NITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LAURIE NICHOLSON, individually and on behalf of herself and all others similarly situated, Plaintiff, vs. Franciscan Missionaries of Our Lady Health System, Franciscan Missionaries of Our Lady Health System Investment Committee, and John Does 1-20, Defendants.	**No.: 3:16-cv-00258-SDD-EWD**

PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CASE CONTRIBUTION AWARDS

Plaintiff Laurie Nicholson ("Named Plaintiff" or "Plaintiff"), on behalf of herself and all others similarly situated, submits this motion for award of attorneys' fees, reimbursement of expenses, and Case Contribution Awards. Specifically, Plaintiff moves the Court for an Order: (1) approving awards of attorneys' fees to their attorneys Izard Kindall & Raabe, LLP, Kessler Topaz Meltzer & Check, LLP, and Tarcza & Associates; (2) reimbursing their litigation expenses; and (3) Case Contribution Awards to the Named Plaintiff and Settlement Class Representative.

In support of this Motion, Plaintiff has submitted the accompanying Joint Declaration of Mark K. Gyandoh and Mark. P. Kindall (with exhibits) and a Memorandum of Law in support thereof.

Dated: January 5, 2018

Respectfully submitted,

/s/ Mark K. Gyandoh
Mark K. Gyandoh
Julie Siebert-Johnson
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056
Email: mgyandoh@ktmc.com
Email: jsjohnson@ktmc.com

/s/ Mark P. Kindall
Robert A. Izard
Mark P. Kindall
Douglas P. Needham
IZARD KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
Tel: (860) 493-6292
Fax: (860) 493-6290
Email: rizard@ikrlaw.com
Email: mkindall@ikrlaw.com
Email: dneedham@ikrlaw.com

/s/ Robert E. Tarcza
Robert E. Tarcza, LSBN 12655
TARCZA & ASSOCIATES
1310 Whitney Bldg.
228 St. Charles Ave.
New Orleans, LA 70130
Tel: (504) 525-6696
Fax: (504) 225-6701
Email: bobt@tglaw.net

Counsel for Plaintiff and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2018, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/ Mark K. Gyandoh
Mark K. Gyandoh

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LAURIE NICHOLSON, individually and on behalf of herself and all others similarly situated, Plaintiff, vs. Franciscan Missionaries of Our Lady Health System, Franciscan Missionaries of Our Lady Health System Investment Committee, and John Does 1-20, Defendants.	**No.: 3:16-cv-00258-SDD-EWD**

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND CASE CONTRIBUTION AWARDS

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Plaintiff submits this Memorandum in support of her motion pursuant to Rule 23(h) of the Federal Rules of Civil Procedure for: (1) an award of attorneys' fees to Class Counsel in the amount of $1,000,000; (2) reimbursement of $28,115.08 in litigation expenses that Class Counsel incurred in prosecuting this case; and (3) a Case Contribution Award of $3,500 to Plaintiff and Settlement Class Representative Laurie Nicholson, and a $1,500 Case Contribution Award to Settlement Class Representative Cynthia Francis for their involvement in the case.

INTRODUCTION

The proposed Settlement is an excellent result for the Class. The Settlement requires $125 million to be contributed to the Plans[1] over the next five years, money which will greatly improve the Plans' funding levels and substantially benefit the Class. In addition, each of the more than 2,000 Class members who accepted a lump-sum buyout of their pension in 2016 will receive an additional $450. The Settlement also has equitable provisions, including a guarantee that the Plans will continue to pay benefits for the next fifteen years.

In undertaking this litigation, Class Counsel faced substantial challenges that warrant their requested amount of fees. Due to the nature of this litigation and the ever-evolving case law concerning "church plans" under ERISA, Class Counsel faced the very real risk that the substantial time and out-of-pocket expenses they dedicated to this case would not result in a recovery for the Class. In light of the more than $125 million recovery obtained through the Settlement, the time

[1] The term "Plans" is defined in the Settlement as: (1) the Retirement Plan of Our Lady of the Lake Hospital and Affiliated Organizations; (2) the Pension Plan for Employees of Our Lady of Lourdes Regional Medical Center, Inc.; and (3) the Retirement Plan for Employees of St. Francis Medical Center, Inc. All capitalized, undefined terms shall have the meaning ascribed to them in the Settlement Agreement ("Settlement" or "Settlement Agreement"), which is attached as Exhibit 7 to the Joint Declaration of Mark K. Gyandoh and Mark P. Kindall in Support of the Motion for Final Approval of Class Action Settlement and Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards to the Settlement Class Representatives submitted herewith ("Joint Declaration").

and resources that Class Counsel devoted and the risks they undertook, Plaintiff's fee request of $1 million is entirely appropriate.

Importantly, the requested fee will not reduce the amounts that must be contributed to the Plans and represents less than 1% of the Settlement's total value, a substantially lower percentage than what courts in this Circuit and others across the country have awarded in similar cases. The requested fee is also reasonable when crosschecked by Class Counsel's lodestar, and would represent a modest lodestar multiplier as compared to other cases in the Fifth Circuit.

In addition, Plaintiff requests reimbursement of Class Counsel's out-of-pocket expenses in the amount of $28,115.08, which were reasonable and necessary to protect the interests of the Class. Finally, Class Counsel requests a Case Contribution Awards of $3,500 for Plaintiff Nicholson and a $1,500 award for Settlement Class Representative Francis in recognition of their contributions to the case.

BACKGROUND

On April 21, 2016, Plaintiff filed her Complaint against the Franciscan Missionaries of Our Lady Health System, Inc. ("Franciscan Missionaries") and the Plans' administrators and fiduciaries alleging that they had violated ERISA by improperly classifying the Plans as "church plans." *See* Complaint, Dkt. No. 1. Plaintiff alleged the Plans were not "church plans" because they were not "established" by a church or convention or association of churches, and are not "maintained" by a church or an entity whose principal function it is to administer retirement benefits. *Id.* at ¶¶ 68-76.

On June 14, 2016, Plaintiff filed a Motion for Curative Notice, claiming that communications sent to members of the Class as part of Defendants' "Lump Sum Window Benefit

Program" in 2016 were misleading and were offering Class members lump sum buyouts of their pensions that were less than what ERISA required. *See generally* Dkt. No. 25.

On July 26, 2016, Defendants moved to dismiss the Complaint pursuant to FED. R. CIV. P. 12(b)(1) and 12(b)(6) (Dkt. Nos. 39 and 41) (together, the "Motions to Dismiss"). Plaintiff filed Oppositions to the Motions to Dismiss on August 26, 2016 (Dkt. Nos. 48 and 49), and on September 9, 2016, Defendants filed Reply Memoranda in further support of their Motions to Dismiss (Dkt. Nos. 51 and 52). Defendants also filed Supplemental Authority in further support of their Motions to Dismiss on September 19, 2016 (Dkt. No. 55) to which Plaintiff filed an Opposition (Dkt. No. 56).

Defendants attached more than 45 exhibits to the Motions to Dismiss. *See* Dkt. Nos. 39-1 through 39-19, and 40-1 through 40-27. These documents provided important information about how the Plans were "established" and are "maintained," issues central to Plaintiff's claim that the Plans were not "church plans." Dkt. No. 40-12. Moreover, among the documents Defendants filed were the Plans' actuarial data, kFey information which helped allow Plaintiff and Class Counsel to determine the Plans' current funding levels. Dkt. Nos. 40-8, 40-9 and 40-10.

While the Motions to Dismiss were pending, the Parties recognized that it might be possible to resolve the case. The central issue is a legal one, revolving around competing interpretations of ERISA's "church plan" exemption that has been litigated over the course of several years, leading most recently to decisions in the Courts of Appeals for the Third, Seventh, Ninth and Tenth Circuits. *See* Dkt. No. 48 at p. 2.[2] Moreover, many of the facts bearing on the application of the

[2] As discussed more fully in the Memorandum in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Final Approval Memorandum"), after the Parties negotiated the Settlement, the Supreme Court reversed the decisions of the Third, Seventh and Ninth Circuits in *Advocate Health Care v. Stapleton*, 137 S. Ct. 1652 (2017). The Tenth Circuit's decision in *Medina v. Catholic Health Initiatives*, No. 16-1005, 2017 WL 6459961 (10th Cir. Dec. 19, 2017) is the first circuit court decision after *Advocate*.

"church plan" exemption were set forth in the Motions to Dismiss briefing. Accordingly, the Parties agreed to early mediation. *See* Dkt. No. 36.

In anticipation of the mediation, and in addition to the materials provided in conjunction with the Motions to Dismiss, Plaintiff requested that Defendants produce specific documents concerning each of the Plans, together with financial information that would permit an evaluation of current funding levels under ERISA's standards. Class Counsel reviewed these materials in advance of the mediation and retained an actuary to determine the Plans' funding status under ERISA's requirements and also how much more money should be contributed to each Plan.[3] *See* Joint Declaration at ¶ 5.

On September 22, 2016, the Parties participated in an all-day mediation session in Los Angeles, California before Robert Meyer, Esq. of Loeb & Loeb LLP. Mr. Meyer is highly experienced in mediating complex class actions and has successfully mediated at least 5 other "church plan" cases. The negotiations at the mediation were hard-fought. Defendants adamantly asserted that the Plans were properly classified as "church plans" and thus not subject to ERISA. The issue of how much, if at all, the Plans were underfunded was also a hotly contested issue. *Id*. at ¶¶ 6-7.

By the end of the mediation session, the Parties had agreed in principle on many key terms that were ultimately incorporated into the Settlement, including how much money would be contributed to the Plans, when the contributions would be made and the non-economic relief that Class members would receive. *Id*. at ¶ 8.

[3] Prior to the mediation, Cynthia Francis, a participant in the Our Lady of Lourdes Plan, joined the case as a Settlement Class Representative. *See* Francis Decl. at ¶ 4 (Joint Declaration at Exhibit 6).

The Parties, however, were not able to resolve the claims of Class members who had accepted a buyout of their pensions under the "Lump Sum Window Benefit Program" in 2016 and thus had received less than what they would have if ERISA applied to the Plans. *See* Dkt. No. 25. Defendants subsequently provided Class Counsel with additional information through the mediator, including the number of participants who accepted a lump sum buyout and the aggregate amount they had received. Defendants also previewed the defenses they would assert to claims from these Class members if the litigation were to continue, including that each had signed a release knowing of the pendency of this case and its implications. *See* Joint Declaration at ¶ 8.

Class Counsel again consulted with their actuary and examined the viability of claims from Class members who had accepted a lump sum buyout. After several rounds of negotiations, the Parties agreed on a resolution for these Class members. *Id*. at ¶ 9.

After all other terms were agreed upon, the Parties then negotiated the amounts of the Case Contribution Awards, the reimbursement of expenses that Class Counsel incurred and the attorneys' fees that Class Counsel would ask the Court to approve. *Id*. at ¶ 10. On March 27, 2017, the Parties signed a Term Sheet that summarized the key terms of their agreement. *Id*. On May 4 and 5, 2017, the Parties signed the Settlement. *Id*.

On May 10, 2017, Plaintiff moved for Preliminary Approval of the Settlement. *See* Dkt. No. 76.[4] On October 4, 2017, the Court held a telephonic status conference to discuss the Motion for Preliminary Approval. *See* Dkt. No. 80. On October 24, 2017, the Court granted the motion and preliminarily approved the Settlement, preliminarily certified the Class, appointed Ms. Nicholson and Ms. Francis as Settlement Class Representatives and their counsel from Izard,

[4] Plaintiff originally filed her Motion for Preliminary Approval on May 5, 2017 (*see* Dkt. Nos. 69 and 70) but had to re-file it because the original supporting memorandum (Dkt. No. 69-2) exceeded the Court's page limitation (Dkt. No. 71).

Kindall & Raabe, LLP ("IKR") and Kessler Topaz Metzler & Check, LLP ("KTMC") as Class Counsel, appointed Tarcza & Associates[5] as Liaison Counsel for the Settlement Class, approved the form and method of providing notice to the Class and set a date for the Final Approval Hearing. *See* Dkt. No. 83.

In accordance with the Preliminary Approval Order, the approved Class Notice was sent to each person within the Class who could be identified by the Plan's recordkeeper by first-class mail on November 21, 2017. *See* Decl. of Jose C. Fraga (Joint Declaration at Exhibit 1). In addition, the Settlement and all of its attachments, including the Class Notice, as well as the Motion for Preliminary Approval and supporting materials, were published on a dedicated page on the Izard, Kindall & Raabe website (http://ikrlaw.com/file/nicholson-v-franciscan-missionaries-lady-health-system/). *See* Joint Declaration at ¶ 14. The Class Notice specifically described the terms of the Settlement related to this motion:

> Defendants have also agreed to pay one million dollars ($1,000,000) to be used to fund Class Counsel's requested attorneys' fees and thirty-five thousand dollars ($35,000) for expenses actually incurred by Class Counsel and/or a Case Contribution Award to the Settlement Class Representatives. The Court has the sole discretion as to whether, and/or in what amounts to award attorney's fees, expenses, and/or Case Contribution Awards.

See Class Notice, Joint Declaration Exhibit 7 at Exhibit A at pp. 31-43.

The date for filing objections is January 23, 2018, giving Class members the opportunity to review this motion, as well as the Motion for Final Approval, before deciding whether to object. As of the date of this filing, no Settlement Class member has objected to the proposed award of attorneys' fees, expenses or Case Contribution Awards. *See* Joint Declaration at ¶ 17.

[5] Class Counsel together with Liaison Class Counsel are referred to as "Plaintiff's Counsel."

ARGUMENT

I. The Court Should Award Class Counsel Attorneys' Fees in the Requested Amount

Rule 23(h) authorizes a district court to "award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." *See* FED. R. CIV. P. 23(h). As the Supreme Court has repeatedly emphasized, the determination of fees "should not result in a second major litigation." *Fox v. Vice*, 563 U.S. 826, 838 (2011) (quoting *Hensley v. Eckherhard*, 461 U.S. 424, 437 (1983)). To avoid this, parties are encouraged to reach an agreement on the amount of a fee before seeking the court's approval. *See, e.g.*, *Hensley*, 461 U.S. at 437 ("Ideally, . . . litigants will settle the amount of a fee."); *see also DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 287 (W.D. Tex. 2007) (same).

However, "a district court is not bound by the agreement of the parties as to the amount of the attorneys' fees." *Strong v. BellSouth Telecoms., Inc.*, 137 F.3d 844, 849 (5th Cir. 1998). A court must review a proposed award of attorneys' fees to ensure it is reasonable and to protect against the "public perception that attorneys exploit the class action device to obtain larger fees at the expense of the class." *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 228 (5th Cir. 2008).

The Fifth Circuit gives district courts flexibility to choose between the percentage and the lodestar method when awarding attorneys' fees in a class action. *See*, *e.g.*, *Union Asset Mgmt. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012). Most district courts, however, have used the "blended percentage method," also referred to as the "hybrid percentage method." *See*, *e.g.*, *City of Omaha Police & Fire Ret. Sys. v. LHC Group*, No. 12-cv-1609, 2015 WL 965696, at *3 (E.D. La. Mar. 3, 2015) (collecting cases). Under this approach, the court first applies the percentage method and then uses the lodestar method to crosscheck the reasonableness of the award. *Id.*; *see also Jones*

v. Singing Rive Health System, No. 14-cv-447, 2016 WL 3248449, at *3 (S.D. Miss. June 10, 2016) (*vacated on other grounds* by 865 F.3d 285 (5th Cir. 2017)).[6]

While Plaintiff believes that Class Counsel's fee request is reasonable under any method, she respectfully submits that the Court should use the "blended percentage method" to evaluate its reasonableness.

A. Class Counsel's Requested Fee is Reasonable Under the Percentage Method

The percentage method for evaluating attorneys' fees is a three-step process. First, the court determines the "actual monetary value conferred to the class members by the settlement." *In re Heartland Payment Sys., Inc. Customer Data Security Breach Litig.*, 851 F. Supp. 2d 1040, 1075 (S.D. Tex. 2012). Second, the court sets a "benchmark" percentage based on the awards in other cases for the requested attorneys' fees to be measured against. *Id.* Third, the court applies the twelve factors the Fifth Circuit articulated in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974) to determine if there should be a positive or negative adjustment to the benchmark percentage. *In re Heartland*, 851 F. Supp. 2d at 1075 (citing *Union Asset Mgmt*., 669 F.3d at 642-644)).

1. The Settlement's Present Value Is More Than $120 Million

Under the percentage method, the court evaluates the reasonableness of the attorneys' fees as measured against the "common fund" created by the settlement that is used to pay class

[6] The Fifth Circuit vacated the district court's final approval of the settlement in *Jones* and, on remand, instructed the district court to consider the defendant's ability to make the payments required by the settlement and if the attorneys' fees should be paid over the same thirty-year period as the contributions to the pension plan. *Jones v. Singing River Health Services Foundation*, 865 F.3d 285, 302 (5th Cir. 2017). Neither issue is relevant in this case. According to its 2016 audited financial statements, Franciscan Missionaries has over $1.1 billion in net unrestricted assets and $177 million alone in cash and cash equivalents. *See* 2016 Financial Statements, available at: http://www.govwiki.info/pdfs/Special%20District/LA%20Franciscan%20Missionaries%20Of%20Our%20Lady%20Health%20System%202016.pdf. Here, there is no indication in that any fees paid to Class Counsel will be at the expense of, or jeopardize, the contributions to the Plans that the Settlement requires.

members' claims, attorneys' fees and claims administrative expenses. *See*, *e.g.*, *In re Heartland*, 851 F. Supp. 2d at 1071. Here, however, the Settlement does not create a common fund. Defendant will pay Plaintiff's attorneys' fees separately from the Class Settlement Amount (the $125 million that will be contributed to the Plans and the $450 amount paid to Class members who participated in the Lump Sum Program). *See* Settlement Agreement at § 8.1.3. This approach is regularly used in class action settlements. *See*, *e.g.*, *In re Heartland*, 851 F. Supp. 2d at 1072 ("Having two funds – one for the claimants, one for the attorneys – is a well-recognized common fund arrangement.").

In cases such as this one, where the attorneys' fees will be paid by the defendant separately, courts create a "constructive common fund" to evaluate the reasonableness of the fees under percentage method. This is done by adding the amounts paid to class members and the attorneys' fees together and then calculating what percentage of the total that the attorneys' fees represent. *See*, *e.g.*, *In re Heartland*, 851 F. Supp. 2d at 1076-1080; *see also Johnston v. Comerica Mort. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996) ("Even if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of the class's recovery.").

The Settlement requires $125 million to be contributed to the Plans over the next five years, with $35 million being contributed in each of the next 3 years, and $10 million contributions in the fourth and fifth years. *See* Settlement Agreement at § 8.1. Because these contributions will be made over time, they must be reduced to their present value. *See*, *e.g.*, *Jones*, 2016 WL 3248449, at *3. The present value of the contributions is $118,453,893. *See* Serota Decl. at ¶ 7 (Joint Declaration at Exhibit 11).

The Settlement also calls for a total of $939,150 to be paid to the Class members who accepted a lump sum buyout. *See* Settlement Agreement at § 8.1.2. Adding the requested

attorneys' fees ($1,000,000), the requested Case Contribution Awards ($5,000) and the requested expense reimbursements ($28,115), the Settlement's total value is $120,426,158.[7]

Class Counsel's requested fee award represents 0.83% of the Settlement's total value ($1,000,000 divided by $120,426,158). As discussed below, this percentage is reasonable and much lower than what is customarily awarded to attorneys in class action litigation generally and in ERISA cases specifically.

2. Twenty-Five Percent is an Appropriate Benchmark

The Fifth Circuit, unlike some other circuits, does not have a rigid benchmark when evaluating attorneys' fees under the percentage method. *See In re Heartland*, 851 F. Supp. 2d at 1080 (noting that the Ninth and Eleventh Circuits "generally use a 25% benchmark for common-fund cases."). Often, courts rely on empirical studies that have analyzed awards of attorneys' fees in class action settlements to set an appropriate benchmark. *Id*. at 1080-81 (collecting cases).

Courts, however, have reached slightly different conclusions on what the average award of attorneys' fees is in the Fifth Circuit. Compare *In re Heartland*, 851 F. Supp. 2d at 1084 ("[T]he mean fee percentage award in the Fifth Circuit is 26.4%.") with *Kemp v. Unum Life Ins. Co. of Amer.*, No. 14-cv-944, 2015 WL 8526689, at *8 (E.D. La. Dec. 11, 2015) ("In the Fifth Circuit, the average percent awarded as attorneys' fees is 29.5%.").

However, "[t]he majority of common fund fee awards fall between 20% and 30% of the fund." *In re Heartland*, 851 F. Supp. 2d at 1080 (citing Manual For Complex Litigation (Fourth) § 14.121 ("Attorney fees awarded under the percentage method are often between 25% and 30%

[7] This calculation does not include the significant non-economic benefits provided for in the Settlement, including the fifteen-year guarantee of benefits that the Plans' participants and beneficiaries will receive. *See* Settlement Agreement at § 8.1.2. While Plaintiff believes these non-economic benefits have substantial value and should be considered by the Court (*see*, *e.g.*, *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 481 (D. Md. 2014)), the Settlement's economic benefits alone justify Class Counsel's requested fees.

of the fund.")). But it is "not unusual for district courts in the Fifth Circuit to award percentages of approximately one-third." *Collins v. Sanderson Farms, Inc.*, 568 F. Supp. 2d 714, 729 (E.D. La. 2008); *see also City of Omaha*, 2015 WL 965696, at *4 ("a 33 1/3% contingency is common in this geographic area").

In ERISA cases specifically, courts in this Circuit have found an award of attorneys' fees of 33% to be appropriate. *See*, *e.g.*, *Kemp*, 2015 WL 8526689, at *9. Courts in other jurisdictions have found that the median fee award in ERISA class actions is 25% to 28%. *See*, *e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 350 (S.D.N.Y. 2014).

Plaintiff respectfully submits that a 25% benchmark is appropriate as a point of comparison. This is lower than average in the Fifth Circuit (*see In re Heartland*, 851 F. Supp. 2d at 1084) and at the low end of the average for ERISA cases nationally (*see In re Colgate-Palmolive*, 36 F. Supp. 3d at 350).

3. The *Johnson* Factors Support the Requested Fee Award.

The Fifth Circuit identified twelve factors in *Johnson* for district courts to use when evaluating an award of attorneys' fees: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted the case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-720.

The *Johnson* factors "are intended to ensure a 'reasonable fee'" is paid to the attorneys for the class. *Kemp*, 2015 WL 8526689, at *8 (quoting *In re Harrah's Entertainment*, No. 95-cv-

3925, 1998 WL 832574, at *4 (E.D. La. Nov. 25, 1998)). Courts can use the *Johnson* factors to adjust a fee award upwards or downwards. *See*, *e.g.*, *Kemp*, 2015 WL 8526689, at *8. However, in cases where a constructive common fund is created, the amount of the attorneys' fees in settlement agreement will be "upper limit on the fees that can be awarded to counsel." *In re Heartland*, 851 F. Supp. 2d at 1051 (quoting MANUAL FOR COMPLEX LITIGATION (FOURTH) at § 21.7).

As described below, the *Johnson* factors support Class Counsel's fee request. Certainly, none of the factors warrant a negative adjustment to the requested award of 0.83% of the Settlement's present value discussed above, which is already substantially below the benchmark. *See*, *e.g.*, *Jones*, 2016 WL 3248449, at *3 (fee award of 9.6% of constructive common fund in ERISA case was "well below the amount typically awarded in class action cases.").

i. The Time and Labor Required.

"Although hours claimed or spent on a case should not be the sole basis for determining a fee…they are a necessary ingredient to be considered." *Kemp*, 2015 WL 8526689, at *9 (citing *Johnson*, 488 F.2d at 717). Here, Plaintiff's Counsel collectively spent more than 1,000 hours litigating this case. *See* Kindall Decl. at ¶ 4 (Joint Declaration at Exhibit 3); Gyandoh Decl. at ¶ 4 (Joint Declaration at Exhibit 2); and Tarcza Decl. at ¶ 4 (Joint Declaration at Exhibit 4). They dedicated this time to protect the interests of the Class, investigating and preparing a detailed Complaint (Dkt. No. 1), filing a Motion for Curative Notice to ensure the Class received accurate information about the Plans' "Lump Sum Window Benefit Program" (Dkt. No. 25), opposing Defendant's two motions to dismiss (Dkt. No. 48 and 49), analyzing the Plans' financial and actuarial information and negotiating a resolution after a full-day mediation session. *See* Joint Declaration at ¶¶ 3-11; *see also* Dkt. No. 83 at p. 3 (the Court finding that "Class Counsel have done extensive work identifying or investigating potential claims in the action…").

And, Class Counsel's work has certainly not stopped since the Preliminary Approval Order on October 24, 2017. In addition to preparing the Final Approval Motion, Class Counsel has responded to numerous telephone calls from Class members who had questions about the Settlement. *See* Joint Declaration at ¶ 17. Moreover, this time does not reflect the additional time Class Counsel will spend attending the Final Approval Hearing, responding to future communications from Class members who call with questions after the case concludes, and the general administration of the Settlement. Accordingly, Class Counsel believes this factor supports the reasonableness of the requested fee award.

ii. Novelty and Difficulty of the Issues

ERISA litigation is complex. *See*, *e.g.*, *In re BP p.l.c. Sec. Litig.*, No. 10-cv-4214, 2015 WL 6674576, at *9 (S.D. Tex. Oct. 30, 2015) ("ERISA is a complex statutory and regulatory apparatus."). But even within this complex area of law, this case presented novel issues of statutory interpretation. The "church plan" exemption in ERISA § 3(33), 29 U.S.C. § 1002(33)) is "a mouthful, for lawyers and non-lawyers alike" (*Advocate*, 137 S. Ct. at 1656), and when the Complaint was filed, few courts had interpreted it and those that had reached conflicting decisions. *See*, *e.g.*, *Overall v. Ascension*, 23 F. Supp. 3d 816 (E.D. Mich. 2014) and *Kaplan v. St. Peter's Healthcare Sys.*, 810 F.3d 175 (3d Cir. 2015). This strongly supports Class Counsel's requested attorneys' fees. *See*, *e.g.*, *Johnson*, 488 F.2d at 718 (stating that counsel should be "appropriately compensated" for taking "a case which may make new law.").

There were also complexities beyond just how to interpret the statute. The gravamen of this case involved whether the Plans were properly funded under ERISA's funding rules. *See* Complaint at ¶¶ 2-3; *see also* Dkt. No. 40-8, 40-9 and 40-10 (actuarial reports for the Plans). This is an esoteric subpart of ERISA, an already complex area of the law. *See*, *e.g.*, *Chicago Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund v. CPC Logistics*, 698 F.3d

346, 350 (7th Cir. 2012) ("Federal pension law is a highly specialized field that judges encounter only intermittently."). Also, the case presented unique religious and Constitutional issues, including the extent of Defendant's ties to the Catholic Church and whether the Plans' "church plan" status implicated the First Amendment's establishment clause. *See*, *e.g.*, Complaint at ¶¶ 22-45 and Dkt. No. 39-11, 39-12).

Simply put, this case was not cookie-cutter and the significant challenges that were presented strongly support the Class Counsel's requested award of attorneys' fees.

iii. The Skill Required to Adequately Perform the Legal Service

This *Johnson* factor is "evidenced where counsel performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide information necessary to analyze the case and reach a resolution." *King v. United SA Fed. Credit Union*, 744 F. Supp. 2d 607, 614 (W.D. Tex. 2010). Another "highly important" consideration is the Court's observation of the attorneys' work product, preparation and abilities. *See*, *e.g.*, *In re Enron Corp. Sec., Der. & ERISA Litig.*, 586 F. Supp. 732, 789 (S.D. Tex. 2008) (citing *Johnson*, 488 F.2d at 718).

Here, as the Court has already found (Dkt. No. 83 at p. 3), Class Counsel did extensive work to identify and investigate the claims in this case and then litigated those claims through the motion to dismiss stage. Class Counsel also used informal discovery and expert consultants to efficiently identify the key issues and then reach a resolution that was favorable to the Class. *See* Joint Declaration at ¶ 5.

In evaluating this factor, the Court may also consider the abilities of opposing counsel. *See*, *e.g.*, *Billitteri v. Secs. Am., Inc.*, Nos. 09-cv-1568, 09-cv-1833, 2011 WL 3585983, at *7 (N.D. Tex. Aug. 4, 2011) ("[B]ecause of the extremely effective work of opposing counsel…The skill required here…certainly justifies the contemplated award"). Here, Defendants were primarily

represented by Proskauer Rose LLP, "a leading international firm." *Kemp-DeLisser v. St. Francis Hospital*, No. 15-cv-1113, 2016 WL 6542707, at *16 (D. Conn. Nov. 3, 2016). Proskauer Rose is recognized in U.S. News' 2018 edition of "Best Law Firms" and has a "Tier One" ERISA practice. The New Orleans office specifically, which handled the defense, has a "Tier One" practice in "Litigation – ERISA."[8] Class Counsel was challenged at each step by the preeminent attorneys representing the Defendants. This supports Class Counsel's requested fee.

iv. The Preclusion of Other Employment

This *Johnson* factor involves the dual considerations of whether the attorneys' representation foreclosed other available business because of a conflict of interest and that "once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Kemp*, 2015 WL 8526689, at *10 (quoting *Johnson*, 488 F.2d at 718).

Here, Class Counsel did not turn down any other business due to a conflict of interest. However, as shown by the number of hours spent litigating this case, Class Counsel devoted considerable time and resources to the litigation. This supports Class Counsel's requested award of fees. *See*, *e.g.*, *Kemp*, 2015 WL 8526689, at *10; *Jones*, 2016 WL 3248449, at *2.

v. The Customary Fee Charged for Those Services in the Relevant Community

"The customary fee for similar work in the community should be considered." *Kemp*, 2015 WL 8526689, at *10 (quoting *Johnson*, 488 F.2d at 718). A court should consider the customary fee for similar work because "[i]t is open knowledge that various types of legal work command differing scales of compensation." *Id*.

[8] *See* http://www.proskauer.com/news/press-release/proskauer-earns-94-tier-one-rankings-in-best-law-firms-2018-11-01-2017/ (last visited January 3, 2018).

Attorneys who handle ERISA class action litigation are most often paid by receiving a percentage of the amount they recovery they achieve for the class. *See*, *e.g.*, *Kemp*, 2015 WL 8526689, at *10. Here, however, Class Counsel's requested award of attorneys' fees was negotiated based on Plaintiff's Counsel's Lodestar, which while not the norm, is still common in ERISA cases. *See*, *e.g.*, *Slipchenko v. Brunel Energy, Inc.*, No. 11-cv-1465, 2015 WL 338358, at *21 (S.D. Tex. Jan. 23, 2015).

ERISA is a specialized practice and the hourly rates of practicing attorneys are measured on a nationwide basis. *See*, *e.g.*, *Spano v. Boeing*, No. 06-cv-743, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016); *see also Mogck v. Unum Life Ins. Co. of Amer.*, 289 F. Supp. 2d 1181, 1191 (S.D. Cal. 2003). Courts in this Circuit and others around the country have approved Class Counsel's hourly rates and those comparable to them. *See*, *e.g.*, *In re 2014 Radioshack ERISA Litig.*, No. 14-cv-959, Order (N.D. Tex. July 20, 2016) (Dkt. No. 194) (approving KTMC's hourly rates in ERISA settlement); *Kemp-DeLisser*, 2016 WL 6542707, at *5 (awarding fees based on IKR's "normal billing rate"); *Gruber v. Starion Energy, Inc.*, No. 17-cv-6075408, 2017 WL 6262409, at * 1 (Conn. Super. Nov. 13, 2017) (approving IKR's rates); *see also Slipchenko*, 2015 WL 338358, at *19 (the hourly rate for an ERISA class action partner is $775 an hour); *Spano*, 2016 WL 3791123, at *3 (the "reasonable hourly rate" for class counsel was "for attorneys with at least 25 years of experience, $998 per hour…").

As discussed in more detail in § I.B., below, the requested amount of Class Counsel's fees is similar to what they would have received if they litigated this case on an hourly basis. Accordingly, Class Counsel submits that this *Johnson* factor is satisfied.

vi. The Contingent Nature of the Fee

This factor considers the financial risks that the attorney took when accepting the case. "[T]he risk of receiving little or no recovery is a major factor in considering an award of attorneys'

fees." *Schwartz v. TXU Corp.*, No. 02-cv-2243, 2005 WL 3148350, at *31 (N.D. Tex. Nov. 8, 2005); *see also Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) ("Because they shift part of the risk of loss from client to lawyer, contingent-fee contracts usually yield a larger fee in a successful case than an hourly fee would."). Accordingly, courts in the Fifth Circuit have found upward adjustments from the benchmark to be appropriate when the attorneys worked on a contingency basis. *See*, *e.g.*, *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 678 (N.D. Tex. 2010); *DeHoyos*, 240 F.R.D. at 330.

Here, Plaintiff's Counsel litigated this case wholly on a contingency basis and took the risk that they might expend substantial amounts of time and money without any compensation if the case was ultimately unsuccessful. In the face of this risk, Plaintiff's Counsel dedicated more than 1,000 hours of time and $28,115 to prosecute this case. *See* Kindall Decl. at ¶¶ 4-5 (Exhibit 3 to Joint Declaration); Gyandoh Decl. at ¶¶ 4-5 (Exhibit 2 to Joint Declaration); and Tarcza Decl. at ¶ 4 (Exhibit 4 to Joint Declaration). Accordingly, this factor supports the fee request.

vii. The Time Limitations Imposed by the Client or Circumstances

This factor recognizes that "[p]riority work that delays the lawyer's other legal work is entitled to some premium." *Johnson*, 488 F.2d at 718. While there were numerous times when Class Counsel had to prioritize this case over other work due to Court-imposed deadlines (*see* Dkt. No. 36), this factor is generally subsumed in the fourth *Johnson* factor, preclusion of other employment. *See*, *e.g.*, *Walker v. U.S. Dept. of Housing and Urban Development*, 99 F.3d 761, 772 (5th Cir. 1996); *Kemp*, 2015 WL 8526689, at *10. As discussed above, while Class Counsel was not precluded from additional work by this case, they spent a significant amount of time on the litigation. Accordingly, this factor also supports Class Counsel's fee request.

viii. The Amount Involved and the Results Obtained

"The most critical factor in determining a fee award is the 'degree of success obtained.'" *Romaguera v. Gegenheimer*, 162 F.3d 893, 896 (5th Cir. 1998) (quoting *Hensley*, 461 U.S. at 434)). As set forth more fully in the accompanying Final Approval Memorandum, the Settlement requires Defendant to contribute nearly the full amount of the Plans' funding shortfalls, guarantee the payment of benefits to the Plans' participants for the next fifteen years and pay each Class member who accepted a lump sum buyout ***an additional*** $450. The Settlement is far beyond just "fair, reasonable and adequate" – it is outstanding, and strongly supports Class Counsel's requested amount of fees.

ix. The Experiences, Reputation and Ability of Class Counsel

This factor is similar to the third *Johnson* factor (counsel's skills) and the criteria the Court considered under Rule 23(g) when it appointed IKR and KTMC as Class Counsel. *See* Dkt. No. 83. Class Counsel respectfully submits that their reputations and abilities support the requested fee award. In approving an "extremely favorable" settlement in an analogous "church plan" case, a court recently described IKR as one of the "national leaders in class action litigation and ERISA matters." *Kemp-DeLisser*, 2016 WL 6542707, * 16. Courts have likewise praised KTMC, calling it "one of the most experienced ERISA litigation firms in the country…" *In re Chesapeake Energy Corp.*, 286 F.R.D. 621, 624 (W.D. Okla. 2012).

x. The Undesirability of the Action

Like the second *Johnson* factor, this factor considers the novelty and difficulty of the issues in the case. *See*, *e.g.*, *Slipchenko*, 2015 WL 338358, at *22. A case may also be "undesirable" "when the defendant is a large corporation with substantial resources, financial or otherwise, for a vigorous defense…" *In re Heartland*, 851 F. Supp. 2d at 1075.

Here, in addition to this case's legal and factual challenges identified above (*see* § I.A.3.ii, above), Franciscan Missionaries is one of the largest healthcare companies in Louisiana and mounted a vigorous defense to this case. *See* Complaint at ¶¶ 22-31; Dkt. Nos. 39-41. The case also involved the nature and extent of Franciscan Missionaries' religious affiliation, a sensitive issue that had potential to divide members of the community and potential jurors. *See* Dkt. Nos. 39-11, 39-12. These factors support Class Counsel's requested award of attorneys' fees.

xi. The Nature and Length of the Professional Relationship with the Client

Class Counsel did not have a prior relationship with Plaintiff Nicholson or Settlement Class Representative Francis. *See* Nicholson Decl. at ¶ 4 (Joint Declaration at Exhibit 5); Francis Decl. at ¶ 4 (Joint Declaration at Exhibit 6). However, in the nearly two years that Class Counsel litigated this case, it kept Plaintiff well-informed and aggressively advocated on her behalf. *See* Nicholson Decl. at ¶ 8 (Joint Declaration at Exhibit 5). Indeed, Class Counsel's records reflect at least eighteen separate phone conversations with Plaintiff Nicholson. *Id.* Class Counsel did the same with Settlement Class Representative Francis after she joined the case in November 2016, having at least ten separate phone conversations with her. *See* Francis Decl. at ¶ 8 (Joint Declaration at Exhibit 6). Accordingly, this factor supports the requested amount of attorneys' fees. *See*, *e.g.*, *Kemp*, 2015 WL 8526689, at *11; *Slipchencko*, 2015 WL 338358, at *22 (approving requested amount of fees where class counsel, among other things "regularly communicated with each class representative" during the case).

xii. Awards in Similar Cases

This factor is similar to the analysis undertaken when setting the benchmark percentage of attorneys' fees. "Courts often look at fees awarded in comparable cases to determine if the fee requested is reasonable." *DeHoyos*, 240 F.R.D. at 333 (citing *Johnson*, 488 F.2d at 719). As noted

above in § I.A.2, above, courts in this Circuit and across the country have found attorneys' fees between 25% and 33% of the total recover to be reasonable. *See Kemp*, 2015 WL 8526689, at *8; *In re Colgate-Palmolive*, 36 F. Supp. 3d at 350.

Class Counsel's requested attorneys' fees are particularly reasonable and in that they are substantially lower than courts have recently awarded in other "church plan" cases. *See*, *e.g.*, *Butler v. Holy Cross Hospital*, No. 16-cv-5907 (N.D. Ill. June 29, 2017) (Dkt. No. 52) ($630,000 in attorneys' fees, $4 million contributed to pension plan, or 15.75% of the undiscounted recovery); *Lann v. Trinity Health Corp.*, No. 14-cv-2237 (D. Md. May 31, 2017) (Dkt. No. 111) ($7.6 million in attorneys' fees, $75 million in contributions to pension plan over 3 years, or 10.1% of the undiscounted recovery); *Griffith v. Providence Health & Services*, No. 15-cv-1720 (W.D. Wash. Mar. 21, 2017) (Dkt. No. 69) ($6.4 million in attorneys' fees, $350 million contributed to pension plan over 7 years, or 1.8% of the undiscounted recovery).

To Class Counsel's knowledge, the only "church plan" settlement where the fees were lower on a percentage basis is *Kemp-DeLisser* where the court approved $800,000 in attorneys' fees when the defendant was required to contribute $107 million over ten years, or 0.7% of the undiscounted recovery. However, in that case, counsel spent less than half of the hours that Class Counsel here has dedicated to this case. *See Kemp-DeLisser*, 2016 WL 6542707, at *5, 7.

Class Counsel respectfully submits that their requested fee award of $1 million is eminently reasonable considering the excellent results achieved in this case and compares very favorably to the fee awards in ERISA class actions generally and in "church plan" cases specifically. Accordingly, the Court should approve Class Counsel's requested fees.

B. The Lodestar Crosscheck Confirms the Reasonableness of Class Counsel's Fee Request

The lodestar crosscheck is a two-step process. *See Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 324 (5th Cir. 1995). The court must first determine the reasonable number of hours expended and the reasonable hourly rates for the attorneys who performed the work. *Id*. The court then multiplies the hours by the rate to calculate the lodestar, which it can then accept or adjust, upwards or downwards. *City of Omaha*, 2015 WL 965696, at *3. "The lodestar analysis is not undertaken to calculate a specific fee, but only to provide a rough cross check on the reasonableness of the fee arrived at by the percentage method." *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 861 (E.D. La. 2007).

As detailed in the accompanying declarations of Mark Kindall on behalf of IKR, Mark Gyandoh on behalf of KTMC, and Robert Tarcza on behalf of Tarcza & Associates, Plaintiff's Counsel spent more than 1,000 hours in litigating this case. While Plaintiff's Counsel worked efficiently, this extremely favorable resolution would not have been possible without the hard work they put in at the beginning of the case. The total hours Plaintiff's Counsel spent were reasonable in a case of this complexity and magnitude, where there was more than $100 million at issue (*see* Complaint at ¶¶ 2-3), and fully necessary to protect the interests of Plaintiff and the Class.

Likewise, the rates for each attorney who worked on this case are reasonable and within the "prevailing market rates for lawyers with comparable experience and expertise." *In re Heartland*, 851 F.Supp.2d at 1087. While the "prevailing market rates" are typically measured against those in the judicial district where the case is litigated (*see*, *e.g.*, *Talen's Marine & Fuel, LLC v. Con Drive, LLC*, No. 09-cv-1735, 2011 WL 1595274, at *3 (W.D. La. Apr. 21, 2011), certain niche areas of law, including securities and ERISA class actions, are judged on a national standard. *See*, *e.g.*, *City of Omaha*, 2015 WL 9655696, at *9 (judging rates of lawyers who brought

securities class action against those in major metropolitan areas); *Mogck*, 289 F. Supp. 2d at 1191 (appropriate to judge ERISA class action lawyers on national standard).

Moreover, each attorney's hourly rate is within the range of those that other courts in this Circuit have approved in performing a lodestar crosscheck. *See*, *e.g.*, *In re Heartland*, 851 F. Supp. 2d at 1087 ($825 per hour rate reasonable for co-lead class counsel); *Slipchencko*, 2015 WL 338358, at *19 ($635 to $775 hourly rate for ERISA lawyer was reasonable). Based on the hours expended and Class Counsel's regular billing rates, Class Counsel's total Lodestar is $624,867.

The requested fee of $1,000,000 would result in a multiplier of approximately 1.6, which is well-supported by cases in this Circuit. A Lodestar multiplier compensates counsel for the "risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *City of Omaha*, 2015 WL 9655696, at *10 (internal citations omitted).[9] In the Fifth Circuit, multipliers "from one to four frequently are awarded in common fund cases…" *In re Combustion Inc.*, 968 F. Supp. 1116, 1135 (W.D. La. 1997) (citing *In re Shell Oil Refinery*, 155 F.R.D. 52, 573 (E.D. La. 1993)) (applying multiplier of 3.25). Recently, the Western District of Louisiana, in approving an award of attorneys' fees, determined that a 1.92 Lodestar multiplier "is on the lower end of approved multipliers." *City of Omaha*, 2015 WL 9655696, at *9. A multiplier of 1.6 is inherently reasonable in this case given the Settlement's value.

Likewise, courts from other jurisdictions have approved multipliers much greater than 1.6. For example, in the analogous "church plan" case *Kemp-DeLisser*, the court found that a 2.77 multiplier was reasonable because IKR had worked efficiently and achieved an excellent result. *Kemp-DeLisser*, 2016 WL 6542707, at *17. Courts in other ERISA class actions have likewise

[9] In the Fifth Circuit, the "risk multiplier" is not considered separately but included with the *Johnson* factor evaluation. *See*, *e.g.*, *Longden v. Sunderman*, 979 F.2d 1095, 1099 (5th Cir. 1992).

regularly approved lodestar multipliers higher than what is requested here. *See*, *e.g.*, *In re Colgate-Palmolive*, 36 F.Supp.3d at 353 (approving lodestar multiplier of 5.2, noting that the median multiplier in ERISA cases is 2.1).

The Court's lodestar crosscheck confirms the adequacy of Class Counsel's requested fee award, which represents less than 1% of the Settlement's value. The 1.6 Lodestar multiplier is well-justified given the excellent results Class Counsel achieved and supported by cases in the Fifth Circuit and across the country.

II. The Court Should Reimburse Class Counsel For Expenses Reasonably Incurred and Approve the Requested Case Contribution Awards

A. Reimbursement of Class Counsel's Expenses

It is axiomatic that counsel should be reimbursed for all expenses that are reasonable and necessarily incurred. FED. R. CIV. P. 23(h); *Kemp*, 2015 WL 8526689, at *11 ("the Court notes that such reimbursement is typical in the settlement of class actions."); *City of Omaha*, 2015 WL 965696, at *11 ("Counsel for a class action is entitled to reimbursement that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.").

Here, Class Counsel requests reimbursement of $28,115 in expenses that were incurred in prosecuting this action. All of the expenses were reasonable and necessary to the prosecution of this matter, and represent standard litigation costs and expenses such as the cost of consulting with Plaintiff's actuarial expert, mediation and travel expenses, as well as court costs and are itemized in detail. *See* Kindall Decl. at ¶ 5 (Exhibit 3 to Joint Declaration) and Gyandoh Decl. at ¶ 5 (Exhibit 2 to Joint Declaration). Plaintiff thus respectfully submits that the request for reimbursement should be granted.

B. Case Contribution Awards to Plaintiff Nicholson and Settlement Class Representative Francis

Courts "commonly permit payments to class representatives above those received in settlement by class members generally." *Kemp*, 2015 WL 8526689, at *7 (quoting *Smith v. Tower Loan of Miss., Inc.*, 216 F.R.D. 338, 368 (S.D. Miss. 2003)). Such awards are designed to "compensate named plaintiffs for the services they provide and burdens they shoulder during litigation." *City of Omaha*, 2015 WL 965696, at *10. In deciding whether an incentive award is warranted, courts generally consider: (1) the actions the plaintiff took to protect the interests of the class; (2) the degree to which the class benefitted from those actions; and (3) the amount of time and effort the plaintiff expended pursuing the litigation. *In re Heartland*, 851 F. Supp. 2d at 1089; *Kemp*, 2015 WL 8526689, at *7. Analysis of these factors with respect to both Plaintiff Nicholson and Settlement Class Representative Francis confirm that the requested Case Contribution Awards are warranted. Indeed, as noted above, both individuals have submitted a Declaration further attesting to their efforts in the litigation. *See* Nicholson Decl. (Joint Declaration at Exhibit 5); Francis Decl. (Joint Declaration at Exhibit 6).

Here, Class Counsel request a Case Contribution Award of $3,500 for Plaintiff Nicholson, and $1,500 for Settlement Class Representative Francis. Plaintiff Nicholson acted to protect the Class by filing this case and stayed well informed during its progression, including during settlement negotiations, having in-person meetings and at least seventeen separate telephone calls with Class Counsel. *See* Nicholson Decl. at ¶¶ 7-10 (Joint Declaration at Exhibit 5). Settlement Class Representative Francis became involved in the case after it was filed but was nonetheless well-informed during each subsequent step and involved in developing a strategy for settlement. *See* Francis Decl. at ¶¶ 5-8 (Joint Declaration at Exhibit 6).

Both amounts requested as Case Contribution Awards are reasonable given the time and effort expended to protect the interests of the Class and the risks associated with having their names associated with a class action lawsuit. *See*, *e.g.*, *Slipchenko*, 2015 WL 338358, at *13 ("The class representatives faced risk in acting as the public face of the lawsuit."). Both requested amounts are also well within the range of awards that courts in this Circuit have approved in other class actions. *See*, *e.g.*, *Everson v. Bunch*, No. 14-cv-583, 2016 WL 3255023, at *5 (M.D. La. June 13, 2016) ($10,000 each to two named plaintiffs); *Kemp*, 2015 WL 8526689, at *7 ($5,000 award); *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 306 (S.D. Miss. 2014) ($5,000 each to seven named plaintiffs); *City of Omaha*, 2015 WL 965696, at *10 ($5,000 to the named plaintiff). Accordingly, Class Counsel respectfully submit that the Court should grant the request for the Case Contribution Awards.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion should be granted in its entirety.

Dated: January 5, 2018

Respectfully submitted,

/s/ Mark K. Gyandoh
Mark K. Gyandoh
Julie Siebert-Johnson
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056
Email: mgyandoh@ktmc.com
Email: jsjohnson@ktmc.com

/s/ Mark P. Kindall
Robert A. Izard
Mark P. Kindall
Douglas P. Needham
IZARD KINDALL & RAABE LLP

29 South Main Street, Suite 305
West Hartford, CT 06107
Tel: (860) 493-6292
Fax: (860) 493-6290
Email: rizard@ikrlaw.com
Email: mkindall@ikrlaw.com
Email: dneedham@ikrlaw.com

/s/ Robert E. Tarcza
Robert E. Tarcza, LSBN 12655
TARCZA & ASSOCIATES
1310 Whitney Bldg.
228 St. Charles Ave.
New Orleans, LA 70130
Tel: (504) 525-6696
Fax: (504) 225-6701
Email: bobt@tglaw.net

Counsel for Plaintiff and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2018, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/ Mark K. Gyandoh
Mark K. Gyandoh