

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

CHARLEAN FOSTER,)
KATHLEEN MILTON,)
PAUL E. BLAIR,)
MAI R. THURMAN,)
CLAUDIA M. SMITH,)
DARLENE BREIT and)
GLORIA D. GLOVER,)

Plaintiffs,)

v.)

SHERMAN ACQUISITION, LP,)
SHERMAN FINANCIAL GROUP LLC,)
SHERMAN ACQUISITION II, LP,)
SHERMAN ACQUISITION II)
GENERAL PARTNER LLC,)
REDLINE RECOVERY)
SERVICES, LLC,)
NATIONAL ACTION)
FINANCIAL SERVICES, INC.,)
FINANCIAL RECOVERY)
SERVICES, INC.)
M.R.S. ASSOCIATES, INC., and)
NATIONAL ENTERPRISE SYSTEMS,)
INC.,)

Defendants.)

04 C 1072

Judge Gottschall
Magistrate Judge Denlow

**MEMORANDUM OF CLASS COUNSEL IN SUPPORT OF
REQUEST FOR ATTORNEYS' FEES AND COSTS**

Plaintiffs Charlean Foster, Kathleen Milton, Paul Blair, Mai R. Thurman, Claudia
Smith, Darlene Breit, Gloria Glover, Tamara Durygina, Beatrice Ortt, Ora Ezell, Roy Madlock,
Steven Montgomery, Cyrus Bradbury, Sabrina Washington, Carol Nelson, Melvin Stewart, Erika
T. Wepner, Dorothy King, Richard Cwienkala, Julie Rhodes, Roberta L. Curtis, Rosemary
Claybon, Leslie A. Raub, Ami M. Thomas, Patty K. Reiser, Brenda Youngblood, Susan

Rosenberg, LeGirtha Knight, Paul E. Lucas, Norman G. Rauchenecker, Carol L. Noel, Georgetta Lopez, and Noah Downs (“Plaintiffs”), individually and as representatives of classes of similarly situated persons, by Class counsel, Edelman, Combs, Lattuner & Goodwin, LLC, respectfully submit this memorandum in support of their request for an award of attorneys’ fees and costs.

Class counsel include experienced class action attorneys, all of whom contributed their skills and expended their resources in a coordinated effort that resulted in the settlement of this matter. Class counsel expended \$399,173.00 in fees and \$33,997.91 in expenses in prosecuting these fourteen actions. See Declaration of Daniel A. Edelman (hereinafter “Edelman Dec.”)(Appendix A).

As compensation for their efforts on behalf of Plaintiffs and the Classes and pursuant to the Settlement Agreement (“Agreement”), Class counsel request approval of attorneys’ fees and costs in the amount of \$650,000 to be paid separate and apart from the settlement fund. The amount is approximately 15% of the total economic value of the settlement, which includes at least \$10 million in credits and \$166,000 in refunds and represents a 1.54 multiplier of Class counsel’s lodestar (after deduction for expenses as described below). The amount is also reasonable in relation to the time and effort expended by Class counsel in pursuing the various cases on behalf of the Classes.

I. NATURE OF THE SETTLEMENT

Unlike a standard “common fund” settlement, this settlement consists of two components. The primary benefit provided by the settlement is a 15% credit to the class members’ account balances which Defendants estimate to be in excess of \$10 million. In

addition to the credit, the settlement also provides a refund of approximately \$166,000, which represents the interest in excess of 5% and 21% that was actually paid by class members in Illinois and Indiana, respectively.

II. COUNSEL IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS

An award of adequate compensation to assure protection of legal rights is critical in consumer class actions. The Supreme Court has repeatedly recognized the importance of private litigation as a necessary and desirable tool to assure the effective enforcement of the antitrust laws, and the same principle applies to consumer class actions. See, e.g., Pillsbury Co. v. Conboy, 459 U.S. 248, 262-63 (1983); Reitner v. Sonotone Corp., 442 U.S. 330, 331 (1979); Fortner Enterprises Inc. v. U.S. Steel Corp., 394 U.S. 495, 502 (1969); Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 139 (1968); Minnesota Mining & Mfg. Co. v. New Jersey Wood Finishing Co., 381 U.S. 311, 318-19 (1965). As the Seventh Circuit noted in a case brought under the Fair Debt Collection Practices Act:

Congress provided fee shifting to enhance enforcement of important civil rights, consumer-protection, and environmental policies. By providing competitive rates we assure that attorneys will take such cases, and hence increase the likelihood that the congressional policy of redressing public interest claims will be vindicated.

Toletino v. Friedman, 46 F.3d 652-53 (7th Cir. 1995)(citing Student Public Interest Research Group v. AT&T Bell Laboratories, 842 F.2d 1436, 1449 (3d Cir. 1989).

The Seventh Circuit has specifically authorized the district courts to award attorneys' fees using the lodestar method or the percentage of fund method. Cook v. Niedert, 142 F.3d 1004, 1018 (7th Cir. 1998).

Generally, in a class action, even where the parties have reached agreement as to

the appropriate amount of the fee and it is clear that the question of fees did not affect the substantive terms of the settlement, the fee is still subject to Court approval. In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Lit., 55 F.3d 768, 819-20 (3d Cir.), cert. denied, 116 S. Ct. 88 (1995). However, a negotiated fee agreed upon under circumstances -- where there could be no connection between the amount of the fee and the class recovery -- is entitled to substantial weight. See In re First Capital Holdings Corp Fin. Prods. Sec. Litig., 33 F.3d 29 (9th Cir. 1994)(fee request approved where it was 'negotiated between the parties and was in addition to the benefits provided to the Class); In re M.D.C. Holdings Sec. Lit., 1990 U.S. Dist. LEXIS 15488, [1990 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶ 95,474 at 97,487-88 (S.D. Cal. Aug. 30, 1990)(“Because this Court believes the parties should be encouraged to settle all their disputes as part of the settlement of a derivative case, including the amount of the fee, it believes that if the agreed-to fee falls within a range of reasonableness, it should be approved as part of the negotiated settlement between plaintiffs and defendants”); Armstrong v. Board of Sch. Dirs., 471 F. Supp. 800, 810-11 (E.D. Wis. 1979), aff’d, 616 F.2d 305 (7th Cir. 1980) (after carefully considering all factors set forth in Manual for Complex Litigation and materials submitted by plaintiffs’ attorneys in support of fee request, court found that settlement agreement's provision for plaintiffs’ attorney’s compensation was "fair, reasonable, and adequate under all of the circumstances of this case.”); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 720 (5th Cir. 1974) (encouraging both sides to “understandingly, sympathetically, and professionally arrive at a settlement as to attorney’s fees”); In re First Capital Holdings Corp. Fin. Prods. Sec. Lit., MDL No. 901, 1992 U.S. Dist. LEXIS 14337, at *13 (C.D. Cal. June 10, 1992) (“[t]he fee was negotiated at arms’ length with sophisticated defendants by the attorneys

who were intimately familiar with the case, the risks, the amount and value of their time, and the nature of the result obtained for the class [T]he Court is reluctant to interpose its judgment as to the amount of attorneys' fees in the place of the amount negotiated “).

As there is no “common fund” in this case out of which attorney’s fees will be paid, Class counsel show by the lodestar method their considerable investment of time in this cases. Class counsel and paralegal staff spent a total of approximately 2,052.2 hours on this matter. The total lodestar (hours x hourly rates) in this case – \$399,173 is the sum of all Class counsels’ lodestars. (Appendix A). Throughout this case, Class counsel endeavored to assure that work would be done efficiently as well as thoroughly. In allocating work, Class counsel sought to assure that the appropriate lawyer was used. In all, Class counsel can assure the Court that efforts were taken throughout to make sure that this case was prosecuted not only aggressively and thoroughly, but also efficiently.

In computing the lodestar, the hourly billing rate applied is the hourly rate that is normally charged in the community where counsel practices, *i.e.*, the “market price.” See, e.g., Blum, 465 U.S. at 895; McDonald v. Armontrout, 860 F.2d 1456, 1459 (8th Cir. 1988)(“in most cases, billing rates reflect market rates — they provide an efficient and fair short-cut for determining the market rate”); Spencer v. Comserv Corp., 1986 WL 15155, Fed.Sec.L.Rep. ¶ 93, 124, at 95, 532 (D. Minn. Dec. 30, 1986)(“[c]ompensating a nationally recognized securities class action attorney at his hourly rate is entirely appropriate.”); Lindy I, 487 F.2d at 167 (“The value of an attorney’s time generally is reflected in his normal billing rate.”). The hourly rates of class counsel and a detailed listing of class counsel’s lodestar are explained in Appendix A.

The United States Supreme Court and many lower courts have held that the use of

current rates is proper to compensate for inflation and the loss of use of funds. See e.g., Missouri v. Jenkins, 491 U.S. 274 (1989); Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711, 716 (1987); Skelton v. General Motors Corp., 860 F.2d 250, 255 (7th Cir. 1988), cert. denied, 493 U.S. 810 (1989); Johnson v. University College of University of Alabama, 706 F.2d 1205, 1210-1211 (11th Cir.), cert. denied, 464 U.S. 994 (1983); Norman, 836 F.2d at 1302; Copeland v. Marshall, 641 F.2d 880, 893 (D.C. Cir. 1980)(en banc); In re Union Carbide Corp. Consumer Prod. Business Sec. Litig., 724 F. Supp. at 163.

Class counsel submit that the hours spent on these fourteen cases are reasonable and reflect the commitment of Class counsel to achieving a successful result. The hours spent in this matter on a fully contingent basis, in connection with the significant risk faced by Class counsel, support an award of approximately 15% of the total economic value of the settlement, under the percentage method.

III. OVERVIEW OF THE LITIGATION PRECEDING SETTLEMENT.

Plaintiffs are members of fourteen class action lawsuits filed in Illinois, Indiana, Wisconsin, and Michigan against the Sherman Family of Companies (“Sherman”) and the debt collectors who were collecting on behalf of Sherman. The class actions were based upon form collection letters received by the Plaintiffs which violate various portions of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”). The specific allegations of each of these cases are contained in Plaintiffs’ Memorandum in Support of Final Approval of Class Action Settlement, filed concurrently with this Petition.

Each of the cases was at a different litigation stage when the settlement was reached. Plaintiffs had moved for certification of the class in several of the cases. In a majority

of the causes of action, Plaintiffs had exchanged numerous sets of written discovery with Defendants. In a majority of the causes of action, Defendants had filed a dispositive motion, some of which had been ruled upon and some of which were pending at the time of settlement.

Class counsel's request for fees and costs of \$650,000 is also appropriate under the lodestar method of calculation. This represents a multiplier of 1.54, (after deduction of expenses as discussed below) which is reasonable and fair in light of the degree of risk. See e.g., In re Continental Securities Litigation, 962 F.2d 566, 569 (7th Cir. 1992) (Reversible error found where district court refused to award a risk multiplier); Florin v. Nationsbank of Georgia, N.A., 34 F.3d 560, 565 (7th Cir. 1994)(Risk multiplier mandated in common fund cases where counsel had "no sure source of compensation.").

Other courts have awarded fees that resulted in significantly higher multiples of the lodestar. See Roberts v. Texaco, Inc., 979 F. Supp. 185 (S.D.N.Y. 1997) (Applying multiplier of 5.5) Willson v. New York Life Insurance Co., 1995 N.Y. Misc. LEXIS 652, *94 (S.Ct., 1995)(awarding fee that resulted in multiple of 4.6 times the lodestar), citing Weiss v. Mercedes-Benz of No. American, Inc., 899 F. Supp. 1297 (D.N.J., 1995)(awarding fee that resulted in multiple of 9.3 times the lodestar); In re RJR Nabisco, Inc., Sec.Litig., [1992 Transfer Binder] Fed.Sec.L.Rep. (CCH) P 96,984, at 94,267 (S.D.N.Y. 1992)(multiplier of 6); Cosgrove v. Sullivan, 759 F.Supp. 166 (S.D.N.Y. 1991)(multiplier of 8.74); Glendora Community Redevelopment Agency v. Demeter, 155 Cal. App. 3d 465, 202 Cal. Rptr. 389 (1984)(fee award was 12 times the lodestar); Goldenberg v. Marriott PLP Corp., 33 F. Supp.2d 434, 439, n. 6 (D. Md. 1998)(noting that multipliers of 3 - 4.5 have been common over the years).

This case was prosecuted by Class counsel on a contingent fee basis with no

assurance of any fee. In undertaking to prosecute this case on that basis, Class counsel assumed a significant risk of nonpayment or underpayment. Numerous cases recognize that the contingent fee risk is an important factor in determining the fee award. See In re Continental Illinois Sec. Litig., 962 F.2d 566 (7th Cir. 1992)(holding that when a common fund case has been prosecuted on a contingent basis, plaintiff's counsel must be compensated adequately for the risk of non-payment); Ressler, 149 F.R.D. at 651, 654 (M.D. Fla. 1992)("Numerous cases recognize that the attorney's contingent fee risk is an important factor in determining the fee award.").

Class counsel are experienced lawyers, with extensive experience in class action cases. See Appendix A. Class counsel filed well-researched complaints, conducted discovery, filed briefs, and engaged in difficult and lengthy negotiations which resulted in the Settlement. In light of the work performed in all of these matters, the request of Class counsel for \$650,000 is reasonable, and Plaintiffs accordingly request approval of this amount.

Plaintiffs' counsel are entitled to reimbursement of their out-of-pocket expenses incurred in this matter so long as they are consistent with what the private market would bear and are billed with the level of detail that paying clients would find satisfactory. Synthroid, 264 F.3d at 722, citing other Seventh Circuit cases. The request for reimbursement of expenses meets both of these standards.

The Agreement contemplates that the \$650,000 payment to Class counsel will include reasonable expenses incurred. As set forth in the accompanying Declaration, those expenses are equal to \$33,997.91 and were necessary to the prosecution of this case, are consistent with what the private market would bear, and are billed with the level of detail that

paying clients would find satisfactory.

IV. CONCLUSION

For all the reasons set forth above, Plaintiffs, individually and as representatives of Classes of similarly situated persons, by counsel, request this Honorable Court grant Class counsel's fee petition.

Respectfully submitted,

s/Daniel A. Edelman
Daniel A. Edelman

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CERTIFICATE OF SERVICE

I, Daniel A. Edelman, hereby certify that on December 8, 2005, a copy of the foregoing **PLAINTIFFS' MEMORANDUM IN SUPPORT OF REQUESTS FOR ATTORNEYS' FEES AND COSTS** was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Parties without access to the Court's electronic filing system will be served a copy of this document by United States mail.

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