

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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Judy Larson, Janelle Mausolf, and Karen Reese, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Allina Health System; the Allina Health System Board of Directors; the Allina Health System Retirement Committee; the Allina Health System Chief Administrative Officer; the Allina Health System Chief Human Resources Officer; Clay Ahrens; John I. Allen; Jennifer Alstad; Gary Bhojwani; Barbara Butts-Williams; John R. Church; Laura Gillund; Joseph Goswitz; Greg Heinemann; David Kuplic; Hugh T. Nierengarten; Sahra Noor; Brian Rosenberg; Debra L. Schoneman; Thomas S. Schreier, Jr.; Abir Sen, Sally J. Smith; Darrell Tukua; Penny Wheeler; Duncan Gallagher; Christine Webster Moore; Kristyn Mullin; Steve Wallner; John T. Knight; and John Does 1–20,

Defendants.

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**Civil Action No.: 17-3835-SRN-SER**

**PLAINTIFFS' MEMORANDUM  
OF LAW ADDRESSING  
OBJECTIONS TO THE CLASS  
ACTION SETTLEMENT**

Plaintiffs Judy Larson, Janelle Mausolf, and Karen Reese (collectively, “Plaintiffs”), respectfully submit this Memorandum of Law Addressing Objections to the Class Action Settlement.<sup>1</sup>

## I. OVERVIEW

The Court’s order granting preliminary approval of the Settlement (“Preliminary Approval Order”) (ECF 99) provided, *inter alia*, that:

Any member of the *Settlement Class* or authorized recipient of any *CAFA Notice* may file an objection to the fairness, reasonableness, or adequacy of the *Settlement*, to any term of the *Settlement Agreement*, to the *Plan of Allocation*, to the proposed award of attorneys’ fees and litigation costs, the payment of costs of administering the *Settlement* out of the *Settlement Fund*, or to the request for a *Case Contribution Award* for the *Named Plaintiffs*. An objector must file with the *Court* a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that the objector wishes to bring to the *Court’s* attention or introduce in support of the objection(s).... The objector or his, her, or its counsel (if any) must file the objection(s) and supporting materials with the Court no later than March 16, 2020.

ECF 99 at ¶ 10 (emphasis omitted). The Preliminary Approval Order further provided that any responses to objections should be filed by March 30, 2020. *Id.*

Pursuant to the Preliminary Approval Order, Class Counsel oversaw the issuance of the Court-approved Class Notice. On December 20, 2019, the Settlement/Notice Administrator, JND Legal Administration LLC (“JND”), mailed 69,558 individual Class Notices to Settlement Class members. *See* Declaration of Jennifer M. Keough Regarding

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<sup>1</sup> Undefined capitalized terms herein have the same meaning as in the Settlement Agreement (“Settlement Agreement” or “Agreement”) (ECF 96-1 and 118-1).

Notice Administration (“JND Declaration”) at ¶ 5 (ECF 118-7). The mailing resulted in a 95.87% success rate. *Id.* at ¶ 8. Additionally, the Class Notice was also posted on a dedicated website — [www.AllinaERISASettlement.com](http://www.AllinaERISASettlement.com) — through which Settlement Class members could (i) view a summary description of the Action and the status of the Action, and (ii) access the Settlement Agreement and related Settlement documents. *Id.* at ¶ 9. As of March 6, the Settlement website had tracked 2,765 unique users who registered 6,023 page views. *Id.* at ¶ 10. Class Counsel had also received 448 phone inquiries about the Settlement from Settlement Class members (“Class Members”). *Id.* at ¶ 12, ECF 118-7. Between March 6 and March 27 there have been an additional 1,839 page views from 831 unique visitors, and 24 phone inquiries. *See* ¶ 6 of Declaration of Mark K. Gyandoh on behalf of Class Counsel in Support of Plaintiffs’ Memorandum of Law Addressing Objections to the Settlement (“Gyandoh Supplemental Declaration”) filed concurrently herewith. To date, Class Counsel has also received and responded to 89 emails from Class Members. *Id.*

Most of the inquiring Class Members sought a better understanding of what this case is about and how the Settlement impacted them. *Id.* Some just wanted to update their current address. *Id.* Overall, the Class Members who Class Counsel spoke with support the Settlement. *Id.* Indeed, the four (4) objections received represent less than 0.01% of those who received mailed notice of the Settlement.

## **II. OBJECTIONS TO THE SETTLEMENT**

Plaintiffs filed their memoranda in support of Final Approval of Class Action Settlement; Certification of Settlement Class; Appointment of Class Representatives and

Class Counsel; Approval of Notice to Settlement Class; and Approval of Plan of Allocation (“Final Approval Memo”) and for an Award of Attorneys’ Fees, Reimbursement of Expenses and Case Contribution Awards for the Class Representatives (“Fee Memo”) on March 10, 2020, ahead of the March 16, 2020 objection deadline.<sup>2</sup> The relief requested in the Final Approval Memo and Fee Memo did not deviate in any material way from what was previously disclosed to the Settlement Class in the Class Notice, Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement Agreement (ECF 94, filed on October 16, 2019), or the Settlement materials prominently displayed on the Settlement website.

To date, there have only been four (4) objections filed.<sup>3</sup> These objections do not challenge the fairness or reasonableness of the Settlement; they only challenge the request for attorneys’ fees. Class Counsel preliminarily addressed these objections in the Fee Memo (ECF 122, at 8-9). The four objectors are addressed in turn below.

**Patricia Hines (ECF 101)**

Ms. Hines states that: “I object with the requested amount for the fees and expenses the attorneys are seeking from the Court. One third (33 1/3%) plus a maximum of fifty thousand (\$50,000) for reimbursement of expenses seems excessive. I am requesting the Court to deny their motion and limit the fees and expenses to less [than] 20%.” Ms. Hines goes on to recognize the crux of the allegations in this Action: “[I]t

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<sup>2</sup> Corrected versions of these documents were filed on March 11, 2020 to address technical and non-substantive filing deficiencies. Both the Final Approval Memo and Fee Memo were promptly published to the Settlement website.

<sup>3</sup> Class Counsel does not include among the objections the Motion for Leave to File *Amicus Curiae* in Support of Neither Party by Shiyang Huang. *See* ECF 103. The Court denied Mr. Huang’s motion on February 6, 2020. *See* ECF 111.

appears there were lapses in the fiduciary duties. Bargaining power to keep retirement management fees reasonable was not utilized.... As an individual I have no negotiating power regarding the management fees Fidelity uses in any of their plans.”

Named Plaintiffs and Class Counsel filed the Action to address the very failures Ms. Hines identifies. Protecting workers’ retirement funds is in the public interest. Public policy relies on private sector enforcement of the pension laws as a necessary adjunct to Department of Labor intervention. *See Braden v. Walmart Stores, Inc.*, 588 F.3d 585, 598 (8th Cir. 2009) (“Congress intended that private individuals would play an important role in enforcing ERISA’s fiduciary duties...” (quotation marks omitted)). Courts recognize that Class Counsel’s fees should reflect the important public policy goal of “providing lawyers with sufficient incentive to bring common fund cases that serve the public interest.” *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43,51 (2nd Cir. 2000). While court-awarded fees must be reasonable, setting fees too low or randomly will create insufficient incentives to bringing large class action cases. *See In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at \*3, \*8 (S.D.N.Y. Nov. 7, 2007) (citing *Goldberger*, 209 F.3d at 51). While courts must scrutinize the unique circumstances of each case with “a jealous regard to the rights of those who are interested in the fund,” they must also provide incentives to bring these cases in the future. *Goldberger*, 209 F.3d at 53.

That is why “[i]n the Eighth Circuit, courts have routinely awarded attorney fees ranging from 25% to 36% of a common fund under the percentage-of-the-fund method.” *See Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1061 (D. Minn. 2010)

(approving attorneys' fees of 33% of the common fund). Given the substantial benefit obtained by Class Counsel for the Settlement Class (a fact Ms. Hines does not challenge), the attorneys' fees being requested by Class Counsel are in line with Eighth Circuit precedent as discussed in detail in the Fee Memo.

Ms. Hines's objection to expenses was directed at the maximum amount set out in the Settlement Agreement and the notice: \$50,000. However, Plaintiffs have only requested \$12,413.78 in expenses, far short of the \$50,000 maximum. Accordingly, Ms. Hine's objection is effectively moot. The expenses were incidental to and necessary for the prosecution of this case, and are of the type that courts recognize would normally be charged to fee-paying clients, including filing fees, printing costs, travel expenses for court appearances, copying, delivery and telecommunications charges, and computer-based research. *See, e.g., Beaver County Employees' Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 WL 2588950, at \*3 (D. Minn. June 14, 2017). Accordingly, the requested expenses also should be approved.

**Randall Johnson** (ECF 102)

Mr. Johnson wrote: "I strongly object to the amount of the proposed settlement allocated to attorneys' fees. The amount – 1/3 of the proposed settlement fund – is unconscionable, and egregious." As discussed *supra*, attorneys' fees of 1/3 the settlement fund are endorsed by the Eighth Circuit, especially in the present circumstance where Class Counsel have achieved significant results for the Settlement Class. Like Ms. Hines above, Mr. Johnson does not dispute that Class Counsel achieved significant results for the Class. Mr. Johnson's objection overlooks "the significant risks incurred by

class counsel since [the filing of the Complaint] with no promise of recovery or payment, the extensive experience of and substantial work performed by class counsel, and class counsel's commitment to oversee the [settlement administration] process and future work on this litigation," all of which support the request for attorneys' fees. *George v. Uponor Corp.*, 2015 WL 5255280, at \*8 (D. Minn. Sept. 9, 2015).

Mr. Johnson also seems to imply that Class Counsel, counsel for Defendants, and the Court have come to some sort of "arrangement" regarding attorneys' fees. Obviously, there is no such arrangement in this Action. The Settlement Agreement clearly states that "[p]ursuant to the common fund doctrine and/or any applicable statutory fee provision, *Class Counsel* may apply to the *Court* for and award to *Class Counsel*, of attorneys' fees and reimbursement of expenses, to be paid solely from the *Settlement Fund*." *Id.* at ¶ 10.1. That is precisely what Class Counsel has done in filing the Fee Memo.

**Unknown (ECF 112)**

One objector failed to identify themselves. In handwriting on page 8 of a copy of the Class Notice, this objector states: "The only winner here is the lawyers... and we wonder why healthcare is so expensive." The precise basis for this objection is unclear, but to the extent it suggests Class Counsel's fee request is unreasonable, Class Counsel believes this objection should be overruled for the reasons explained *supra* and in the Fee Memo.

Sharon Atchley (ECF 113)

Ms. Atchley states, *inter alia*: “I object to the requested amount for the fees and expenses the attorneys are seeking from the Court. One third (33 1/3%) PLUS a maximum of fifty thousand (\$50,000) for reimbursement of expenses seems very excessive.” Like Ms. Hines above, Ms. Atchley requests “the Court to DENY THEIR MOTION and LIMIT the fees and expenses to LESS than 20%.” Ms. Atchley also touches upon the merits of the Action stating that the “fiduciary standard was not utilized” and there “were lapses in [Defendants’] fiduciary duties.” Given the substantial overlap in Ms. Atchley and Ms. Hines’ objections, Plaintiffs incorporate here their response to Ms. Hines’ objection.

**III. THE SMALL NUMBER OF OBJECTIONS FROM CLASS MEMBERS SUPPORTS THE SETTLEMENT’S APPROVAL**

The notice program in this case was robust, with Class Notice being mailed to over 69,000 Class Members and posted to the Settlement website. *See* JND Declaration, ¶ 7 (ECF 118-7). Only 2,876 Class Notices remain undeliverable. *Id.* at ¶ 8. As noted above, this represents a 95.87% delivery success rate. Despite the significant number of Class Members who received the Class Notice, only four objections to the Settlement were filed. Thus, less than 0.01% of the Class who received mailed notice object to the Settlement.

Where such a small number of settlement class members object to the settlement, it strongly signals that the settlement should be approved. *See, e.g., Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) (small number of objections relative to a large class



“speaks well of class reaction to the Settlement” and provides support for approval); *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (“The fact that only a handful of class members objected to the settlement similarly weighs in its favor”); *see also Rawa v. Monsanto Co.*, 2018 WL 2389040, at \*7 (E.D. Mo. May 25, 2018) (finding the minimal number of objectors compared to “the large size of the Settlement Class and the extensive public notice” to “weigh in favor of approval” of the settlement). This Action is no different.

#### **IV. CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request that this Court grant the relief sought in their Final Approval Memo and Fee Memo.

Dated: March 30, 2020

Respectfully submitted,

**CAPOZZI ADLER, P.C.**

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*Class Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of March 2020, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which will send a notification to all counsel of record in this Action.

*/s/ Mark K. Gyandoh*

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Mark K. Gyandoh

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Judy Larson, Janelle Mausolf, and Karen Reese, individually and on behalf of themselves and all others similarly situated,

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Defendants.

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**Civil Action No.: 17-3835-SRN-SER**

**CERTIFICATE OF COMPLIANCE**

I, Mark K. Gyandoh, certify that Plaintiffs' Memorandum Of Law Addressing Objections To The Class Action Settlement complies with the limits in Local Rule 7.1(f) and type-size limit of Local Rule 7.1(h). I further certify that Microsoft Word version 2013, 13-point font, Times New Roman typeface, and that this word processing program

has been applied to include all text, including headings, footnotes, and quotations in the word count, which contains 2,387 words.

Dated: March 30, 2020

Respectfully submitted,

**CAPOZZI ADLER, P.C.**

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