IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FELIPE HERNANDEZ, on behalf of himself and other similarly situated persons known and unknown,	)	
Plaintiff,	)	
v.	)	Case No. 12 C 2068
ASG STAFFING, INC.,	)	Judge Bucklo
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF THE STIPULATION OF SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANT ASG STAFFING, INC.

I. INTRODUCTION

Plaintiff seeks final approval of the class action settlement between Plaintiff and Defendant ASG Staffing, Inc. preliminarily approved by this Court originally on July 31, 2014 ("the Settlement"). (D.E.[1] 78). Final approval is appropriate where the court determines that a settlement is fair, adequate, and reasonable. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652 (7th Cir. 2005). As further described below, the Settlement here meets this standard because 1,180 of the members of the "Notice Class" who filed timely claims (18.6%) will receive the statutory damage amount provided for in the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §1681(b) *et seq*.[2] Further, 25.5% of the members of the "Adverse Action Sub-Class" who were eligible to make a claim for an alleged adverse action did so and will receive the maximum $1,500 allotted in the Settlement for such a claim. None of the class members timely excluded themselves from the Settlement, and not one Settlement Class

[1] "D.E. __" reflects Docket Entry for this case.
[2] In the case of a Notice violation, FCRA provides for statutory damages of "not less than $100". 15 U.S.C. §1681(n). Defendant disputes it committed a Notice violation.

member objected to the Settlement.

II. SUMMARY OF THE SETTLEMENT

A. The Class Defined

As part of the Revised Stipulation of Settlement, the parties seek to have one class and a sub-class certified for settlement purposes only. The Class would consist of all of the individuals 6,341 who sought employment through ASG Staffing during the period of March 21, 2010 through March 15, 2013 who were not given a FCRA notice consisting of a stand-alone document prior to the time ASG Staffing obtained a background report,[3] hereafter referred to as the "Notice Class."

The Sub-Class consists of Fifty-Five (55) individuals who allegedly did not receive the job assignments they wanted as a result of a background check and who were not provided with a copy of their rights or an opportunity to challenge the report,[4] hereafter referred to as the "Adverse Action Sub-Class."

B. Terms of the Stipulation of Settlement

Under the terms of the Stipulation of Settlement, attached hereto as Attachment 1, Defendant ASG has agreed to pay a total amount of $220,000.00 ("Settlement Fund") to resolve the class claims defined above. From the Settlement Fund, the Settlement calls for Plaintiff Hernandez to receive $6,000.00 as an incentive award and for executing a general release of

[3] In particular, this Class is defined as: All individuals for whom Defendant has obtained consumer reports but to whom Defendant allegedly did not provide a clear and conspicuous disclosure in a document consisting solely of said disclosure and an authorization for the procurement of the report from March 21, 2010 through March 15, 2013.

[4] This Sub-Class is defined as: All individuals against whom Defendant has allegedly taken adverse action based on criminal background information contained in a consumer report procured by Defendant without Defendant first providing such individuals with a copy of the report, a summary of their rights under FCRA, and an opportunity to dispute the background report from March 21, 2010 through March 15, 2013.

claims[5]; Class Counsel to receive $45,000.00, or 20% of the fund, for all attorneys' fees and costs incurred in prosecuting this matter; claims administration costs of $30,250.00; and the mediation fee of $4,000.00 of Thomas Meites of The Law Offices of Meites and Mulder.[6] The balance of the Settlement Fund, or $134,750.00, is designated to pay the claims of the Notice Class and the Adverse Action Sub-Class (the "Class Settlement Fund"). The 14 individuals from among the 55 Adverse Action Sub-Class members (25.5%) will each receive the maximum claim amount of $1,500 for this claim, or a total of $21,000.00 from the Settlement Fund. Finally, the 1,180 individuals from among the 6,341 Notice Class members will each receive a *pro rata* share of the remaining funds, or $120,500.00, or $96.40 each, slightly less than the statutory damages of "not less than $100" provided for in FCRA, 15 U.S.C. §1681(n), if Plaintiff prevailed at trial.

III. STATEMENT OF FACTS

A. Factual and Procedural Background

The procedural background of this matter was previously set forth in detail in Plaintiff's Unopposed Motion for Preliminary Approval, D.E. 49, and Plaintiff's Unopposed Renewed Motion for Preliminary Approval of the Revised Stipulation of Settlement, D.E. 74, and is not repeated herein.

B. The Court's Preliminary Approval Order

On July 29, 2014, this Court held a hearing on the Plaintiff's Unopposed Renewed Motion for Preliminary Approval of the Parties' Revised Stipulation of Settlement and for Approval of Class Certification, Form and Manner of Class Notice. D.E. 77. Following the

[5] No other class member is being asked to execute a general release.

[6] The Court recommended Mr. Meites as a mediator to attempt to finalize the proposed class settlement. Mr. Meites dedicated much more time to mediating this matter than is reflected in the fee he is charging and both parties wish to acknowledge and commend his assistance in reaching a fair and reasonable settlement.

hearing, the Court entered an Order: (i) preliminarily approving the Parties' Stipulation of Settlement (ii) granting class certification of the class identified herein; (iii) approving the Notice of Class Action, Proposed Settlement and Fairness Hearing; and (iv) authorizing that notice to the Class to be sent. As part of the Order of Preliminary Approval, the Court certified the following class and sub-class for settlement purposes, D.E. 78:

> *With respect to Plaintiff's Count I ("Notice Class"):*
>
> All individuals for whom Defendant has obtained consumer reports but to whom Defendant allegedly did not provide a clear and conspicuous disclosure that a consumer report may be obtained for employment purposes in a document consisting only of said disclosure and authorization for the procurement of the report from March 21, 2010 through March 15, 2013.
>
> *With respect to Plaintiff's Count II ("Adverse Action Sub-Class"):*
>
> All individuals against whom Defendant has allegedly taken adverse action based on criminal background information contained in consumer reports procured by Defendant without Defendant first providing such individuals with a) a copy of the report; b) a copy of their rights under FCRA; and c) an opportunity to dispute the background report from March 21, 2010 through March 15, 2013.

Pursuant to the Court's Preliminary Approval Order, Defendant ASG provided Settlement Services, Inc., the Claims Administrator (hereinafter "SSI"), with the last known addresses of the Six Thousand, Three Hundred and Forty-One ("6,341") members of the above-identified Notice Class and the Fifty-Five ("55") members of the Adverse Action Sub-Class. SSI caused the notice and claim form approved by the Court, in the form attached to the Settlement as Exhibits A and C, (hereafter "Class Notice Packets") and as Exhibits B and E for the Adverse Action Sub-Class, to be mailed to each class member by depositing the same in the U.S. Mail, first class postage paid, on August 21, 2014. *See* Declaration of Mark Patton, ¶3, attached hereto as Attachment 2 (hereafter "Patton Decl., ¶_"). Prior to the mailing, 1,018 Class Members' addresses were updated through the national change of address database.

Patton Decl., ¶3. Of the 6,341 notice packets mailed by SSI, 1,139 were returned by the U.S. Postal Service as undeliverable prior to the September 11, 2014 date for the second mailing, of which the Claims Administrator was able to find new possible addresses for 600 through skip-tracing. Patton Decl., ¶¶4 – 5. The 600 Notice packets were immediately re-mailed to the 600 forwarding addresses. Patton Decl., ¶5.

Altogether one thousand, one hundred and eighty (1,180) valid Notice claim forms were received out of the 6,341 that were mailed out by SSI, or a claim rate of 18.6%, and of the 55 members of the Adverse Action Sub-Class, fourteen (14) valid Adverse Action Sub-Class forms were received, or a claim rate of 25.5%.[7] Patton Decl., ¶¶6 – 7. Each Notice Class member who filed a valid claim form will receive nearly the full amount of the $100 statutory damages provided for by FCRA and each Adverse Action Sub-Class member who filed a valid claim form will receive the maximum recovery of $1,500.00 agreed to in the Settlement. No amount of the Class Settlement Fund will revert back to Defendants so Defendants had no incentive to suppress participation in this class action settlement. Finally, no putative class members have filed objections to or opted out from the class settlement.

IV. THE PARTIES HAVE SATISFIED THE REQUIREMENTS OF RULE 23 AND THE COURT'S NOTICE PROCEDURES SET FORTH IN THE PRELIMINARY APPROVAL ORDER.

In its Preliminary Approval Order, the Court held that the form, content and proposed distribution of the Class Notice met the requirements of federal law and due process, and was the best notice practicable under the circumstances.[8] D.E. 78 at ¶5.

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[7] Of the 1,180 Notice claim forms received, 17 were received by SSI after the filing deadline and without a legible postmark. Of the 15 Adverse Action claim forms, one was received by SSI after the filing deadline. In an effort to be as inclusive as possible, the Parties have agreed to treat these claim forms as timely and valid. Patton Decl., ¶7.

[8] The Notice Packet and Complete Notice approved by the Court informed Class Members of the

Rule 23(c)(2)(B) requires the Court to direct the Parties to give the "best notice practicable" under the circumstances, including "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 155, 173 (1974). As the Supreme Court has held, notice by mail provides such "individual notice to all members" in accordance with Rule 23(c)(2). *Id.* Where the names and addresses of the class members are easily ascertainable, individual notice through the mail is "clearly the 'best notice practicable.'" *Id.* at 175. The Parties' and the claims administrator's extensive efforts to effectuate notice to the class have met the requirements of Rule 23(c)(2)(B).

V. FINAL APPROVAL IS APPROPRIATE PURSUANT TO RULE 23(E) BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.

Settlement of class action litigation is favored by federal courts. *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). Although settlements must be approved by the district court, its inquiry is limited to the consideration of whether the proposed settlement is fair, reasonable, and adequate. *Id.* In determining whether a settlement is fair, adequate, and reasonable, courts in the Seventh Circuit consider a variety of factors including:

> (a) the strength of plaintiffs' case, weighed against the settlement offer; (b) the complexity, length, and expense of further litigation; (c) the presence of collusion between the parties; (d) the opinion of competent counsel; (e) the reaction of class members to the proposal; and (f) the stage of proceedings and discovery completed.

In re Mexico Money Transfer Litig., 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citing *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 308 (7th Cir. 1985)). The court must consider

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pendency of the class action litigation, the definition of the Settlement Class, the alleged claims in dispute, the terms and conditions of the proposed settlement, information regarding attorneys' fees, costs, and expenses, the procedures for allocating and distributing the maximum gross settlement amount, the address and phone number of class counsel and the procedure for making inquiries, the deadlines for taking action, class members' individual rights under the settlement, including the right to exclude themselves from the Settlement Class, the manner and consequences for doing so, the right to file any objections to the Settlement, and the right to attend a fairness hearing during which such objections will be heard as required by Rule 23(c)(2)(B).

the facts in the light most favorable to the settlement. *Id.* The determination that a settlement is fair is left to the sound discretion of the trial court and will not be overturned absent a clear showing of abuse of that discretion. *Armstrong v. Bd. Of Sch. Dist.*, 616 F.2d 305, 313-14 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998). When evaluated under these factors, the Parties' Settlement is fair, adequate, and reasonable.

A. The Settlement is Fair, Adequate, and Reasonable

1. Strength of Plaintiff's Case As Compared to the Amount of the Settlement and Allocation of the Settlement Payment

One of the key considerations in evaluating a proposed settlement is the strength of the plaintiff case as compared to the amount of the defendant's offer. *See Isby*, 75 F.3d at 1199. However, "district courts have been admonished 'to refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights.'" *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985)). Accordingly, in deciding whether to approve the Settlement, this Court must focus on the general principles of fairness and reasonableness, but not on the substantive law governing Plaintiff's claims. *See Id.* A settlement is fair "if it gives [plaintiffs] the expected value of their claim if it went to trial, net of the costs of trial." *Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust*, 834 F.2d 677, 682 (7th Cir. 1987) (finding adequate a settlement of ten percent of the total sought due to risks and costs of trial); *Hiram Walker & Sons, Inc.*, 768 F.2d at 891 (settlement approved because "there [was] no showing that the amounts received by the beneficiaries were inadequate").

An integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation. *Donovan*, 778 F.2d at 309 (citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975)). The members of the Settlement Class would face significant obstacles and risk an unsuccessful outcome if this case

were to proceed to trial. Here, Plaintiff alleges that the members of the Notice Class sought employment with ASG and were subjected to the same company-wide policies which violated FCRA, specifically not providing members of the Notice Class a clear and conspicuous disclosure that a consumer report (or background check) may be obtained for employment purposes in a document consisting only of such disclosure and authorization for the procurement of the consumer report. Plaintiff further alleges that ASG took adverse action against him and the other members of the Adverse Action Sub-Class based on criminal background information contained in consumer reports procured by Defendant without Defendant first providing such individuals with a) a copy of the report; b) a copy of their rights under FCRA; and c) an opportunity to dispute the background report.

ASG denies the allegations. As to the "notice" issue, ASG points to the language on its employment application, "send out" sheets and Employee Handbook all notifying employees that background checks would be conducted, and asserts further that such communications show that if there was a violation of the FCRA, the alleged violations were not willful. As to the adverse action claim, ASG disputes that any Adverse Action Sub-Class Member suffered any actual damages to the extent any procedural violations of FCRA may have occurred. In light of these risks going forward, the consideration to be paid by Defendant to the Class and Sub-Class here is considerable and the plan of allocation is reasonable.

Given that 18.6% of the Notice Class Members have returned a valid claim form to SSI and these Class Members will receive nearly the full amount of the $100 statutory damages and 25.5% of the Adverse Action Sub-Class Members have returned a valid claim form to SSI, and these Class members will receive the full amount of the damages negotiated in the Settlement. The consideration to be paid by ASG is considerable given the amount of damages alleged.

The Class members who opted into Adverse Action Sub-Class are all treated equally and all of the Notice Class Members are treated equally. This is an excellent result for participating Class Members. Hence, the requirement that the Settlement is fair, adequate, and reasonable is met in this case. *See Mars Steele Corp*., 834 F.2d at 682 (citations omitted).

Furthermore, pursuant to the Parties' Stipulation of Settlement, any remainder from the class settlement fund resulting from eligible class members not cashing their settlement checks will be paid to an IRS 501(c)(3) organization as *cy pres*, the Chicago Bar Foundation, subject to approval by the Court.

2. Complexity, Length, And Expense of Further Litigation

A second factor to be considered by the Court is the complexity, length, and expense of litigation that will be spared by the proposed settlement. *In re Mexico Money Transfer Litigation*, 164 F. Supp. 2d at 1019. This complex class action was resolved only after extensive research, analysis, and informal discovery culminating in a multiple settlement conferences before the Magistrate Judge, and then with Mediator Thomas Meites who was recommended by this Court with counsel for the Class and ASG present. Absent settlement, ASG would continue to vigorously defend the case. Further litigation would require additional depositions and expert discovery. Additional motion practice relating to discovery and dispositive motions would be certain. Moreover, Plaintiff might also have to confront appeals. Further litigation would increase the expenses of this litigation and would not likely reduce the risks the litigation held for the Settlement Class. *See Isby*, 75 F.3d at 1199; *see also In re Mexico Money TransferLitig*., 164 F. Supp. 2d at 1019; *see also Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers (In re Harnischfeger Indus., Inc.)*, 212 F.R.D. 400, 409-10 (E.D. Wis. 2002). Accordingly, the remaining burden, expenses, and risks for Plaintiff would be substantial as continued litigation would require resolution of complex disputed issues at

considerable expense.

3. Settlement Was Result of Arm's Length Negotiations, Free From Collusion.

The Settlement was the result of hard-fought adversarial, arm's length negotiations that took place after months of investigation and informal discovery. In determining whether a settlement was reached absent any collusion between the parties, courts look to whether the settlement is "intense, vigorous, and at arm's length." *In re Mexico Money Transfer Litig*., 164 F. Supp. 2d at 1020.

Here, the Settlement is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation in general and with the legal and factual issues of the Defendant's industry. In negotiating this settlement, Class Counsel has had the benefit of years of experience advocating the interests of low wage laborers, particularly in the staffing industry. In his former capacity as founder and Director of the non-profit Working Hands Legal Clinic, Class Counsel served as an advisor to the legislative sponsors of the 2010 amendments to the Illinois Wage Payment and Collection Act, the 2007 amendments to the Illinois Minimum Wage Law and the 2006 amendments to the Illinois Day and Temporary Labor Services Act. In addition, Class Counsel have successfully litigated and resolved over 30 class actions involving low wage laborers in the logistics and temporary staffing industry. Similarly, Counsel for Defendant is an experienced class action litigator with substantial experience in Defendant's industry and with FCRA.

Settlement negotiations in this case took place over the course of many months. After a period of extensive investigation and informal discovery, including a significant exchange of legal authority on the underlying legal issues, frequent meetings and multiple court-assisted and mediator-assisted settlement discussions between the Parties. On May 28, 2014, the Parties finalized the Revised Stipulation of Settlement with the assistance of mediator Thomas Meites.

Class Counsel supports the resulting settlement as fair and as providing reasonable relief to the members of the class.

Such arm's length negotiations conducted by competent counsel constitute *prima facie* evidence of a fair settlement. *Berenson v. Fanueil Hall Marketplace*, 671 F. Supp. 819, 822 (D. Mass. 1987) ("where . . . a proposed class settlement has been reached after meaningful discovery, after arm's-length negotiation by capable counsel, it is presumptively fair."). In the absence of any evidence of collusion, this factor favors final approval of the settlement. *See Winston v. Speybroeck*, No. 3:94-CV-150AS, 1996 U.S. Dist. LEXIS 12131, *15-6 (N.D. Ind. Aug. 2, 1996). Therefore, the Court should find that the Settlement meets the requirements of Rule 23(e) and was the result of arm's-length bargaining. *See Meyenburg v. Exxon Mobil Corp.*, No. 3:05-cv-15-DGW, 2006 U.S. Dist. LEXIS 97057, *16 (S.D. Ill. Jun. 6, 2006).

4. Opinion of Counsel

Class Counsel is experienced in class action litigation and had a substantial amount of information to evaluate and negotiate the Settlement. The Settlement was reached after extensive negotiations. In Class Counsel's opinion, the Settlement is fair, reasonable and adequate. It is appropriate for the Court to place significant weight on the strong endorsement of this Settlement by Class Counsel. *See In re Mexico Money Transfer Litigation*, 164 F. Supp. 2d at 1020; *see also Meyenburg*, 2006 U.S. Dist. LEXIS 97057 at *17-8. *See* Declaration of Christopher J. Williams, ¶12 (hereafter "Williams Decl., ¶__"), attached hereto as Attachment 3.

5. Lack of Objections to The Settlement

Lack of objections is a significant factor in determining whether the proposed class settlement is reasonable to the class as a whole. *Mangone v. First USA Bank*, 206 F.R.D. 222,

226-27 (S.D. Ill. 2001); *see also Wal-Mart Stores, Inc. v. Visa USA, Inc*., 396 F.3d 96, 118 (2d Cir. 2005) (noting that "[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 251 (D.N.J. 2005) (concluding that "[s]uch a small number of objections in relation to the size of the Class favors approval of the request."); *Strougo v. Brazilian Equity Fund, Inc*., 258 F. Supp. 2d 254, 258 (S.D.N.Y. 2003) (stressing that "[i]t has repeatedly been held that 'one indication of the fairness of a settlement is the lack of or small number of objections.'"); *Hispanics United of DuPage County v. Village of Addison, Illinois*, 988 F. Supp. 1130, 1169 (N.D. Ill. 1997) (finding the settlement fair where a small number of class members objected). Here, not a single member of the Settlement Class opted out or objected to the Settlement.

B. The Settlement is Appropriate.

The Settlement Class here have been well represented by Plaintiff and by experienced Counsel, and class members who have responded to the Class Action Notice have indicated their desire to accept the terms of the Settlement. Therefore, Plaintiff requests that the Court certify the claims of all members of the Settlement Class and approve the settlement of their claims.

V. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.

In his Unopposed Renewed Motion for Preliminary Approval of Proposed Settlement and Conditional Settlement Class Certification, (D.E. 74), Plaintiff requested that the Court conditionally certify the Settlement Class and Sub-Class. The Court's Preliminary Approval Order found that, for settlement purposes, the Settlement Class is proper under Rule 23(a) and 23(b)(3). D.E. 78 at ¶3. Since the Court's Order, no objections addressing certification issues have been received. As recognized in the Settlement and the Court's Preliminary Approval Order, the

Settlement Class is appropriate for the reasons summarized below.

A. The Settlement Class Satisfies All Rule 23(a) Requirements.

Numerosity: Fed. R. Civ. P. 23(a)(1) requires that the class be so numerous that joinder of all class members is impracticable. The Settlement Class provisionally certified by the Court included 6,341members, thus meeting the numerosity requirement whereby joinder is impracticable. 1 Newberg on Class Actions § 3.05 at 3-23 to 3-24.

Commonality: The Settlement Class members share common questions of law with respect to their claims and their claims are factually linked through ASG's policies related to criminal background checks. As found in the Court's Preliminary Approval Order, Plaintiff's claims satisfy the commonality requirement of Rule 23(a)(2).

Typicality: As this Court has already found in its Preliminary Approval Order, Rule 23(a)(3)'s demand for typicality has been satisfied. The alleged FCRA notice violation of the named Plaintiff is typical of the claims of the Settlement Class. In addition, the Plaintiff's alleged adverse action claim is typical of the Adverse Action Sub-Class. The Court's finding has not been challenged since the date of the Court's Preliminary Approval Order.

Adequacy: No objection or information contrary to the finding of adequacy in the Court's Preliminary Approval Order has been raised contesting the ability of the named Plaintiff and Class Counsel to fairly and adequately protect the interests of the Settlement Class. No evidence has arisen of an improper conflict of interest between the named Plaintiff and their counsel and any members of the Settlement Class. Moreover, Class Counsel's experience litigating class actions has enabled him to vigorously represent the interests of the Settlement Class throughout the litigation and settlement of this action, and Counsel will continue to do so.

B. The Settlement Class Satisfies All Rule 23(b)(3) Requirements.

As found in the Court's Preliminary Approval Order, the Settlement Class meet the requirements of Rule 23(b)(3) in that common questions of law affecting proposed Class Members predominate over questions affecting individual members and that class resolution is superior to other available methods.

Predominance: Since the Court's Preliminary Approval Order, it remains undisputed that the Settlement Class meets the predominance standard because common questions of fact and law predominate over individual damage issues. Class Members were allegedly subject to the same policies. The claims they set forth as a class predominate over any individual claims members of the Settlement Class may otherwise wish to bring forward. Moreover, ASG's defenses to this case are of class-wide application to the claims asserted.

Superiority: Litigating this case in multiple forums and proceedings would waste judicial resources and create the risk of conflicting outcomes. As such, there is superiority to maintaining this action as a class action as opposed to any alternate methods available.

By reason of the foregoing demonstration that the prerequisites for certification have been met, the Parties request that the Court issue a final order certifying for settlement purposes the Settlement Class identified in its Preliminary Approval Order and the Parties' proposed Order of Final Approval to be provided to the Court.

VI. PAYMENT TO THE NAMED PLAINTIFF IS APPROPRIATE.

As preliminarily approved by the Court's Order of Preliminary Approval (D.E. 78), the Named Plaintiff shall receive $6,000 from the ASG Settlement as a part of this Settlement Agreement in exchange for executing a general release, including settlement of individual claims could have been asserted and for his service to the ASG Settlement Class. These

amounts shall be paid without withholding. The payments to the Plaintiff shall be paid from the ASG Settlement Amount but shall be separate from and in addition to the $134,750.00 Class Settlement Fund. Plaintiff will also receive his proportional share of the Settlement Fund subject to the same formula as relevant factors as other class members.

Throughout the litigation, the named class representative has remained informed about the case; has been available for numerous interviews; has been available or multiple discussions with Class Counsel, which allowed class counsel to fully investigate the claims of the class, and was actively involved in the negotiations of this settlement for absent class members. Unlike absent class members who will release only their claims for under FCRA, Plaintiff will execute a full release of all claims against ASG in exchange for the payments specified in the settlement.

VII. THE PAYMENT OF ATTORNEYS' FEES EQUAL TO ONE-FIFTH (20%) OF THE SETTLEMENT AMOUNT IS REASONABLE.

When the amount of the Settlement Fund in this case was negotiated, ASG's offer was a combined offer which included everything - - damages, attorneys' fees, expenses, and costs, including fees and expenses to be incurred by Class Counsel in administrating this matter through disbursement of this Settlement. Such settlements, known as "common fund" settlements, are preferred by the law and fees are awarded from such settlement funds by the Court under "common fund" principles. The parties have agreed to, and Class Counsel requests, an award of attorneys' fees in the amount of $45,000.00. This is 20% of the $220,000.00 Total Settlement Amount.

A. The Percentage of the Fund Method of Awarding Attorneys' Fees is Appropriate in Common Fund Cases.

The Seventh Circuit has directed district courts to employ the percentage of the fund

method to determine an appropriate fee award in common fund cases. *See Taubenfeld v. AON Corp.*, 415 F.3d 597, 599-600 (7th Cir. 2005). In fact, "[t]he approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class. *See Matter of Continental Illinois Securities Litigation,* 962 F.2d 556, 572-74 (7th Cir. 1992) ("*Continental Illinois I*"), later proceeding, 985 F.2d 867 (7th Cir. 1993) ("*Continental Illinois II*") (citing *Williams v. General Elec. Capital Auto Lease,* No. 94 C 7410, 1995 U.S. Dist. LEXIS 19179, *29-30 (N.D. Ill. Dec. 16, 1995)); *see also Teamsters Local Union No. 604, No. 02-C V-1109-DRH,* 2004 U.S. Dist. LEXIS 6363, *3-4 (S.D. Ill. Mar. 19, 2004); *Berger v. Xerox Corp. Retirement Income Guarantee Plan, No. 00-584-DRH, *5-7* (S.D. Ill. Jan. 22, 2004). To determine what percentage of the fund should be awarded the Court looks to the market price for legal services in comparable litigation.) *See Teamsters Local Union No. 604, 2004 U.S. Dist. LEXIS 6363 at *3-4.*[9]

In deciding fee levels in common fund cases, the Seventh Circuit has "consistently directed district courts to 'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'" S*utton,* 504 F.3d at 692, 693-94 (citing *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718

[9] *See also* the following cases from the Northern District of Illinois and the Chancery Court of the Circuit Court of Cook County involving Class Counsel: *Craig v. EmployBridge et al.,* Case No. 11 C 3818 (N.D. ILL.)(D.E. No. 75) Order dated April 4, 2013, awarding 30% of common fund; *Francisco, et al. v. REM Staffing, et al.,* Case No. 11-2162 (N.D. Ill.)(Dkt. No. 43, Order dated May 24, 2012, awarding 33 1/3% of common fund); *Jones et al. v. Simos Insourcing Solutions, Inc. et al.,* Case No. 11-3331 (N.D. Ill.)(Dkt. No. 35, Order dated May 4, 2012, awarding 33 1/3% of common fund); *Ochoa et al. v. Fresh Farms International Market, Inc. et al.,* Case No. 11-2229 (N.D. Ill.)(Dkt. No. 29, Order dated July 10, 2012, awarding 18% of common fund); *Ramirez et al. v. Paramount Staffing, Inc. et al.,* Case No. 11-4163 (N.D. Ill.)(Dkt. No. 40, Order dated January 29, 2013 awarding 27 1/3% of common fund); *Alvarez et al. v. Staffing Partners, Inc. et al.,* Case No. 10-6083 (N.D. Ill.)(Dkt. No. 63, Order dated January 17, 2012, awarding 27 1/2% of common fund); *Bautista et al. v. Real Time Staffing Services, Inc. et al.,* Case No. 10-0644 (N.D. Ill.)(Dkt. No. 58, Order dated August 28, 2012, awarding 18 3/4% of common fund); *Herrera, et al. v. Chicago Mattress, Inc*., Case No. 06-1872 (Dkt. No. 49, Order awarding 33% of the common fund); *Acosta, et al. vs. Scott Labor, et al.,* Case No. 05-2518 (Dkt. No. 120, Order awarding 33 1/3% of common fund); *Ortegon, et al. v. Staffing Network, Inc*., Case No. 06 CH 12679 (Order dated July 24, 2009, awarding 33% of common fund).

(7th Cir. 2001) (collecting cases). The Seventh Circuit has held, "Although it is impossible to know *ex post* exactly what terms would have resulted from arm's length bargaining *ex ante*, courts must do their best to recreate the market by considering factors such as actual fee contracts that were privately negotiated for similar litigation, information from other cases, and data from class-counsel auctions." *Taubenfeld*, 415 F.3d at 599. Under the market-based approach, "class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client." *Retsky Family Ltd. Partnership v. Price Waterhouse LLP*, No. 97 C 7694, 2001 U.S. Dist LEXIS 20397, * 10-11 (N.D. Ill. 2001).

Here, Class Counsel had executed fee arrangements with the Named Plaintiff that entitled Class Counsel up to one-third (33.33%) of any recovery. This percentage is consistent with the standard contingent fee percentage in this legal marketplace for comparable litigation. *See Teamsters Local Union No. 604*, 2004 U.S. Dist. LEXIS 6363 at *3-4; see also n. 8, *supra*. ("In this Circuit, a fee award of thirty-three and one-third (33 1/3%) in a class action is not uncommon.")

In light of the fact that Plaintiff's Counsel agreed to take this case on a contingency fee basis, agreed to pay all of the costs of the litigation and assumed the risk of there being no recovery, the fee of $45,000.00 requested here, which represents twenty percent (20%) of the total Settlement Amount, is fair and reasonable, is typical of the amount of awards made in the Chicago area and is consistent with the contingency fee arrangement with the Class Representative. The fees sought by Class Counsel is one-third of the total Class Settlement Fund ($134,750.00), which amount excludes administration costs, an incentive award and mediation

costs. *See Redman v. Radioshack Corp.*, 2014 U.S. App. LEXIS 18181, *13 (7th Cir. Ill. 2014). In this highly contested matter, Class Counsel's actual fees exceed this amount.

B. The Attorneys' Fee Request is a Reflection of the Relevant Market.

1. The Risk of Non-Payment Is Inherent in This Type of Litigation.

Consistent with the market for Chicago legal services, Class Counsel agreed to litigate this case on one-third contingency fee basis, as evidenced by the initial retainer agreement executed with the Named Plaintiff. Class Counsel took the risk that they would obtain no recovery at all. Williams Decl., ¶13. In fact, the contingency fee agreement specifically provided that Class Counsel would receive nothing if they ultimately failed to secure a monetary recovery for Plaintiff. Williams Decl., ¶13.

Any lawyer undertaking representation of large numbers of employees must be prepared to make a tremendous investment of time, energy and resources. Due to the contingent nature of the customary fee arrangement, lawyers must be prepared to make this investment with the very real possibility of an unsuccessful outcome and no fee of any kind. The demands and risks of this type of litigation overwhelm the resources and deter participation of many traditional plaintiffs' firms. In addition, Plaintiff could not have afforded to retain counsel on any basis other than a contingent fee basis. Class Counsel was fully prepared to prosecute and finance this litigation for as long as necessary, with the very real possibility that they would come away with nothing. Williams Decl., ¶13.

2. The Requested Attorneys' Fee Award Reflect is Below the Normal Rate of Compensation in this Market.

Class Counsel in this case has substantial experience in prosecuting large-scale wage and hour class actions, and routinely negotiates contingency fee compensation rates at or near 33.33%. *See* Williams Decl., ¶14. Mr. Williams is also a frequent speaker regarding

employment matters nationwide, particularly involving the staffing industry, and has advised the Illinois legislature and the Illinois Department of Labor on amendments to four different Illinois statutes including one regulating the staffing industry. *See* Williams Decl., ¶4 – 8. In light of Class Counsel's expertise, skill, and typical contingent fee arrangement, the requested percentage of the Settlement Fund is reasonable.

3. Results and the Benefit Conferred Upon Class Justifies Requested Award.

This Settlement brings substantial value to Plaintiff and the Class. As described above, participating Settlement Class members will receive the amount of the statutory damages provided for by FCRA and Adverse Action Sub-Class members will receive the maximum $1,500 allotted in the Settlement for such claim. Williams Decl., ¶16. The fact that significant monetary recovery is available to class members without the uncertainty of trial, and is being delivered through this Settlement rather than after years of additional litigation, qualifies this Settlement as a favorable result.

In conclusion, based upon the negotiated fee agreement in this case, as compared to other comparable cases Class Counsel has litigated, the normal rate of compensation in similar cases, the risk Class Counsel undertook in engaging in this litigation, the quality of legal services rendered, the uncertainty of recovery, and the results obtained, Class Counsel is entitled to a reasonable attorneys' fees award of twenty percent (20%) of the Settlement Fund.

VIII. CONCLUSION

The Settlement is a compromise that takes into account the complex factual and legal issues that confronted the litigants in this case. It has been achieved in good faith and through arm's length negotiations and is not the product of fraud or collusion. The record indicates that all the criteria under Rule 23 are met for purposes of settlement, and that the Parties

have provided the Class Members with adequate notice of the terms and conditions of the Settlement in a manner intended to maximize the due process rights of the Class Members

The Settlement offers substantial monetary relief to the Settlement Class. If the Plaintiff and the Settlement Class continued this litigation they would face complex legal and factual issues, significant defenses, enormous costs, risk of denial of class certification and grant of summary judgment in favor of Defendant, and risk of an adverse judgment. The fact that no class members timely requested exclusion from the Settlement and none of the class members objected to the Settlement shows support for the Settlement. Additionally, experienced Counsel for the Parties have extensively analyzed the claims and issues herein, and have certified that the Settlement is fair, reasonable, and adequate and in the best interest of the Settlement Class. Thus, Plaintiff respectfully requests that the Court grant final approval of the Settlement, certify the Settlement Class for settlement purposes, and enter the Plaintiff's proposed final approval order.

Respectfully submitted,

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