

**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' MOTION FOR AN  
AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF  
EXPENSES, AND CASE  
CONTRIBUTION AWARDS FOR  
THE CLASS REPRESENTATIVES**

Plaintiffs Judy Larson, Janelle Mausolf, and Karen Reese (collectively, “Named Plaintiffs”), by and through their undersigned counsel, respectfully move this Court for an award of attorneys’ fees, reimbursement of expenses, and Case Contribution Awards to

each of the Class Representatives in connection with the Settlement achieved in this matter.<sup>1</sup>

Specifically, Plaintiffs request that the Court: (1) award Class Counsel the amount of \$808,252.50 in attorneys' fees; (2) award Class Counsel the amount of \$12,413.78 as reimbursement of litigation expenses; and (3) award Named Plaintiffs the amount of \$5,000 each as an incentive award in recognition of their work on behalf of the Settlement Class in this litigation. The grounds for this Motion are set forth in Plaintiffs' accompanying memorandum of law and counsel declarations.

WHEREFORE, Plaintiffs request that the Motion be granted and that they have such other and further relief as the Court deems just and proper.

Dated: March 10, 2020

Respectfully submitted,

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<sup>1</sup> The Settlement Agreement was previously submitted as Exhibit 1 to the Declaration of Mark K. Gyandoh in support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement [ECF 96-1]. Undefined capitalized terms herein have the same meaning as in the Settlement Agreement.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th 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*

\_\_\_\_\_  
Mark K. Gyandoh

**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,

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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 IN  
SUPPORT OF THEIR MOTION  
FOR AN AWARD OF  
ATTORNEYS' FEES,  
REIMBURSEMENT OF  
EXPENSES AND CASE  
CONTRIBUTION AWARDS FOR  
THE CLASS REPRESENTATIVES**

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Plaintiffs Judy Larson, Janelle Mausolf, and Karen Reese (collectively, “Plaintiffs”), submit this Memorandum of Law in support of their Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Case Contribution Awards for the Class Representatives.

## **I. INTRODUCTION**

Following a hard-fought litigation that encompassed extensive investigation, motion practice, and settlement negotiations, the Parties have now settled this ERISA fiduciary breach class action that provides for the creation of a \$2.425 million Settlement Fund.<sup>1</sup> The Settlement Agreement resolves all of Plaintiffs’ claims.

While the concurrently-filed Memorandum of Law in Support of Plaintiffs’ Motion for Final Approval of Settlement Agreement (“Final Approval Memo”), incorporated herein by reference, demonstrates why the Settlement is an excellent result for the Settlement Class and should be approved, this memorandum addresses Class Counsel’s request for: (i) an award of attorneys’ fees in the amount of \$808,252.50, which represents 33 1/3% of the Settlement Fund; (ii) reimbursement of out-of-pocket litigation expenses of \$12,413.78; and (iii) approval of Named Plaintiffs’ Case

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<sup>1</sup> The Settlement Agreement was previously submitted as Exhibit 1 to the Declaration of Mark K. Gyandoh in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of the Settlement Agreement [ECF 96-1]. It is also attached as Exhibit 1 to the Declaration of Mark K. Gyandoh on behalf of Class Counsel in Support of Plaintiffs’ Motion for Final Approval of Settlement Agreement and in Support of Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses and Case Contribution Awards for the Class Representatives (“Gyandoh Decl.” or “Gyandoh Declaration”). Undefined capitalized terms herein have the same meaning as in the Settlement Agreement.

Contribution Awards of \$5,000 to each Named Plaintiff in recognition of their valuable service to the Settlement Class.

As demonstrated below, the record in this case and the case law in the Eighth Circuit fully support the requested attorneys' fees, reimbursement of expenses, and Case Contribution Awards for the Class Representatives. Given the risks undertaken by Class Counsel and the outcome of Settlement negotiations, Class Counsel respectfully asks that the court grant Plaintiffs' motion for an award of attorneys' fees, reimbursement of expenses, and Case Contribution Awards for the Class Representatives.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

The factual and procedural background of this litigation is described in detail in the Final Approval Memo. In the interests of brevity, Plaintiffs incorporate that discussion by reference here. Additional facts relevant to the Court's consideration for assessing Plaintiffs' requests for attorneys' fees, reimbursement of expenses and Case Contribution Awards are in the relevant sections of this memorandum.

## **III. THE COURT SHOULD APPROVE PLAINTIFFS' ATTORNEYS' FEE REQUEST**

### **A. Legal Standard**

Courts utilize two main approaches in analyzing a request for attorneys' fees by class counsel: the "percentage of the fund" method and the "lodestar" method. *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996). The percentage of the fund method is typically utilized in cases, like this one, where a common fund is created and attorneys' fees are calculated as some fraction of the common fund. *Id.* at 244. While

the Eighth Circuit has not expressly adopted its own test for the reasonableness of a fee award, it has approved of district court decisions considering: (1) the benefit conferred on the class, (2) the risk to which Class Counsel was exposed, (3) the difficulty and novelty of the legal and factual issues of the case, (4) the skill of the lawyers, both plaintiffs' and defendants', (5) the time and labor involved, (6) the reaction of the class, and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases." *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming attorney fee award of one-third of \$60 million settlement).

Here, the same factors also warrant Class Counsel's requested fee of one-third of the common fund.

## **B. The Requested Fee Is Fair and Reasonable**

### **1. The Benefit Conferred on the Class**

As explained in the Final Approval Memo, the Class Settlement Amount of \$2.425 million is approximately 30.3% of the Settlement Class's maximum potential damages. *See also* Gyandoh Decl. at 10. This percentage signifies a significant recovery for the Class. *See, e.g., Keil v. Lopez*, 862 F.3d 685, 696 (8th Cir. 2017) (finding that a 27% recovery of maximum possible full verdict at trial to be reasonable). However, the Settlement may actually represent a much higher percentage of the Plaintiffs' *likely* damages. The \$8 million figure is based in large part in alleged kickbacks on investment fees that Fidelity Management Trust Company ("FMTC") received from non-affiliated investment managers. Gyandoh Decl. at ¶ 8. However, Defendants produced documents that suggest that these monies actually offset recordkeeping and other charges to the

Plans, which would reduce the potential full damages figure by at least \$4 million. The Settlement represents over 60% of the Class's damages remaining after such reduction, a percentage that compares favorably with the recoveries in comparable cases where settlements were approved. *See, e.g., Urakchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL 3000490, \*4 (C.D. Cal. Feb. 6, 2018) (granting preliminary approval to settlement that represented 25.5% of plaintiffs' losses) and Docket Entries 185 and 186 (final approval order and judgment of that settlement).

The proposed Settlement here is the result of lengthy, contentious, and complex arms-length negotiations between the Parties. Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented. In light of the uncertain and high-stakes backdrop, the proposed Settlement is an exceptional result for the Settlement Class.

## **2. The Risk to which Class Counsel was Exposed**

ERISA class actions alleging excessive fees or biased investment selection must survive myriad uncertainties, and the accompanying risks, in order to provide any relief to the class. Since this case was filed, another case, brought by other counsel, against Wells Fargo for the use of proprietary funds in its 401(k) plan was dismissed: *Meiners v. Wells Fargo & Co.*, 2017 WL 2303968 (D. Minn. May 25, 2017). That dismissal was affirmed by the Eighth Circuit. *Meiners*, 898 F.3d 820 (8th Cir. 2018). Another case survived a motion to dismiss and summary judgment, only to end in a defense verdict. *Wildman v. Am. Century Servs., LLC*, 362 F. Supp. 3d 685 (W.D. Mo. 2019). In *Wildman*, as in this case, the plaintiffs had adequately addressed that defendants had

breached their fiduciary duties at the pleading stage, like in this case, but ultimately failed to prevail at trial. *See also Sacerdote v. NYU*, 328 F. Supp. 3d 273 (S.D.N.Y. 2018) (analogous case to *Wildman* ending in defense verdict).

Here, Plaintiffs face significant obstacles to ultimately prevailing on their claims. Breach of fiduciary duty claims under ERISA depend on the process by which decisions were made rather than the results of those decisions. *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595 (8th Cir. 2009). The Plans' investment decisions were made by the Allina Health System Retirement Committee ("Committee"). Defendants maintain that the process by which the Committee approved FTMC's investment selection meets the requirements of ERISA. Further, Defendants maintain that evidence showing that recordkeeping fees were renegotiated several times over the past decade belies Plaintiffs' characterization of the Committee's process. These disputed issues support the Settlement's approval. *See, e.g., Cooper v. Integrity Home Care, Inc.*, 2018 WL 3468372, at \*2 (W.D. Mo. July 18, 2018) ("A settlement is bona fide if it reflects a reasonable compromise over issues actually in dispute.").

Moreover, Plaintiffs established that Defendants breached their fiduciary duty, proving damages would not be a given. As set forth above, the \$8 million damages amount was a "best case" scenario, a number that Defendants would try to minimize if not eliminate at the summary judgment stage or at trial. For example, in addition to claiming that the revenue sharing of non-affiliated investment options offset fees that otherwise would have been charged to the Plans, Defendants would also claim that any

damages from failing to properly identify the fees charged to participants in the Plans on their quarterly statements are minimal.

Accordingly, this factor also supports approval of attorneys' fees.

**3. The Difficulty and Novelty of the Legal and Factual Issues of the Case**

ERISA 401(k) fiduciary breach class actions fall within a complex area of the law, which requires a willingness to risk significant resources in time and money, given the uncertainty of recovery and the protracted and sharply-contested nature of ERISA litigation. A class action alleging inclusion of imprudent proprietary funds in a 401(k) plan "is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation," *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at \*1 (D. Minn. July 13, 2015), adding to the already great risk of such litigation. While some ERISA fiduciary breach cases concerning the selection and monitoring of plan investment options have settled, others have been dismissed entirely or have resulted in protracted legal battles even after findings of liability. *Tussey v. ABB, Inc.*, an ERISA fiduciary breach case concerning the inclusion of allegedly imprudent investment options, spanned a decade of litigation, including four weeks of trial and two appeals before resulting in a payment to the class and plaintiffs' counsel. *See Kennedy v. ABB, Inc.*, No. 06-4305 (W.D. Mo.).

**4. The Skill of the Lawyers**

Given the difficulties and risks noted above, counsel pursuing class actions such as this one must be knowledgeable about this complex and developing area of law, be aware

of numerous merits and procedural pitfalls (including the risk of dismissal at any stage), be willing to risk dismissal at any stage, and be prepared to pursue many years of litigation. Indeed, ERISA has been described as a “comprehensive and reticulated statute.” *Nachman Corp. v. Pension Ben. Guar. Corp.*, 446 U.S. 359, 361 (1980).

Here, Class Counsel not only have substantial experience in ERISA class actions, they have litigated numerous cases such as this one involving 401k plan fees and expenses. In fact, Plaintiffs are represented by some of the most experienced ERISA fiduciary breach firms in the country. The law firms of Kessler Topaz Meltzer & Check LLP (“KTMC”), Bailey Glasser LLP (“Bailey Glasser”), Izard, Kindall & Raabe, LLP (“IKR”), and Nichols Kaster, PLLP (“Nichols Kaster”) are Class Counsel. Class Counsel are among the most prominent, experienced, and well-regarded ERISA class action litigators in the nation. Additionally, Mark K. Gyandoh, formerly of KTMC for the majority of the litigation, is now at Capozzi Adler, P.C. as Plaintiffs’ Counsel. At each firm, the responsible attorneys and/or their firms have been pioneers in ERISA class action litigation as indicated in their respective declarations filed in support of this fee petition. *See* Declarations of Donna Siegel Moffa (“KTMC Decl.”) at ¶¶ 3-4 ; Mark Boyko, (“Bailey Glasser Decl.”) at ¶ 3; Mark Kindall (“Izard Kindall Decl.”) at ¶¶ 3-4; and Kai Richter (“Nichols Kaster Decl.”) ¶¶ 3-4 attached as Exhibits 2, 3, 4, and 5 to the Gyandoh Declaration, filed contemporaneously herewith.

Class Counsel were able to navigate a legal minefield, leveraging their vast experience with similar matters and particular expertise to achieve a positive and meaningful benefit to the Settlement Class. This expertise was needed given that

Defendants were represented by two of the most preeminent firms in the country: Dorsey & Whitney LLP and Steptoe & Johnson LLP.

### **5. Time and Labor Expended by Counsel**

Plaintiffs are represented by four nationally recognized firms as Class Counsel. All have expertise in this narrow area of law. Together, counsel have expended 1,533.60 hours, and incurred \$12,413.78 in expenses litigating this Action. *See* Gyandoh Decl. at ¶ 38. Based on Class Counsel's experience with similar cases, at least 35 to 40 additional hours are expected for among other things, future communications with Settlement Class members, attendance at the Fairness Hearing, and monitoring of Defendants' compliance with the Settlement. *Id.* at ¶ 35.

Class Counsel researched the litigation pre-filing, developed relevant facts, and worked with Plaintiffs on drafting the Complaint. Class Counsel minimized expenses where possible. With over 1,500 hours of time spent on this litigation, Class Counsel have been both diligent and efficient in obtaining a meaningful recovery for the Settlement Class and the Plans. As explained below in discussion of a lodestar cross check, the requested fee represents a risk multiplier of 1.06.

### **6. The Reaction of the Class**

On December 20, 2019, JND Legal Administration LLC ("JND"), the Settlement Administrator, mailed Class Notices to 69,558 persons identified as Settlement Class members. The Class Notice advised Settlement Class members that Class Counsel would seek up to \$808,252.50 in attorneys' fees and reimbursement of expenses up to \$50,000. Out of the almost 70,000 notices sent, only four (4) objections have been lodged so far to

the request for attorneys' fees. Each of the objectors ask the Court to award Class Counsel less than the requested attorneys' fees and reimbursement of expenses. *See generally* ECF 101 (objection of Patricia P. Hines); 102 (objection of Randall K. Johnson); 112 (unidentified objector); and 113 (objection of Sharon Atchley). However, the objections provide no substantive support for denying Class Counsel's fee request.<sup>2</sup> As set forth here and in the Final Approval Memo, Class Counsel have achieved an excellent result for the Settlement Class, and have done so in as cost-conscious manner as possible.

“In 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 the objectors do not challenge), the attorneys' fees being requested by Class Counsel are in line with Eighth Circuit precedent.

#### **7. The Comparison between the Requested Attorney Fee Percentage and Percentage Awarded in Similar Cases**

In ERISA fee, and proprietary fund litigation specifically, a one-third contingency fee is the market rate. In numerous prior settlements of 401(k) fee cases, class counsel were awarded one-third of the monetary recovery to the plans. Class Counsel in this case

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<sup>2</sup> These objections, as well as any others that are filed before the objection deadline of March 16, 2016, will be addressed fully by Class Counsel by the deadline of March 30, 2020, which is set forth in the Preliminary Approval Order. *Id.* at ¶ 10.

recently prevailed before the Eighth Circuit in an appeal objecting to Class Counsel's request for one-third of attorneys' fees in a similar ERISA fiduciary breach matter. *See McDonald v. Edward Jones*, 791 F.App'x 638, 640 (8th Cir. 2020) (affirming judgment that awarded the class counsel attorneys' fees of 1/3 of the settlement fund); *see also Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at \*6 (M.D.N.C. Sept. 29, 2016); *Spano v. The Boeing Co.*, 2016 WL 3791123, at \*4 (S.D. Ill. Mar. 31, 2016); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at \*4 (S.D. Ill. July 17, 2015); *Krueger*, 2015 WL 4246879, at \*4; *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at \*4 (S.D. Ill. Jan. 31, 2014). These fee awards from comparable ERISA 401(k) class actions filed around the time that Plaintiffs filed this Action, represent a recognition by those courts that an award of one-third of the monetary recovery as attorneys' fees is appropriate in cases of this type. This Court should reach the same conclusion here.

## **8. Public Policy Considerations**

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. *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)). 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.

Accordingly, public policy supports the request for attorneys’ fees in this matter.

**C. A Lodestar Crosscheck Confirms the Reasonableness of the Fee Request**

While the Eighth Circuit has recognized the primacy of the percentage of recovery approach, it has also endorsed use of the lodestar method as a “cross check.” *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999). To arrive at the lodestar, the hours expended are typically multiplied by each attorneys’ respective hourly rate. The hourly rate to be applied in calculating the lodestar is that which is normally charged in the community where the attorney practices. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). “Community” in this sense is more expansive than geography. Indeed, “[t]he legal communities of today are increasingly interconnected. To define markets simply by geography is too simplistic. Sometimes, legal markets may be defined by practice area.” *Arbor Hill v. County of Albany et al.*, 522 F.3d 182, 192 (2d Cir. 2008). The rates charged by counsel who specialize in large-scale, complex ERISA cases are relevant “because ERISA cases involve a national standard, and . . . ERISA cases are often considered to be complex, ERISA plaintiff cases are often undesirable, and Plaintiff’s attorneys possess extensive experience in ERISA law.” *Mogck v. Unum Life Ins Co. of*

*Am.*, 289 F. Supp. 2d 1181, 1191 (S.D. Cal. 2003). Current rates are used, since such rates compensate for inflation and the loss of use of funds. *Id.* The Court should also take into account “the attorneys’ legal reputation, experience and status.” *In re Charter Commc’n, Inc., Sec. Litig.*, 2005 WL 4045741 (E.D. Mo. June 30, 2005).

In addition, a multiplier is used “to account for, among other things, the results achieved, the quality of representation, the complexity and magnitude of the litigation, the consequent risk of nonpayment viewed as of the time of filing the suit, and the contingent nature of the expected compensation for services rendered.” *Id.* (approving a fee request with a lodestar multiplier of 5.61). Multipliers between 5x and 6x are frequently approved. *In re RJR Nabisco Sec. Litig.*, 1992 WL 210138 (S.D.N.Y. Aug. 24, 1992) (multiplier of 6x); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172 (W.D.N.Y. 2011) (5.3x multiplier); *In re Rite Aid Corp. Secs. Litig.*, 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001) (concluding that, under the cross-check approach, a lodestar multiplier in the range of 4.5 to 8.5 was “unquestionably reasonable”); *In re Beverly Hills Fire Litig.*, 639 F. Supp. 915 (E.D. Ky. 1986) (5x multiplier); *In re Boston & Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A.*, 778 F.2d 890 (1st Cir. 1985) (6x multiplier)); *New Eng. Carpenters Health Benefits Fund v. First Databank*, 2009 WL 2408560 (D. Mass. Aug. 3, 2009) (awarding a fee representing a multiplier of approximately 8.3 times the lodestar).<sup>3</sup>

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<sup>3</sup> Moreover, the requested fee award is also within the range of fee awards routinely found to be reasonable within this Circuit using the lodestar analysis. *See, e.g., Ewald v. Royall Norwegian Embassy*, 2015 WL 1746375, at \*18 (D. Minn. Apr. 13, 2015)

Here, Class Counsel have collectively worked 1,533.60 hours, resulting in a base lodestar of \$765,541.00 to date. *See* Gyandoh Decl. at ¶ 38. The basis for this calculation and the reasonableness of counsel's rates are attested to by the filed declarations and represent the customary hourly rates of the attorneys. These rates were effectively approved by the district court in the *McDonald* case and affirmed by the Eighth Circuit. *See McDonald*, 791 F.App'x 638 at 640 (affirming judgment).

Moreover, Class Counsel have been efficient in litigating this case. "Had the case not been settled, considerably more time would have been necessary to complete formal discovery... and to prepare this case for trial with no assurance that the outcome would have been any more successful." *In re Charter Commc'n, Inc. Sec. Litig.* at \*18. The lodestar multiplier of Plaintiffs' requested fee is 1.06. Thus, under a lodestar analysis, the requested fee award is indisputably reasonable.

**D. Class Counsel Should Be Reimbursed For Their Incurred Expenses**

Class Counsel should also be reimbursed the \$12,413.78 in litigation expenses that they advanced in prosecuting this case under FED. R. CIV. P. 23(h) which provides that courts in certified class actions may "award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." FED. R. CIV. P. 23(h). Reasonable costs and expenses are routinely awarded in ERISA class action cases where they are directly related to counsels' representation of the class. *See, e.g., Beaver County Employees' Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 WL 2588950, at \*3 (D. Minn.

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(awarding \$1,773,719.05); *Morales v. Farmland Foods, Inc.*, 2013 WL 1704722, at \*11 (D. Neb. Apr. 18, 2013) (awarding \$2,008,142).

June 14, 2017). Normal costs properly reimbursed include computerized legal research, copying costs, and travel. *See Morales v. Farmland Foods, Inc.*, 2013 WL 1704722, at \*11 (D. Neb. Apr. 18, 2013). Further, courts have observed that where counsel undertakes litigation on a contingent-fee basis, “they ha[ve] a strong incentive to keep these expenses at a reasonable level.” *Krueger*, 2015 WL 4246879, at \*3 (citing *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010)).

In prosecuting this case, Class Counsel incurred \$12,413.78 in litigation-related expenses for which they respectfully seek reimbursement. These expenses are itemized in further detail in the individual declarations of Class Counsel. 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, computer-based research, and database services. Class Counsel respectfully submit that their request for reimbursement of expenses is reasonable and should be approved.

**E. The Class Representatives’ Efforts on Behalf of the Class Merit the Requested Case Contribution Awards.**

Plaintiffs request that Class Representatives be granted Case Contribution Awards in compensation for the time and effort they expended in successfully prosecuting this case to a successful resolution. Such awards acknowledge representative plaintiffs’ hard work and sacrifices in support of the class, as well as their promotion of the public interest. “Courts often grant service awards to named plaintiffs in class action suits to

promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits,” and courts in this circuit regularly grant service awards for \$10,000 or greater. *Caligiuri*, 855 F.3d at 867. *See also In re Aquila ERISA Litig.*, 2007 WL 4244994, at \*3 (W.D. Mo. Nov. 29, 2007) (awarding incentive awards between \$5,000 and \$25,000 for named plaintiffs because they “rendered valuable service to the Plan and all Plan Participants. Without this participation, there would have been no case and no settlement.”).

Here, Plaintiffs seek awards of \$5,000 for each Class Representative, amounts that are well-deserved. Each of the Class Representatives have been closely involved in this litigation since its inception. They provided documents relating to their employment at Allina and their participation in the Plans, reviewed drafts of the pleadings and approved the filing of the final versions, and monitored Class Counsel and the progress of the litigation. Gyandoh Decl. at ¶ 42.

Moreover, Plaintiffs willingly put themselves forward in litigation against their former employer regarding their personal finances. “ERISA litigation against an employee’s current or former employer carries unique risks, including alienation from employers or peers.” *Krueger*, 2015 WL 4246879, at \*3 (issuing incentive awards of \$25,000 each to five named plaintiffs in ERISA action against former employer). In recognition of their commitment to the class and selfless service, the requested Case Contribution Award is reasonable. Substantially larger awards have been approved as well within the ranges that are typically awarded in comparable cases. *See, e.g., Tussey v. ABB, Inc.*, 2012 WL 1113291, at \*21 (W.D. Mo. Nov. 2, 2012)(awarding \$25,000 to each

class representative in ERISA 401(k) fee class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)(upholding award of \$25,000 to class representative); *Beesley v. Int'l Paper*, 2014 WL 375432, at \*4 (awarding \$25,000 to each of the three named plaintiffs); *Nolte v. Cigna Corp.*, Case No. 07-2046, Doc. 413 at 9 (C.D. Ill. Oct. 15, 2013)(same); *Will v. Gen. Dynamics Corp.*, No. 06-698, Doc. 253 at 26 (S.D. Ill, Nov. 4, 2010)(same).

#### **IV. CONCLUSION**

For these reasons, Plaintiffs request that the Court approve an award attorneys' fees in the amount of \$808,252.50, reimbursement of expenses to Class Counsel in the amount of \$12,413.78, and Case Contribution Awards of \$5,000 to each of the Class Representatives: Judy Larson, Janelle Mausolf, and Karen Reese.

Dated: March 10, 2020

Respectfully submitted,

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***Class Counsel***

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th 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*

\_\_\_\_\_  
Mark K. Gyandoh

**CERTIFICATE OF COMPLIANCE**

I, Mark K. Gyandoh, certify that Plaintiffs' Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement Agreement 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 4,185 words.

*/s/ Mark K. Gyandoh*

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Mark K. Gyandoh

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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.

Case No. 17-cv-03835 (SRN/SER)

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR AN  
AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES  
AND CASE CONTRIBUTION  
AWARDS FOR THE CLASS  
REPRESENTATIVES**

This *Action* came for hearing on April 16, 2020 on the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses incurred in the Action and for Case Contribution Awards for the Class Representatives. Having considered all papers filed and proceedings conducted herein, having found the

Settlement of this Action to be fair, reasonable, and adequate, and otherwise being fully informed in the premises and good cause appearing therefrom:

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

Except as otherwise defined herein, all capitalized and italicized terms used in this Order shall have the same meanings as ascribed to them in the *Settlement Agreement* executed by *Named Plaintiffs* and *Defendants*.

1. The *Court* has jurisdiction over the subject matter of the *Action* and over all *Parties* to the *Action*, including all members of the *Settlement Class*.

2. Class Counsel are hereby awarded attorneys' fees of 808,252.50 and reimbursement of expenses in the sum of \$12,413.78 ("Attorneys' Fees/Expenses"), to be paid from the Settlement Fund. The Court finds that the amount of fees awarded is appropriate, fair, and reasonable given the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Settlement Class.

3. Each of the Class Representatives are awarded \$5,000.00 as a Case Contribution Award, as defined in the Settlement Agreement, in recognition of their contributions to this Action.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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Hon. Susan Richard Nelson  
United States District Judge