IN CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

TANISHA RODRIGUEZ, on behalf of herself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. 2020-CH-07031
	)	Hon. Neil H. Cohen
MAT ASPHALT LLC,	)	
Defendant.	)	

PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR FEES

NOW COMES Plaintiff Tanisha Rodriguez, on behalf of herself and all other similarly situated, to move the Court for final approval of class action settlement pursuant to 735 ILCS 5/2-806 and enter the Proposed Order Granting Final Approval attached hereto as **Exhibit 7**: (1) granting final approval of the Settlement Agreement and Mutual Release ("Settlement"); (2) finally certifying the class for settlement purposes; (3) approving Class Counsel's request for attorney's fees and costs; (4) approving Class Counsel's request for an incentive award to the Named Class Representative; and (5) authorizing Class Counsel to administer the settlement in accordance with the terms of the Settlement Agreement.

INTRODUCTION

Following this Court's November 17, 2023 Order Preliminary Approving Class Action Settlement, the approved Notice was disseminated to all known residential addresses within the Class Area. Plaintiff is pleased to report that the Class response was overwhelmingly positive.

Hundreds of claim forms have been received. There was only one objection, and 17 households exercised their right to opt out. [**Ex. 4**, Opt Out List; **Ex. 8**, Objection]. Based on Plaintiff's Counsel's extensive experience litigating cases of this type, this represents an outstanding and overwhelmingly positive reaction from the Class. Indeed, Class Counsel has received a number of positive messages directly from Class Members who wished to express their support for the terms of the Settlement Agreement.[1] [**Ex. 3**, Sheets Decl.]. Accordingly, Plaintiff now moves this Court for entry of an order finally approving the Settlement, so that relief can be distributed to the Class and the valuable improvement measures designed to mitigate Defendant's alleged emissions can commence. [**Ex. 7].**

As the Court has preliminarily held, and as the Class's response to the Notice program has confirmed, the proposed settlement is fair, reasonable, and adequate. The Settlement provides for payment of $1,200,000 in cash into a common fund to benefit class members who timely submitted valid claim forms and requires Defendant to perform Improvement Measures valued at approximately $900,000, which are designed to minimize offsite odor and particulate matter emissions moving forward. Overall, the settlement has a total value of $2,100,000.

The Improvement Measures obtained through this Settlement are substantial and meaningful relief that will inure to the entire Class, irrespective of whether a Class Member completed a valid Claim Form and receives compensation from the common fund. These Improvement Measures include: (1) installation of a blue smoke control system, which will filter 99.9% of blue smoke from all Facility emission points; (2) maintenance and enforcement of a

[1] While the deadline for postmarking claim forms has passed, with claim forms due by January 22, 2023, Class Counsel continues to receive and process claims, including by working with Class Members who have incomplete claims to ensure that the maximum number of persons can benefit from the Settlement Fund.

fugitive dust/particulate matter control plan; (3) expansion of the fugitive dust/particulate matter control plan; (4) maintenance of rules requiring that trucks leaving the property are covered by tarps; (5) maintenance of a policy requiring trucks on property to turn off their engines; (6) watering of roadways and open piles; (6) planting of additional trees at the Facility; (7) inspection of the baghouse; and (7) completion of maintenance and repairs to the ductwork at the Facility. [**Ex. 2**, Improvement Measures].

Importantly, the release contained in the Settlement Agreement preserves claims for any medically diagnosed personal injuries and any claims arising from emissions of any kind from the Facility occurring after the Effective Date. [**Ex. 1**, Sec. 2, ¶bb]. Accordingly, the Settlement adequately protects Class Members' rights and warrants final approval.[2]

In preliminarily approving the Settlement Agreement, the Court issued an Order: (1) preliminarily finding that the Settlement Agreement is fair, just, reasonable, and adequate; (2) conditionally certifying the Class for Settlement purposes; (3) appointing Laura L. Sheets and Steven D. Liddle as Class Counsel; (4) appointing Tanisha Rodriguez as Named Class Representative; (5) approving the form and content of the Class Notice; (6) setting the deadlines for Class Members to exercise their rights to opt-out or object to the Settlement; and (7) scheduling a Final Fairness Hearing for January 31, 2024. Upon approval of the form and contents of the Class Notice as the "best notice practicable under the circumstances", Counsel timely provided Notice via direct mail to Class Members, published a summary of the short-form notice in the McKinley Park News, and created a Settlement Website, where all settlement-related documents were posted

[2] Plaintiff refers the Court to her Motion for Preliminary Approval for a more comprehensive summary of the specific terms of the Settlement.

(www.lsccounsel.com/matasphaltsettlement).[3] **[Ex. 6**, KO Decl, ¶ 6.; **Ex. 8**, Proof of Publication].

If the Court grants final approval to the Settlement, all households who submitted timely and valid claim forms will receive meaningful compensation, and all Class Members will benefit from the significant improvement measures to be performed at the Facility per the terms of the Settlement Agreement. The Settlement thus presents fair, reasonable, and adequate relief to the Class and should be finally approved.

FACTUAL AND PROCEDURAL BACKGROUND

Prior to the initiation of this Action, Plaintiff's counsel engaged in significant pre-suit investigation that involved requesting, obtaining, and reviewing voluminous documentation regarding the Facility's operations and its alleged noxious odor emissions, as well as surveying the surrounding residential community regarding their experiences with alleged noxious odor emissions from the Facility in the area and on their private residential property.

On December 1, 2020, Plaintiff filed this proposed Class Action in this Court, with a First Amended Complaint filed on June 29, 2021. Plaintiff's First Amended Complaint alleges three counts: (1) private nuisance, (2) public nuisance, and (3) negligence individually and on behalf of a putative class of similarly situated individuals against Defendant in connection with Defendant's hot asphalt facility ("Facility") operating in Chicago, Illinois since July 20, 2018. These allegations arise from Plaintiff's allegation that the Facility emits noxious odors onto her property, and other similarly situated private properties within one half (.5) mile of the Facility's property boundary.

Defendant moved to dismiss the First Amended Complaint on August 6, 2021, and Plaintiff responded in opposition on September 10, 2021. On October 19, 2021 the Court partially granted

[3] Counsel was contacted by community groups following dissemination of the approved Notice program who raised concerns regarding the diversity of the Class Area and the Notice being sent only in English. To address these concerns, Counsel re-distributed Notice in Spanish and Chinese.

Defendant's Motion to Dismiss the First Amended Complaint to the extent any count was based on the diminution of the value of Plaintiff's property.

On December 1, 2021, Defendant answered the First Amended Complaint, generally denying the allegations against it, and filed Affirmative Defenses. On December 29, 2021, Plaintiff filed a Motion to Dismiss the Affirmative Defenses. Rather than responding to Plaintiff's motion, Defendant filed First Amended Affirmative Defenses on February 11, 2022. On March 7, 2022, Plaintiff filed a Motion to Dismiss the First Amended Affirmative Defenses. On May 6, 2022, Plaintiff's Motion to Dismiss First Amended Affirmative Defenses was granted in part with prejudice and in part without prejudice. Defendant filed Second Amended Affirmative Defenses on June 6, 2022, and Plaintiff moved to strike those Second Amended Affirmative Defenses on June 17, 2022.

Plaintiff also sent a demand letter on February 25, 2022. In response to Plaintiff's demand letter, Defendant asked Plaintiff to provide additional information regarding Plaintiff's suggested improvement measures for the Facility that would be part of a potential settlement agreement. In order to continue negotiations and to schedule and conduct mediation, the Parties moved for an agreed stay in the litigation on July 29, 2022, which was subsequently granted on August 4, 2022. This stay has been periodically continued since August 4, 2022 and the action remains stayed at this time.

The Parties participated in a full day mediation with Hon. Sidney Schenkier (Ret.) on October 19, 2022, which included the participation of Defendant's applicable insurers. Although the mediation did not directly result in an agreement on that date, it brought the Parties close enough that continued, independent and arms-length negotiations did eventually result in a settlement of this matter in principle on February 13, 2023. Following ongoing negotiations

between the Parties, the Settlement Agreement was finalized and executed by all Parties on November 8, 2023. Plaintiff filed her Motion for Preliminary Approval of the Class Action Settlement on the same date. The Court granted preliminary approval and directed that Notice be disseminated on November 17, 2023.

LEGAL STANDARD

Class certification in Illinois "is governed by section 2-801 of the Code (735 ILCS 5/2-801)." *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033, ¶ 53. "Under [735 ILCS 5/2-801 et. seq.], a class action suit shall not be compromised … 'except with the approval of the court and, unless excused for good cause shown, upon notice as the court may direct.'" *Id.* at ¶ 54 (citing 735 ILCS 5/2-806). "[T]he standard used to evaluate the settlement of a class action is whether the agreement is fair, reasonable, and adequate." *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 402 Ill.Dec. 506, 518, N.E.2d 427 (2016) (quoting *Steinberg v. Sys. Software Assocs., Inc.*, 306 Ill.App.3d 157, 169, 239 Ill.Dec. 178, 713 N.E.2d 709 (1999)). "When assessing the fairness of a proposed [class action] settlement, some of the factors the trial judge should consider include:

(1) The strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement;
(2) The defendant's ability to pay;
(3) The complexity, length, and expense of further litigation;
(4) The amount of opposition to settlement;
(5) The presence of collusion in reaching a settlement;
(6) The reaction of members of the class to the settlement;
(7) The opinion of competent counsel; [and]
(8) The stage of proceedings and the amount of discovery completed."

McCormick v. Adtalem Glob. Ed., Inc., 2022 IL App (1st) 201197-U, ¶14 (quoting *City of Chicago v. Korshak*, 206 Ill.App. 3d 968, 972, 565 N.E.2d 68, 70 (1990)). "Where the procedural factors support approval of a class settlement, there is a presumption that the settlement is fair, reasonable, and adequate." *In re Warfarin Sodium Antitrust Litig.,* 391 F.3d 516, 535 (3rd Cir. 2016). A

consideration of these factors weighs overwhelmingly in favor of the conclusions that the Settlement is fair, reasonable, and adequate, and should be finally approved by the Court.

ARGUMENT

I. Class Certification Should Be Made Final.

The Court preliminarily certified the Class for settlement purposes on November 17, 2023. Plaintiff therefore refers the Court to the arguments made in support of preliminary approval and submits that nothing has changed since preliminary certification was granted that would now render class treatment inappropriate or unwarranted. The only change is that hundreds of Class Members have since submitted claim forms, which further confirms that the numerosity element is easily satisfied for class certification purposes. Further, the lack of significant objections support that Plaintiff's claims are typical of the Class and that a class action is the superior method for the fair and efficient adjudication of this action, particularly in light of the Settlement. The circumstances that warranted the Court's grant of preliminary class certification remain the same, and, if anything, have improved since the Court's order granting preliminary approval. Accordingly, class certification for settlement purposes should be made final.

II. The Settlement is Fair, Reasonable, and Adequate.

A consideration of the relevant factors weighs overwhelmingly in favor of final approval of the Settlement as fair, reasonable, and adequate.

A. The Merits of the Case Weigh in Favor of Final Approval.

Although Plaintiff believes that her claims, and those of the Class, have merit, Plaintiff nonetheless recognizes the significant hurdles and risks in seeking to obtain a judgment against Defendant in this matter, any of which could be the death knell of the case. [**Ex. 3**, Sheets Decl. ¶ 32]. The question of whether this case would be certified as a class action over Defendant's

vigorous objections is anything but certain. Further, even assuming success at the class certification phase, there is no guarantee of success in a jury trial, and Defendant has vigorously opposed Plaintiff's claims throughout the pendency of this action. Moreover, even a successful result for Plaintiff going forward can be fleeting given the prospect of a long and almost certain appeal of any contested class certification order or a jury verdict in favor of the Class.

As the Court has seen, Defendant has vehemently opposed the viability of Plaintiff's claims as a class action and, to the extent reached thus far, the underlying merits of Plaintiff's claims. Establishing Plaintiff's claims would have entailed an enormous volume of scientific, technical, and other evidence that would have been countered by Defendant by even more evidence of the same sort. [**Ex. 3**, ¶ 26]. The sheer volume and complexity of the relevant evidence adds to the risks inherent in proving claims related to airborne emissions. [***Id.***]. If class certification were denied, the practical effect for the many Class members would be to receive no relief at all, monetary or non-monetary. [***Id.***, ¶ 25].

Plaintiff obviously disagrees with Defendant's objections to class certification and the merits of Plaintiff's case, but recognizes that the challenges, costs, risks, delays, and uncertainty involved inherent in certifying a class and litigating the case on the merits. [**Ex. 3**, ¶ 23]. If class certification were denied, and even if a large number of class members brought actions in their individual capacities, many hurdles would remain, and it is possible, if not likely, that the costs of litigation would significantly erode any potential recovery. [***Id.***, ¶ 25]. The risks, costs, and delays associated with continued litigation, and the very real possibility of obtaining no recovery for the Class weigh heavily in favor of Settlement on these exceedingly fair terms. [***Id.***]. Even if Plaintiff was able to prove to the fact finder that significant odors and air particulates were emitted from Defendant's facility, Plaintiff would still need to prove that those emissions were transported to

properties throughout the Class Area. [**Ex. 3** ¶¶ 26, 28]. This would inevitably involve a battle of experts, and Plaintiff would need to prove that odors and air particulates sufficient to constitute a nuisance entered their properties and that those odors substantially originated at Defendant's facility. While Plaintiff is confident that she would have put forward a strong and compelling case, the sheer number of variables involved in substantiating her claims makes winning and sustaining a judgment an entirely uncertain proposition.

Further, Plaintiff would have to establish damages. In addition to being costly and time consuming, Defendant could, and likely would have, challenged every aspect of Plaintiff's damages and/or the damages alleged on behalf of the Class. [**Ex. 3**, ¶ 28]. To do so would be a major undertaking requiring expensive and extensive expert testimony that would necessarily detract from any eventual recovery. In view of the range of possible recovery and the substantial non-monetary relief obtained on behalf of the Class, which would by anything but certain to obtain through a trial on the merits, the monetary relief here is fair, reasonable, and adequate. The cash portion of the Settlement is $1,200,000 and the approximate value of the Improvement measures is an additional $900,000. The total value of the settlement, approximately $2,100,000, represents an outstanding recovery for the Class and is well within a reasonable range of likely recovery at trial, particularly weighed against the significant risk of class certification denial, challenges on appeal, and/or a no cause verdict with respect to liability and/or damages.

In view of the risk of the vast majority of class members obtaining no recovery whatsoever if class certification were not granted, and the risks outlined below in establishing the merits of the case, the settlement value is clearly fair, reasonable, and adequate and warrants final approval.

B. Defendant's Ability to Pay is Not In Dispute.

Regarding the second factor, Defendant MAT Asphalt's ability to pay into the common fund, no party disputes the fact that Defendant is able to make the negotiated settlement payment, and such was duly contemplated during the multiple arm's-length mediation sessions between the Parties.

C. The Response to the Settlement Has Been Overwhelmingly Positive with Minimal Opposition.

The reaction of the Class has been overwhelmingly, and almost unanimously, positive. There is only one objection to the Settlement, and hundreds of claims have been submitted, reviewed, and approved by Class Counsel. The claims return here is among the most impressive rates of return that Plaintiff's Counsel has experienced in over 25 years of practice. **[Ex. 3**, ¶ 33]. The Class has been superbly communicative with Class Counsel to express their support for both the financial and improvement measures of the Settlement Agreement. **[*Id.*,** ¶ 34].

There was only one objection to the Settlement, and the lone objector, Bradley Breems, submitted a claim form to obtain monetary relief from the Settlement. [**Ex. 9**, Objection]. The objection from Mr. Breems notes his concern regarding the activity of the trucks and other vehicles entering and exiting the Facility. Mr. Breems noted that these vehicles carry sand, gravel, rocks, and other materials, which causes dust to be kicked up into the surrounding area. He believes that Defendant's dust mitigation techniques are "insufficient." [**Ex. 9**, Objection].

While Plaintiff shares Mr. Breem's concern, and has vigorously advocated on his behalf for improvement measures at the Facility, his objection does not warrant rejecting the proposed Settlement. In fact, the Improvement Measures obtained through the Settlement will stand to improve the very condition that the Objector is concerned about. The Improvement Measures enumerated in Paragraphs (b) – (g) all seek to address decreasing the amount of dust and particulate matter produced by truck traffic. These Improvement measures include: (1) maintenance and

enforcement of a dust control plan; (2) paving, cleaning, and sweeping Facility roadways; (3) expansion of dust control plan to include use of a water cannon, cleaning of roadways, and cleaning of wheels of departing trucks; (4) assurances that trucks leaving the Facility will be covered with tarps; (5) improving procedures for loading and unloading truck beds; (6) requiring trucks to turn off engines while on Facility property; and (7) wetting roadways multiple times per day and checking water contents of on-site piles twice daily. [**Ex. 2**, Improvement Measures]. Because the Settlement directly procures relief that will reduce dust emissions from trucks, the single objection does not warrant overturning the outstanding relief obtained through this Settlement.

Accordingly, given the nearly unanimously positive reaction of the class to the Settlement, this factor weights strongly in favor of final approval.

D. There Was No Collusion Involved in the Parties Agreeing to Settle this Matter.

The settlement was reached as the result of a full-day mediation with the respected neutral Hon. Sidney Schenkier (Ret.) on October 19, 2022, and the continued, good faith negotiations between the parties that resulted therefrom. The Parties, including Defendant's insurers, vigorously negotiated this excellent compromise. Both sides advanced their respective positions before a third party neutral, and the initial mediation did not result in an agreement. This alone demonstrates that this Settlement was not the product of any undue influence or collusion.

At all times the Parties acted as adversaries, and this factor weighs heavily in favor of final approval. *See Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (upholding final approval of class settlement on appeal because "[t]he record shows an arms-length negotiation between plaintiffs and defendants, entered into after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator.")

E. Class Counsel Strongly Recommends the Settlement.

The penultimate *Korshak* factor, the opinion of competent counsel, additionally weighs in favor of final approval. Class Counsel, which possesses extensive experience in the field of environmental nuisance class actions, strongly recommends the Settlement. Plaintiff's Counsel has been litigating complex air pollution cases of this type for more than 25 years. As noted by one federal court, "[c]lass counsel are among the few attorneys that specialize in class-action odor-nuisance litigation." *Batties v. Waste Management of Pennsylvania*, No. 14-7013, 2016 U.S. Dist. LEXIS 186335, at *47 (E.D. Pa. May 11, 2016)). In *Batties*, the Court noted that "Class Counsel skillfully and vigorously investigated and prosecuted the Class's claims" and "[m]oreover, Counsel obtained a material recovery for the Class quickly…Absent the skill and efficiency of Class Counsel, it is also unlikely that individual Class Members could have obtained any recovery on their nuisance claims." *Id.* Based on LSC's extensive experience in similar litigation, Class Counsel strongly recommends the settlement as an outstanding result for the class which will squarely accomplish the two primary objectives of this litigation: (1) obtaining meaningful compensation for the Class; and (2) obtaining meaningful improvement measures designed to mitigate noxious emissions moving forward. [**Ex. 3**, ¶ 49]. This Settlement compensates Class Members for the invasion of their property rights and protects against future invasions. This factor therefore weighs heavily in favor of final approval.

F. All Parties Were Well-Informed and Aware of the Strengths and Weaknesses of the Case In Considering Settlement.

To this point, the litigation has primarily been focused on motion practice and discovery. During discovery, the Parties conducted extensive investigations into the merits of the case and the facts supporting the defense. Prior to filing the case, Class Counsel conducted an intensive pre-suit investigation into the merits of Plaintiff's claims. This work involved submitting freedom of information requests, collaborating with the named Plaintiff, and surveying the Class. The

investigatory work both before and after the litigation commenced has equipped both sides with the information necessary to make informed decisions regarding settlement and assess the risks of continued litigation.

The Parties engaged in arms-length negotiations for several months, including with the assistance of a neutral mediator. As part of the mediation process, both Parties submitted mediation briefs that set forth the merits of claims and defenses involved in both sides of the action, allowing Judge Schenkier and defense counsel to further consider the merits of the case. Overall, this factor considers "how fully the court and counsel are able to evaluate the merits of plaintiffs' claims", and the Parties as well the court have been able to reasonably evaluate the claims in this case. *Armstrong v. Bd of Sch. Dirs., et al*, 616 F.2d 305, 325 (7th Cir. 1980), *overruled on unrelated grounds by Felzen v. Andreas*, 134 F.3d 873, (7th Cir. 1998)). Plaintiff's Counsel has extensive experience in investigating and litigating cases of this type and is well equipped to value and negotiate settlements in cases of this type. [**Ex. 3**, ¶¶ 4, 21]. This factor accordingly weighs firmly in favor of final approval of the Settlement.

For the foregoing reasons, the Court should finally approve the Settlement, consisting of $1,200,000 in monetary relief and $900,000 in improvement measures, while preserving the rights of the Class to pursue personal injury and future claims, as fair, reasonable, and adequate.

III. Class Counsel's Attorney's Fee and Incentive Award Requests are Reasonable.

Illinois employs the common fund doctrine for distributing attorney's fees in class actions, which provides that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011). This approach "spreads the costs of litigation proportionately among those who will benefit from the fund" and, by fairly compensating the

attorneys, prevents the class members from being unjustly enriched. *Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill.2d 235, 239, 214 Ill.Dec. 563, 659 N.E.2d 911 (1995).

Here, Plaintiff requests that the Court award an attorney fee of $525,000. The requested fee is reasonable and should be approved by the Court.

A. Class Counsel's Request for an Attorneys Fee of 25% of the Total Settlement Value Is on the Low End of the Range of Fees Granted in Common Fund Cases.

"The common fund doctrine allows one who creates, preserves, or increases the value of a fund in which others have an ownership interest to be reimbursed from that fund for litigation expenses incurred, including counsel fees." *Brundidge*, 168 Ill.2d at 238. "[A] trial judge has discretionary authority to choose a percentage or a lodestar method when determining the amount of fees to be granted to plaintiff's' counsel in common-fund class-action litigation." *Shaun Fauley*, 402 Ill.Dec. at 441 (citing *Brundidge*, 168 Ill.2d 235, 238, 659 N.E.2d 909 (1995)). "Under the percentage-of-the-recovery approach, reasonable attorney fees are awarded as a percentage of the amount that counsel recovered on behalf of the class." *Brundidge,* 168 Ill.2d at 238, 659 N.E.2d at 911. Illinois courts generally find that a common-fund attorney's fee request between 30-39% is reasonable. *See Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (approving trial court's reliance on a table of thirteen N.D. Ill. Cases where counsel was awarded fees between 30-39% of the settlement fund); *accord McCormick v. Adtalem Glob. Ed., Inc.*, 2022 IL App (1st) 201197-U, ¶ 30 (approving attorney's fees of 35% of total common fund). "When choosing between the two methods, the 'percentage-of-fund' method has the advantage of simplicity." *Stumpf v. Pyod, LLC*, No. 12 C 4688, 2013 WL 5753829, at *4 (N.D. Ill. October 23, 2013) (citation omitted). Plaintiff's request for 25% of the Total Settlement Value is significantly less

than the 33% permitted by the Settlement Agreement, and it is also significantly less than common fund awards that have been granted in similar common fund cases in Illinois.

i. 25% of the Total Settlement Value is a Reasonable Fee Given the Niche Type of Case Involved and the Significant Risks and Time Devoted by Class Counsel.

Here, Class Counsel requests an attorney's fee award of $525,000, which represents 25% of the Total Settlement Value of $2,100,000. This request complies with the terms of the Settlement Agreement, which states that "[c]lass counsel may apply to the Court for an award of attorneys' fees and reimbursement of costs and expenses in an amount not to exceed one-third (1/3) of the Total Settlement Value, inclusive of all fees costs and Settlement Administration and Notice fees (all of which will be borne by Class Counsel)." **[Ex. 1**, Settlement Agreement Sec. 3, ¶c]. This request also complies with the terms of the retainer agreement between Plaintiff and Class Counsel, which similarly provides for a 33.3% contingent fee of the gross recovery of any settlement benefits obtained for the Class. [**Ex. 3**, ¶ 47]. This is a standard, widely accepted contingent fee in Illinois, and in jurisdictions throughout the country. *See CE Design Ltd. v. Franklin Edison Corp.*, 2022 IL App (2d) 190130-U, ¶ 47 (one-third of settlement fund is the "customary amount" of attorney fees); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (30% found to be "reasonable base rate" for Class Counsel in TRCPA class action); *Will v. General Dynamics Corp.,* No. 06–cv–698–GPM, 2010 WL 4818174, at *2 (S.D.Ill. Nov. 22, 2010) ("Where the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys, the normal rate of compensation in the market is 33.33% of the common fund recovered.").

Importantly, this case was taken on a contingency fee basis, and Class Counsel took on all the costs and risks of the litigation with no guarantee of recovery. The risks inherent in proceeding

with adversarial class certification in environmental nuisance cases are difficult to overstate. *See* [**Ex. 3**, ¶ 23]. Class Counsel are one of the few firms who devote a substantial portion of their practice to this kind of complex environmental class action, and such vast experience in this niche area of the law is why the excellent, and efficient, result was obtained without significantly detracting from the Class' overall recovery. [***Id.***, ¶ 49].

Class Counsel has dedicated hundreds of hours of attorney time, and tens of thousands of dollars in costs, to litigating this case, all with no guarantee of any payment. [***Id.***, ¶ 37]. The significant time and costs invested in this case limited Class Counsel's ability to litigate other matters. As with all cases of this type, this case presented a substantial risk of no recovery. There are numerous hurdles, including class certification, appeals, summary judgment, expert motion practice, and trial, that raise significant risk and warrant adequately rewarding Class Counsel for their extensive efforts on behalf of Plaintiff and the Class.

The Settlement achieves significant relief for Plaintiff and the Class, including exceptional Improvement Measures, that will provide immediate relief to the Class. It is precisely because of Class Counsel's experience, reputation, and skill in litigating cases of this type that this Settlement was even possible, and without Class Counsel's advocacy is it unlikely that any Class Member would have been able to even exercise their legal rights at all, let alone procure a $1.2 million-dollar fund and meaningful Facility Improvement Measures. Class Counsel's expertise and work on behalf of the Class both support the reasonableness of Counsel's fee request.

ii. The Settlement Provides Substantial Relief for the Class.

Further, the requested fee is reasonable given the substantial benefits secured for the Class, including direct monetary payments and injunctive relief designed to effectively eliminate the nuisance. The Class overwhelmingly agrees, with hundreds of valid claims forms being submitted

compared to only a single objection. As described above, the Settlement requires Defendant to implement a plethora of facility improvements within months of final approval, so the Class will get nearly contemporaneous monetary and practical relief, designed to protect the quality of life in the Class Area. Included in these Improvement Measures are a new blue smoke control system to the hot mix silo, changes in truck loading policy to reduce emissions, and updated inspection and maintenance protocols for odor/dust mitigation systems. [**Ex. 2**, Improvement Measures].

All of these things are measures designed to eliminate the conditions throughout the community that gave rise to this suit, coupled with significant, direct monetary relief secured by Class Counsel. This Settlement represents an outstanding result for the Class, which warrants the requested fee. Obtaining a favorable benefit to the class without lengthy, costly litigation is among the factors that support a request for attorneys' fees. *See Langendorf v. Irving Trust Co.* (1992), 244 Ill.App.3d 70, 80, 614 N.E.2d 23.

B. Class Counsel is Entitled to Recover the Expenses of the Litigation.

"The common fund doctrine permits a party who creates, preserves, or increases the value of a fund in which others have an ownership interest to be reimbursed from that fund for litigation expenses incurred, including counsel fees." *Scholtens v. Schneider* (1996), 173 Ill.2d 375, 385, 671 N.E.2d 657 (quoting *Brundidge*, 168 Ill.2d at 235) (emphasis added). Plaintiff has incurred litigation costs totaling $29, 911.73 to date, while co-counsel has incurred costs totaling $1535.11, for an overall costs total of $31, 512.84. [**Ex. 3**, Sheets Decl., ¶¶ 36-37; **Ex. 5**, LSC Cost Sheet; **Ex. 10**, Whalley Cost Sheet]. Plaintiff requests reimbursement of these actual, out-of-pocket costs, which were necessary to litigating the case and obtaining this outstanding result for the Class. Class Counsel has not incurred any unnecessary or unreasonable costs in this case, and the vast majority of the costs to this point ($15,527.94) arise from copies and postage associated with Counsel's survey and

investigation into the merits of the case, in addition to administration of the settlement notice program approved by the Court.[4] These expenses represent approximately 2.5% of the cash portion ($1,200,000) of the settlement fund, far less than the average percentage of expenses in class cases. *See Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, 2015 WL 1399367, at *7 (N.D. Ill. March 23, 2015) (recognizing 4% as average percentage of expenses in class cases).

Class Counsel secured an excellent result for Plaintiff and the Class, and the Court should approve Counsel's request for reimbursement of the reasonable expenses that were necessary to obtain this favorable result.

C. An Incentive Award of $10,000 to the Class Representative is Reasonable.

The Settlement Agreement expressly provides that Class Counsel may apply to the Court for a Service Award up to $10,000 for initiating, pursuing, and undertaking the prosecution of the Class Action. Plaintiff requests a service award in that amount. In Illinois, it is customary to grant an incentive award to named Plaintiff-Class Representatives of a class action. *See Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.* (2016), 2016 IL App (2d) 150236, ¶ 15, 52 N.E.3d 427, 434 (granting $15,000 incentive award to each class representative).

Plaintiff Tanisha Rodriguez stepped forward to represent the interests of the putative class in this matter and took on the risks and potential inconveniences of participating as a representative in a complex environmental putative class action, without any guarantee of recovery or compensation for her efforts. [**Ex. 3**, ¶ 48]. Ms. Rodriguez has been exceptionally responsive throughout the litigation and approved the settlement on behalf of the Class, and actively participated in Class Counsel's investigatory and discovery efforts. [**Id.**]. For taking on these risks

[4] A complete table of Class Counsel's costs is provided as **Exhibit 5** to this Motion.

and responsibilities, Plaintiff requests that the Court approve a modest $10,000 Service Award for the named Plaintiff-Class Representative.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion and enter the order attached hereto as **Exhibit** .

Dated: January 24, 2024

Respectfully Submitted,

/s/ Kara Brodowski
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CERTIFICATE OF SERVICE

I, Kara Brodowski, an attorney, certify that I caused a copy of the foregoing Motion for Final Approval of Class Action Settlement and Motion for Attorney's Fees be served upon the below-listed individual(s), be electronic service.

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/s/ Kara Brodowski
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