson* and *Camden* suggest as factors "the novelty and difficulty of the questions" presented by the case and the "undesirability" of the case. *Johnson*, 488 F.2d at 718-19; *Camden*, 946 F.2d at 772 n.3. These factors recognize that class counsel "should be appropriately compensated for accepting the challenge" of undertaking challenging cases, *id*., and "must be evaluated from the standpoint of plaintiffs' counsel as of the time they commenced the suit, not retroactively, with the benefit of hindsight." *In re Checking Account Overdraft Litig*., No. 1:09-MD-02036-JLK, 2013 WL 11319392, at *15 (S.D. Fla. Aug. 5, 2013).

As described above, from the outset, Class Counsel faced the daunting task of overcoming the bar of sovereign immunity and distinguishing this case from adverse precedents which led to the several adverse trial court rulings discussed above. The difficulty inherent in this task, and the resulting risk that Class Counsel undertook when they agreed to accept this case on a contingent basis, strongly support their fee request. Salter Aff. ¶ 7. *See* Terry Aff. ¶ 14, 17.

D. Class Counsel Skillfully Prosecuted This Action to a Successful Conclusion Against Capable Opposing Counsel.

Both *Johnson* and *Camden* suggest as factors "the skill requisite to perform the legal service properly" and "[t]he experience, reputation, and ability of the attorneys." 488 F.2d at 718-19. In evaluating these factors, "[t]he trial judge should

closely observe the attorney's work product, his preparation, and general ability before the court. The trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work become highly important in this consideration." *Id*. at 718.

Class Counsel have extensive experience prosecuting complex litigation, including class actions of the variety at issue in this case, Terry Aff. ¶¶ 5-9; Salter Aff. ¶¶ 5-6, and this Court so found when it appointed them to serve as Class Counsel.

> There is no dispute that Plaintiffs' Counsel are experienced and competent. Ample evidence in the record demonstrates their experience in the field of class action litigation. *See* Pls. Ex 45 (Affidavit of John F. Salter dated April 22, 2013); Pls. Ex.46 (Affidavit of Roy E. Barnes dated April 22, 2013); Pls. Ex. 47 (Affidavit of Michael B. Terry dated January 11, 2017). They have pursued this cause since February 2011. Counsel and the Plaintiffs have persevered, and prevailed, through multiple appeals. They have achieved substantial success, achieving favorable rulings in *Gold III* and *Gold IV* that the two-year notice requirement applied, by its terms, to all District employees equally. Such sustained professional effort is evidence of counsel's dedication to the cause of the Plaintiffs and the Class-members. The Court thus finds that Plaintiffs' Counsel, Roy Barnes and John Salter of the Barnes Law Group, and Michael Terry, Jason Carter and Naveen Ramachandrappa of Bondurant, Mixson & Elmore are more than adequate class counsel.

Order Granting Plaintiffs' Motion for Class Certification at 34-35.

Both prior and subsequent to that finding, Class Counsel's experience and skill enabled them to prosecute this case efficiently and effectively to a successful conclusion while overcoming substantial daunting obstacles.

"In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel." *Lunsford v. Woodforest Nat'l Bank*, No. 12-cv-103-CAP, 2014 WL 12740375, at *13 (N.D. Ga. May 19, 2014). Here, Defendants spared no expense to defend this case by hiring several top notch and experienced attorneys and providing them with the resources to mount a vigorous defense. The fact that Class Counsel were able to prosecute this case to a successful conclusion against capable and well-funded opposing counsel further speaks to their skill and to the quality of representation they have provided to the class.

E. Class Counsel Have Devoted Substantial Time and Effort to This Case to the Exclusion of Others for the Past Nine Years.

Both *Johnson* and *Camden* suggest as factors the "time limitations imposed by the client or the circumstances[,]" and whether other available business was foreclosed by "the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Johnson*, 488 F.2d at 718; *Camden*, 946 F.2d at 772 n.3. These factors recognize that "[p]riority work that delays the lawyer's other work is entitled to some premium." *Id*. These

factors weigh in favor of the requested fee award because during the nine years that this case has been litigated, Class Counsel have devoted substantial time and effort to this case to the exclusion of others. Terry Aff. ¶ 14; Salter Aff. ¶ 2.

F. Class Counsel Assumed Significant Risk by Undertaking This Case Purely on a Contingent Basis.

Both *Johnson* and *Camden* suggest as a factor "whether the fee is fixed or contingent." *Johnson*, 488 F.2d at 718; *Camden*, 946 F.2d at 772 n.3. "The customary fee in class actions is a contingency fee, because it is not practical to find any individual that will pay attorneys on an hourly basis to prosecute the claims of numerous strangers and take on the significant additional expenses of fighting with the defendant over class certification." *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-3066-JEC, 2012 WL 12540344, at *4 (N.D. Ga. Oct. 26, 2012).

> A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class given the significant investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Id. at *5 (citation omitted).

As a practical matter, litigants such as the Plaintiffs here could not afford to pursue litigation against a well-funded government entity on any basis other than a contingent fee. Similar to ERISA litigation, class actions over employee benefits

involve tremendous risk. Thus, this litigation over employee benefits was considered risky, specialized, time-consuming, and cost-intensive, all of which ended up being true in this particular instance. Further, because of the substantial sums at stake, defendants are often willing in such cases to devote massive resources and spend substantial sums for defense costs and expert witnesses, something that also proved true in this case.

Class Counsel undertook this case purely on a contingent basis. In so doing, they assumed a significant risk that they would not be paid for their work, a risk that was very real at the time given the immunity defense and contractual defenses presented. The substantial risk of nonpayment that Class Counsel assumed when they undertook this case on a contingent basis strongly supports their fee request.

G. The Fee Request Is Reasonable in Light of the Excellent Result Obtained for the Class.

Both *Johnson* and *Camden* suggest as a factor "the result obtained for the class." *Johnson*, 488 F.2d at 717-19; *Camden*, 946 F.2d at 772 n.3. This is the most important factor in the fee calculus. *Camden I*, 946 F.2d at 774 ("**[M]onetary results achieved predominate over all other criteria.**") (emphasis added); Manual for Complex Litigation (4th) § 14.121 (2004) ("The greatest emphasis is the size of the fund created, because a common fund is itself a measure of success and represents the benchmark from which a reasonable fee will be awarded.")

(citations and internal quotations omitted). Here, the $117,500,000.00 settlement amount is one of the highest such cases in Georgia history and a substantial percentage of the potential damages that could have been achieved had Plaintiffs won every claim in the case at trial, won the appeal and been able to collect all of the damages.

H. Class Counsel Are Unlikely to Receive Any Future Business or Benefit from Plaintiffs as a Result of This Representation.

Both *Johnson* and *Camden* suggest as a factor "the nature and length of the professional relationship with the client." 488 F.2d at 719. This factor recognizes that "[a] lawyer in private practice may vary his fee for similar work in the light of the professional relationship of the client with his office[,]" *id.*, by, for example, "discount[ing] his or her fees in anticipation of obtaining repeat business with an established client." *Columbus Drywall*, 2012 WL 12540344, at *6. Here, Plaintiff and members of the class are individual school employees (largely teachers) who are unlikely to provide any future business to Class Counsel. As such, Class Counsel's compensation for their work on this case "must come entirely from the settlement fund, rather than future business from these clients." *Id*. Accordingly, this factor supports Class Counsel's fee request. *Id*.

I. The All-Cash, Claimant-Friendly Nature of the Settlement Supports the Fee Request.

The settlement contains no "non-monetary benefits," such as coupons, that class members might not want or use. The all-cash nature of the deal further supports Class Counsel's fee request. *Ressler v. Jacobson,* 149 F.R.D. 651, 656 (M.D. Fla. 1992) (finding an "all-cash settlement" supported class counsel's fee request because it provides "the best relief possible to class members: the prompt payment of money.").

Further, unlike some settlements in which class members are required to make a claim in order to receive a payment, this settlement does not require class members to do anything in order to receive a payment – instead, they will be issued a check for their share of the settlement automatically upon final approval of the settlement. The fact that the settlement is structured to ensure that as much money as possible is distributed to class members also supports Class Counsel's fee request. *In re Flonase Antitrust Litig*., 291 F.R.D. 93, 103 (E.D. Pa. 2013).

J. The Economics of Prosecuting Class Actions Favors the Fee Request.

The economics of prosecuting a class action can be daunting. Class counsel has limited resources, but face off against governmental entities with much larger resources. Class counsel often devote substantial amounts of their own time and money to prosecute class actions on a contingent basis and sometimes receive little

or nothing for their efforts. Such economic considerations are relevant to determining what constitutes an appropriate fee. *In re Checking Account Overdraft Litig.*, 2013 WL 11319392, at *17 ("The burdens of this litigation and the relatively small size of the firms representing Plaintiffs lend support to the fee awarded. This fee is firmly rooted in 'the economics involved in prosecuting a class action.'"); *Ressler*, 149 F.R.D. at 657 ("In evaluating this factor the Court will not ignore the pecuniary loss suffered by plaintiff's counsel in other actions where counsel receive little or no fee.").

Class Counsel faced similar economic challenges in this case. Class Counsel have devoted substantial time and resources to the prosecution of this case on a contingent basis; they have done so against a governmental entity represented by skilled defense counsel; and although they may receive a fee for their success in this case, Class Counsel received nothing for nine years. These economic considerations support Class Counsel's fee request in this case.

K. Public Policy Favors This Fee Request.

"Attorneys who undertake the risk [to bring class actions] to vindicate legal rights that may otherwise go unredressed function as 'private attorneys general.'" *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1217 (S.D. Fla. 2006), quoting *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338 (1980). That is particularly true in a case like this where the defendant is the government, and

plaintiffs thus receive no help from regulators or prosecutors. "If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear[.]" *Lunsford*, 2014 WL 12740375, at *11; accord *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1217 ("Unless that risk is compensated with a commensurate reward, few firms, no matter how large or well financed, will have any incentive to represent the small stake holders in class actions against corporate America, no matter how worthy the cause or wrongful the defendant's conduct."). That logic has even more application to a suit against a governmental entity with the power and resources (not to mention immunities) that such entities possess.

Public policy favors fee awards that encourage capable attorneys to undertake socially desirable litigation such as this. *Columbus Drywall*, 2012 WL 12540344, at *7 ("[C]ourts should award fees that provide capable attorneys with a suitable incentive to represent clients in this type of litigation and compensation for success in doing so."); *Wolff*, 2012 WL 5290155, at *5 ("Mindful of the need to attract counsel of this high caliber, courts have recognized the importance of providing incentives to experienced counsel who take on complex litigation cases on a contingent fee basis so those cases can be prosecuted both efficiently and effectively."); *Swift v. BancorpSouth*, No. 1:10-cv-00090-GRJ, 2016 WL 11529613, at *19 (N.D. Fla. July 15, 2016) ("The undersigned is convinced that

proper incentives must be maintained to insure that attorneys of this caliber are available to take on cases of significant public importance like this one.").

Numerous courts have found that a fee award of one-third of the recovery or more is appropriate to reward class counsel for their success and to provide them with an incentive to continue to undertake socially desirable cases in the future. *Lunsford*, 2014 WL 12740375, at *11 (awarding 33.3% of the recovery); *Columbus Drywall*, 2012 WL 12540344, at *7 (same); *Wolff*, 2012 WL 5290155, at *5 (same); *Swift*, 2016 WL 11529613, at *19-20 (awarding 35% of the recovery).[2]

Class Counsel respectfully submit that a similar award (33.0 percent) is appropriate here to compensate them for their work on behalf of the class and to create an incentive for attorneys to continue to undertake similar socially desirable litigation.

II. CLASS COUNSEL SHOULD BE AWARDED $856,303.06 AS REIMBURSEMENT FOR REASONABLE EXPENSES OF LITIGATION

The Settlement Agreement provides that Class Counsel shall be reimbursed for their reasonable expenses as approved by the Court, out of the Common Fund,

[2] In *Allapattah Servs., Inc*., the court awarded a slightly smaller percentage of the settlement fund (31.33%), 454 F. Supp. 2d at 1218, but the fund exceeded $1 billion, *id*. at 1192, and the class representatives received substantial incentive awards, *id*. at 1242-43, which raised the total combined fee and incentive awards to close to one-third of the recovery.

to be paid proportionally out of each of the settlement funding payments. Thus, like attorneys' fees, expenses will be reimbursed in five annual installments, with the amount awarded by the Court split proportionally with the amount of the annual payments.

Both law firms have submitted affidavits as to the amounts incurred and the reasonableness thereof. Class Counsel have incurred a combined **$856,303.06** in expenses in connection with the prosecution of this case for which they seek reimbursement. Barnes Law Group seeks reimbursement for $371,307.41 of such expenses which were incurred by that Firm. Salter Aff. ¶ 37. Bondurant Mixson & Elmore, LLP seeks reimbursement for $484,995.65 of such expenses which were incurred by that Firm. Terry Aff. ¶ 17. These expenses are of the type that courts have found are reasonably incurred in the prosecution of a class action, such as expenses for filing fees, service fees, witness fees, expert witness expenses, mediators, court reporters, photocopies, electronic/computerized research, etc. There are no business meals or first class travel included.

Given the enormous amount of financial and payroll data involved which needed to be retrieved, translated, processed, stored and searched, the data management expenses and associated expert fees were significant. Terry Aff. ¶ 17. The largest categories of expenses incurred by Bondurant Mixson & Elmore, LLP were professional fees including fees to court appointed Special Masters, and

experts ($351,654.51); legal research (LEXIS and Westlaw) ($75,533.24); transcription and deposition expenses ($19,058.47); data services ($9,888.75) and mediator charges ($5,925.00). Terry Aff. ¶ 17. The largest categories of expenses incurred by Barnes Law Group were costs for expert witnesses, including the extensive technical expertise necessary to formulate a sound class-wide damages methodology (Salter Aff. ¶ 37) (subtotal of expenses for expert witness fees and including specifically BLG's share of expenses for IAG Forensics and Valuation).

These expenses are supported by the Terry Affidavit and the Salter Affidavit, which both set forth the expenses incurred and opine as to their reasonableness. In determining the amount of such expenses, they relied upon the records of their firms as kept in the ordinary course of business. These expenses were reasonable and necessary for the prosecution of this action. Although the expenses were incurred by Class Counsel over a nine-year period, and although they will be reimbursed over five annual payments, there is no interest included in the amounts requested. The amounts sought are reasonable and were necessarily incurred and should be approved by the Court. Terry Aff. ¶ 17.

III. THE INCENTIVE AWARD FOR THE PLAINTIFFS IS REASONABLE CONSIDERING THEIR EFFORTS ON BEHALF OF THE CLASS.

The Court should approve an incentive award of $25,000 for each of the Class Representatives for their services and efforts on behalf of the class. "Courts

routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca-Cola Co*., 200 F.R.D. 685, 694 (N.D. Ga. 2001). "[I]ncentive awards may be given to compensate class representatives for work done on behalf of the class, to make up for financial ... risk undertaken in bringing the action, ... to recognize their willingness to act as a private attorney general, ... and to induce an individual to become a named plaintiff." *Muransky*, 922 F.3d at 1197 (internal citations and quotations omitted). "Although these considerations will certainly weigh differently in different cases, together they help illuminate the fact that class representatives ... have typically done something [that other] class members have not – stepped forward and worked on behalf of the class." *Id.*

Incentive awards have ranged from as low as $1,500 to over $1 million. *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1218-19, 1242-43 (collecting cases involving incentive awards and ultimately awarding $1,766,666.00 to each of eight class representatives and $1,325,000.00 to a ninth representative); *Ingram*, 200 F.R.D. at 694 (awarding incentive awards of $300,000 to each named plaintiff).

This Court already opined on the efforts of these Class Representatives, in a contested order on their adequacy:

> The Court finds that the named Plaintiffs have a lengthy track record from which to evaluate the adequacy of their representation. They have already

> litigated this case on behalf of the class members for 10 years. They have pursued this cause with diligence and persistence.

Order Granting Plaintiffs' Motion for Class Certification at 35. Subsequent events and the evidence submitted with this motion should only reinforce the Court's prior finding.

The fortitude, determination, and patience of the Plaintiffs/Class Representatives Amy Shaye, Elaine Gold, Heather Hunter and Roderick Benson were a vital part of the successful prosecution of this case. Despite several setbacks, they never wavered, tired, or quit fighting for a fair outcome for their co-workers. Salter Aff. ¶ 39. *See also* Terry Aff. ¶ 19. For these reasons, as outlined in the Settlement Agreement and to reasonably compensate the Class Representatives for their efforts in pursuing this case, the Court should order payment of an incentive award of $25,000 to each of the Class Representatives. Defendants do not object to the requested award (Settlement Agreement ¶ 6(b)(ii)), which shall be above and beyond whatever share to which they may be entitled as members of the Settlement Class.

Each of the named Plaintiffs participated in this case for years. They tirelessly complied with multiple discovery requests for interrogatories and their personal records. They submitted to at least one (and sometimes more than one) deposition(s). They attended not one, but two different class-certification hearings of two-days each (four total). They attended two mediations. They personally

attended numerous appellate oral arguments at the Court of Appeals and Supreme Court of Georgia. Finally, they made themselves available for countless conference calls and meetings with Class Counsel and conferences with Class Counsel to consider and evaluate strategic decisions and settlement proposals. Salter Aff. ¶ 40. They were always careful to put the interests of the broader class above their own personal preferences.

In light of these efforts, and the successful outcome of the settlement for the benefit of all Settlement Class Members, this Court should approve the $25,000 incentive award to each of the Class Representatives. *See generally Ingram*, 200 F.R.D. at 694 ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation."). This award is reasonable considering the duration of this litigation, its result and compared to similar awards approved by courts, and as of the date of this Motion has not been opposed or objected to by a single Settlement Class Member.[3] An order directing payment of $25,000 to each

[3] *See, e.g., Allapattah Servs.*, 454 F. Supp. 2d at 1218-19 (collecting cases and listing incentive awards of $25,000, $20,000, $10,000, $3,000, $2,000, $1,500); *Ingram*, 200 F.R.D. at 694 (approving $300,000 award to named plaintiff); *Johnson*, 2013 WL 2295880, at *5 ("the actions and efforts of the named plaintiff in securing such benefits for the absent class members renders the $12,500 incentive award appropriate in this circumstance"); *Moulton v. United States Steel Corp.*, 581 F.3d 344, 351 (6th Cir. 2009) (affirming in relevant part district court's approval of settlement in which seven class representatives each received $10,000 awards); *Hainey v. Parrott*, No. 1:02-CV-733, 2007 WL 3308027, at *3 (S.D. Ohio Nov. 6, 2007) (approving four $50,000 incentive awards); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 914 (S.D. Ohio 2001) (approving $50,000 incentive award); *Johnson*, 2013 WL 2295880, at *5 (approving $12,500

of the Class Representatives upon final approval of the parties' Settlement is fair, reasonable and justified and will effectuate the parties' Settlement Agreement and this Court's Preliminary Approval Order.

CONCLUSION

For the reasons set forth above, Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees and Expenses and Incentive Award should be granted.

Respectfully submitted this 3rd day of August, 2020.

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incentive award); *Se. Milk*, 2013 WL 2155387, at *8 (approving $10,000 incentive awards to each of 16 class representatives); *Date v. Sony Elecs., Inc.*, No. 07-15474, 2013 WL 3945981, at *13 (E.D. Mich. July 31, 2013) (approving $7,000 incentive award); *see also In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 380 (S.D. Ohio 2006) (approving "modest incentive payments of $5,000 to each of the two Class Representatives").

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused to be served a true and correct copy of the foregoing **PLAINTIFFS' BRIEF IN SUPPORT OF UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD** by filing same with the Court's electronic case management system and also via United States first class mail upon the following counsel of record:

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This 3rd day of August, 2020.

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