UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
ST. LOUIS DIVISION

MARK BOSWELL,
DAVID LUTTON,
VICKIE SNYDER, and
all others similarly situated,

Plaintiffs,

v. Case No. 4:14-CV-1833

PANERA BREAD COMPANY and
PANERA LLC,

Defendants.

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

Plaintiffs Mark Boswell, David Lutton, and Vickie Snyder, on behalf of the certified class, respectfully submit this Memorandum in Support of Plaintiffs' Motion for Attorney Fees, Costs, and Service Awards. The motion is further supported by declarations of class counsel, attached as Exhibits 1 and 3, and itemized summaries of costs and expenses in this class action, attached as Exhibits 2 and 4.

I. Preliminary Statement

The 67 class members are individuals who were employed as "Joint Venture General Managers" ("JV GM") with Panera, or any affiliate or subsidiary of Panera; who signed a Joint Venture General Manager Compensation Plan, which was located and produced in this litigation, and who received a capped JV GM Buyout payment from Panera at any time during the period from October 29, 2009 through April 19, 2016. A "capped" JV GM Buyout payment is a JV GM Buyout payment made to an employee in an amount less than the total JV GM Buyout amount determined in accordance with

Section 3(b) of the employee's Joint Venture General Manager Compensation Plan with Panera.

On October 23, 2015, this Court granted class certification pursuant to Federal Rule of Civil Procedure 23(b)(3). (DN 104.) The order certified a class of the individuals who meet the class definition above. (DN 104 at 20.) A total of 68 such individuals were identified. On December 21, 1015, this Court entered its order approving the proposed notice to the class members providing the opportunity to opt out of the class. (DN 153; DN 152-1.) Plaintiffs disseminated the approved notice to the class members. (DN 193.) One individual opted out of the class (DN 189), resulting in a finalized class of 67 members. (DN 193.) Plaintiffs filed an updated class list containing the names and addresses of all 67 class members who did not opt out of the class. (DN 196.) Plaintiffs subsequently amended their motion for summary judgment on the classwide breach of contract claim to reflect the composition of the finalized class, and requested damages and prejudgment interest for all 67 class members. (DN 205.)

On March 24, 2016, the Court granted Plaintiffs' Motion for Summary Judgment on the classwide breach of contract claim against Panera, LLC, and granted Plaintiffs' Motion for Summary Judgment on Panera's affirmative defenses. (DN 216.) Subsequently, the parties filed a joint stipulation as to (1) the classwide and individual damages of the class members on the breach of contract claim, and (2) the classwide prejudgment interest and individual prejudgment interest for each class member on the breach of contract claim. (DN 258, DN 258-1.)

On June 16, 2016, the Court entered a final judgment against Panera, LLC in the amount of $4,774,022 to compensate the class members for losses resulting from

Panera's violation of the class members' contracts. (DN 259.) This amount comprises 100% of the losses incurred by all class members as a result of Panera's imposition of a Buyout cap, plus prejudgment interest on those losses.

Because this is not a fee-shifting case, any payment of attorneys' fees or expenses must be deducted from the common-fund total judgment amount. Class counsel respectfully request that this Court grant them an attorneys' fee of 33% of the total judgment amount, or $1,575,427, as well as reimbursement of litigation expenses in the amount of $35,745.86, to be paid from the total judgment amount. Class counsel further respectfully ask the Court to award the three class representatives service awards in the amount of $50,000 each, to be paid from the total judgment amount.

II. Argument

A. Attorney Fees

Under the "common-fund" doctrine, class counsel is entitled to a reasonable fee drawn from the common fund created for the benefit of a class. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (holding that "a litigant or 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.") This common-fund doctrine is firmly rooted in American case law. *See, e.g.*, *Trustees v. Greenough,* 105 U.S. 527 (1882); *Central R. & Banking Co. v. Pettus,* 113 U.S. 116 (1885); *Blum v. Stenso*n, 465 U.S. 886, 900 n.16 (1984).

Plaintiffs respectfully submit that under the circumstances of this case, attorney fees of 33% of the total common-fund judgment recovered for the class is reasonable.

In *In re U.S. Bancorp Litigation*, 291 F.3d 1035 (8th Cir. 2002), the Eighth Circuit

directly addressed the issue of the reasonableness of contingency fees in class action lawsuits. In that case, the district court approved a stipulated settlement agreement in a class action settlement over the objections of three class members who were unnamed class members that later intervened. *Id*. at 1037. The stipulated settlement agreement in *U.S. Bancorp* provided that U.S. National Bank would pay $3 million to a settlement fund, plus an amount equal to $2 million less than the amount U.S. National Bank paid in respect to a product-refund plan negotiated in a related case. *Id*. In *U.S. Bancorp*, the settlement agreement provided that a settlement fund would be used to pay the class counsel up to $1,250,000 in fees and $40,000 in expenses. *Id*. Consequently, in *U.S. Bancorp* the attorney's fees ended up equaling 36% of the settlement amount plus costs. *Id*. at 1038. The Eighth Circuit found the district court had not abused its discretion in upholding this 36% award plus the $40,000 in costs. *Id*.

This case is similar to *U.S. Bancorp* with one distinct difference — there was no settlement. Plaintiffs in this case recovered 100% of the class members' total contract damages, plus prejudgment interest for all class members, through hard-fought adversarial litigation. The result is a common-fund judgment providing the class members with all the money they lost as a result of Panera's violation of their contracts, plus interest.

The Eighth Circuit has previously approved "the percentage-of-recovery methodology to evaluate attorneys' fees in a common-fund settlement." *Id*. (citing *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999)); *In re Xcel Energy, Inc.*, 364 F.Supp.2d 980, 991 (D. Minn. 2005) ("In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also 'well

established.'"(quoting *Petrovic*, 200 F.3d at 1157)). In relation to the recovery of fees from a common fund, the Eighth Circuit has stated that, "[t]o recover fees from a common fund, attorneys must demonstrate that their services were of some benefit to the fund or enhanced the adversarial process." *Petrovic* at 1156 (citing *Elliott v. Sperry Rand Corp.*, 680 F.2d 1225, 1227 (8th Cir. 1982) (per curiam) and *Class Plaintiffs v. Jaffe and Schlesinger, P.A.*, 19 F.3d 1306, 1308 (9th Cir. 1994) (per curiam)).

Compensating counsel in common fund cases on a percentage basis makes good sense. First, it is customary for contingent fee attorneys to be compensated on a percentage-of-the-recovery method. Second, it rewards efficiency and provides plaintiffs' counsel with a strong incentive to effectuate the maximum possible recovery under the circumstances. *See In re Xcel Energy,* 364 F.Supp.2d at 993, 996; *Kirchoff v. Flynn,* 786 F.2d 320, 325-26 (7th Cir. 1986). And third, as the Eighth Circuit and other courts have routinely recognized, using a percent of the fund approach most closely aligns the interests of the lawyers with the class, since the more that is recovered for the class, the more the attorneys stand to be paid. *See Johnston v. Comerica Mortgage Co.*, 83 F. 3d 241, 244 (8th Cir. 1996) (noting that the percent of benefit approach has been recommended in common fund situations).[1]

[1] Consistent with the Eighth Circuit, other circuits also express "a preference for the percentage of the fund method" in class actions. *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995); *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3rd Cir. 1998) ("[t]he percentage-of-recovery method is generally favored in cases involving a common fund"); *Swedish Hospital Corp v. Shalala,* 1 F.3d 1261, 1269, 1272 (D.C. Cir. 1993) (concluding that a "percentage-of-the-fund method is the appropriate mechanism for determining the attorney fee award in common fund cases" and that "a percentage of the fund approach more accurately reflects the economics of litigation practice … and most closely approximates the manner in which attorneys are compensated in the marketplace for these types of cases."); *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) ("the percentage of the fund approach is the better reasoned in a common fund case"); *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (the percentage of the fund is "a method of more

The Eighth Circuit has not established specific factors that a district court must consider when calculating the reasonable percentage to award attorney fees in a common fund case. *See In re Xcel Energy*, 364 F. Supp. 2d at 992 (citing *U.S. Bancorp*, 291 F.3d at 1038). Courts in this Circuit have cited factors set forth by other Circuits, including the following:

> (1) the benefit conferred on the class; (2) the risk to which plaintiffs' 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.

Yarrington v. Solvay Pharm., Inc., 697 F.Supp.2d 1057, 1062 (D.Minn. 2010) (citing *In re Xcel*, 364 F. Supp. 2d at 993)). "Many of the factors overlap, and not all of the individual factors will apply in every case, affording the Court wide discretion in the weight to assign each factor." *Yarrington*, 697 F.Supp.2d at 1062.

Here, consideration of these factors confirms the reasonableness of the requested fee. Class counsel spent more than 1,900 hours on this case, over a period of nearly two years, and obtained a favorable result for the class members through adversarial litigation. (*See* Ex. 1 ¶5; Ex. 3 ¶5.) This case was complex and required the careful skill and attention of experienced attorneys. The advocacy and experience of Plaintiffs' attorneys helped to reduce costs and provide an outstanding result and substantial benefit to the class members. Additionally, class counsel bore the risk during this case by advancing all costs and their time with no certainty they would be paid for their services.

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closely aligning the lawyer's interests with those of his client by giving him a stake in a successful outcome."); *Prudential Ins. Co.*, 148 F.3d at 333 (the percentage of the fund approach "rewards counsel for success and penalizes it for failure.") (citation omitted).

Class counsel provided an excellent result to the class members through adversarial litigation. Panera employed highly competent defense counsel who fought this case tooth and nail at every stage, from initial discovery through class certification, a motion to dismiss, an attempted interlocutory appeal, two mediations, cross-motions for summary judgment, and now an apparent appeal. Through extensive briefing and oral argument, Plaintiffs' counsel prevailed on a critical discovery motion regarding the class members' identities and the value of their claims (DN 36), successfully opposed efforts by Panera to have the case dismissed (DN 104), obtained certification of the class (DN 104), and successfully opposed Panera's efforts to stay the case and pursue an interlocutory appeal of the class certification decision (DN 145).

Class counsel also engaged in extensive discovery, including three depositions of Panera's corporate representative, and the review of complex financial statements relevant to determining the class members' contract losses. Class counsel compiled records calculating each class member's losses and prejudgment interest, and established those amounts as undisputed. (DN 258, DN 258-1.) Ultimately, class counsel prevailed at summary judgment on the classwide breach of contract claim (DN 216), prevailed on Panera's affirmative defenses to the contract claim (Id.), and obtained a final judgment against Panera awarding 100% of the class members' contract damages, plus interest (DN 259.). In short, class counsel have advanced and protected the interests of all members of the class and have successfully navigated the difficult legal and factual issues presented. The services of class counsel "were of some benefit to the fund or enhanced the adversarial process." *Petrovic*, 200 F.3d at 1156 (8th Cir. 1999).

Courts in common-fund class actions have routinely approved attorney fees

equal to or greater than the 33% sought by this motion. *See U.S. Bancorp*, 291 F.3d at 1038 (8th Cir. 2002) (affirming fee award representing 36% of the settlement fund as reasonable); *W. v. PSS World Med., Inc.*, No. 4:13-CV-574-CDP, 2014 WL 1648741 at *1 (E.D. Mo. Apr. 24, 2014) ("In this case, the court believes that 33 percent is a reasonable percentage for attorney's fees. It is appropriate to apply a reasonable percentage to the gross settlement fund."); *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-CV-4321-NKL, 2015 WL 3460346 at *4 (W.D. Mo. June 1, 2015)(awarding attorney fees and expenses equal to one-third of $6.5 million settlement fund); *Wiles v. Sw. Bill Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291 at *1 (W.D. Mo. June 9, 2011)(awarding attorneys one-third of $900,000 common fund); *Ray v. Lundstrom*, No. 8:10-CV-199, 2012 WL 5458425 at *4 (D. Neb. Nov. 8, 2012) (awarding one-third of $3.1 million fund in fees, plus separate reimbursement from the settlement fund of $77,900 in expenses); *In re Iowa Ready–Mix Concrete Antitrust Litig.*, 2011 WL 5547159 (N.D. Iowa Nov. 9, 2011) (awarding attorneys 36.04% of $18.5 million common fund in fees, plus separate reimbursement from settlement fund of over $900,000 in expenses); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of the settlement fund in fees); *Yarrington*, 697 F.Supp.2d 1057, 1061, 1067–68 (D. Minn. 2010) (awarding one-third of $16 million settlement fund, plus separate reimbursement from the fund of $245,000 in expenses).

Finally, while the Eighth Circuit has recognized the primacy of the percentage-of-recovery approach, *Petrovic*, 200 F.3d at 1157, courts may verify the reasonableness of a percentage award by calculating the fee under a "lodestar" approach — totaling the hours worked, multiplying them by a typical hourly fee, and then multiplying that

amount by a "multiplier" that takes into account "the contingent nature of success, and ... the quality of the attorney's work." *Khoday v. Symantec Corp.*, No. 11-CV-180-JRT/TNL, 2016 WL 1637039 at *11 (D. Minn. Apr. 5, 2016) (citing *Petrovic,* 200 F.3d at 1157 and *Jorstad v. IDS Realty Trust,* 643 F.2d 1305, 1312–14 (8th Cir. 1981)). "Multipliers can range from two to five." *Khoday*, 2016 WL 1637039 at *11 (citation omitted).

Here, a lodestar multiplier cross-check confirms the reasonableness of a 33% fee. Using the normal hourly rates charged by Plaintiffs' counsel, the collective lodestar in this case would be $629,529. (*See* Ex. 1 ¶5 & Ex. 3 ¶5 for hours worked and normal hourly rates.) The requested fee of 33% yields a total fee of $1,575,427. The lodestar multiplier is therefore 2.50 ($629,529/ $1,575,427). This is well within the range of multipliers commonly accepted in other cases. *See, e.g., In re Charter Communications, Inc.*, 2005 WL 4045741 at *18 (E.D. Mo. June 30, 2005) (multiplier of 5.6); *In re St. Paul Travelers Sec. Litig.,* Case No. 14–cv–3801 (JRT/FLN), 2006 WL 1116118 at *1 (D.Minn. Apr. 25, 2006) (using a multiplier of 3.9); *In re Xcel Energy, Inc.*, 364 F.Supp.2d 980, 999 (D. Minn. Apr. 8, 2005) (awarding a fee representing a 4.7 multiplier); *In re Aremissoft Corp. Sec. Litig.*, 210 F.R.D. 109, 134–35 (D.N.J. 2002) (multiplier of 4.3); *Maley v. Del Global Techs. Corp.*, 186 F.Supp.2d 358, 371 (S.D.N.Y. 2002) (percentage fee resulted in a "modest multiplier of 4.65"). In addition, the multiplier of 2.50 will continue to decline as counsel expends additional time litigating any appeals.

For the above reasons, Plaintiffs respectfully ask the Court to award class counsel attorneys' fees of $1,575,427, representing 33% of the total judgment amount. Pursuant to an agreement between class counsel, any award of attorneys' fees will be allocated between class counsel as follows: 35% to Popham Law Firm, and 65% to

Coffield PLC. (Ex. 1¶9; Ex. 3 ¶9.) Accordingly, Plaintiffs ask the Court to award attorneys' fees of $551,399 to Popham Law Firm (35% of $1,575,427), and $1,024,028 to Coffield PLC (65% of $1,575,427).

B. Nontaxable Costs

Federal Rule of Civil Procedure 23(h) also authorizes the award of nontaxable costs in class action litigation. Fed. R. Civ. P. 23(h); Manual For Complex Litigation (4th) § 21.71. *See U.S. Bancorp*, 291 F.3d at 1038 (8th Cir. 2002) (affirming $40,000 cost award to class counsel for their out-of-pocket expenses as appropriate).

In this case, class counsel have advanced costs and expenses totaling $35,745.86. (*See* Ex. 1 ¶7; Ex. 2; Ex. 3 ¶7; Ex. 4.)[2] This amount comprises $22,790.38 in litigation costs and expenses advanced by Coffield PLC, and $12,955.48 in costs and expenses advanced by Popham Law Firm. (Id.)

Of the $35,745.86 total, Plaintiffs believe $6,746.44 constitute taxable costs that Plaintiffs, as the prevailing party, are entitled to recover directly from Panera pursuant to Federal Rule of Civil Procedure 54(d) and 28 U.S.C. §1920.[3] The $6,746.44 comprises $4,732.84 in taxable costs advanced by Coffield PLC, and $2,013.60 in taxable costs advanced by Popham Law Firm.

The remaining $28,999.42 in costs reflect travel, lodging, and other litigation expenses incurred by counsel and the class representatives to attend depositions, hearings, and mediations in furtherance of this class action. These nontaxable costs comprise $18,057.54 in nontaxable costs advanced by Coffield PLC, and $10,941.88 in

[2] This figure does not include costs incurred for the trial of the individual unjust enrichment claims.

[3] Pursuant to Local Rule 54 – 8:03, Plaintiffs will timely file a Bill of Costs seeking reimbursement from Panera for these taxable costs.

nontaxable costs advanced by Popham Law Firm. (*See* Ex. 2 at 4; Ex. 4 at 2.)

Accordingly, Plaintiffs respectfully ask the Court to order reimbursement to class counsel of $35,745.86 in expenses to be paid from the total judgment amount, as follows: $22,790.38 to Coffield PLC, and $12,955.48 to Popham Law Firm.

In the event the Court awards Plaintiffs taxable costs against Panera, Plaintiffs ask that the amount of such award be deducted from the $35,745.86, and the balance awarded to class counsel out of the total judgment amount.

C. Service Awards

Finally, Plaintiffs respectfully ask the Court to order "service awards" of $50,000 for each of the three class representatives, to be paid out of the total judgment amount. In *U.S. Bancorp*, the Eighth Circuit cited *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) for the "relevant factors in deciding whether incentive award to the named plaintiff is warranted." *U.S. Bancorp*, 291 F.3d at 1038 n. 6 (8th Cir. 2002). Those factors are (1) actions plaintiff took to protect the class's interests, (2) degree to which the class has benefitted from those actions, and (3) amount of time and effort plaintiff expended in pursuing the litigation. *Id*.

Considering these factors, Plaintiffs respectfully submit that proposed awards of $50,000 to the class representatives are appropriate.

With respect to the first factor, the three class representatives in this case have consistently and vigorously acted to protect the interests of the absent class members. For example, in an effort to thwart this class action and evade liability to the absent class members, Panera offered — on more than one occasion — to pay each of the three class representatives more than 100% of their own individual losses, in exchange for a

dismissal. (*See* Panera Motion to Dismiss, DN 88 at 2.) Rather than preserve their own self-interests, these representative plaintiffs risked sure money in hand by rejecting Panera's offers and proceeding with the litigation in the interests of the class. The class representatives fully protected the interests of the class by obtaining a favorable judgment on behalf of the entire class — a judgment that recovers 100% of all class members' contract damages, plus interest.

With respect to the third factor, the class representatives have each invested considerable time and effort in pursing this litigation. Each class representative provided class counsel with critical information and documents relevant to the class claims; responded to numerous written discovery requests from Panera; submitted to day-long depositions taken by Panera's counsel in St. Louis; attended the hearing on class certification; participated in two separate mediations in St. Louis; reviewed pleadings, communicated with class counsel on a regular basis, and actively participated in this litigation from the outset. To date, each class representative has taken time away from their jobs and families and travelled to St. Louis on behalf of the class members on four separate occasions — a deposition, the class certification hearing, the July 2015 mediation, and the March 2016 mediation. (*See* Ex. 1 ¶¶3-4; Ex. 3 ¶¶3-4.)

Finally, with respect to the second factor, the actions of the class representatives described above have greatly benefitted the class members. As a direct result of the class representatives' commitment to and pursuit of the class members' claims, the class members obtained a favorable outcome providing 100% of their individual contract damages, plus interest.

Federal courts have approved awards of $50,000 in previous cases where the actions of class representatives were instrumental and helped to obtain substantial benefits to the class members. *See Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 914 (S.D. Ohio 2001) (awarding $50K to named plaintiff who was "instrumental in bringing this lawsuit forward[.]"); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)(awarding $50K to named plaintiff); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (awarding $50,000 to each of six class representatives who "have taken actions which have protected the interests of the Class Members and which have resulted in a Settlement that provides substantial economic and non-economic benefits for the Class Members").

Plaintiffs recognize that in a recent case, this Court expressed concerns that incentive awards "may create a problematic conflict of interest between the class as a whole and the named Plaintiffs tasked with acting as their fiduciaries." *Nyazee v. MBR Mgmt. Corp.*, No. 4:14-CV-01561-AGF, 2016 WL 126363 at *2 (E.D. Mo. Jan. 12, 2016). The Court indicated that its concern is particularly prevalent where "the amount to be received by individual class members is quite small, and such amount is dwarfed significantly by the service awards proposed." *Id*. at *2 (reducing proposed $3,000 service award to $1,000 in settlement of FLSA collective action).[4]

Plaintiffs respectfully submit that the proposed service awards in this case do not present the problems raised by the proposed awards in *Nyazee*.

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[4] *See also Staton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003) (observing that while named plaintiffs may be eligible for reasonable incentive awards, "[i]f class representatives expect routinely to receive special awards in addition to their share of the recovery, they may be tempted to accept suboptimal settlements at the expense of the class members whose interests they are appointed to guard." (quoting *Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 720 (E.D.N.Y. 1989)).

First, the awards proposed here do not create a potential conflict of interest between the named plaintiffs and the class members because the awards are not part of a settlement that discounted the class members' claims. Rather, Plaintiffs prevailed as a matter of law on the class members' contract claims. The result is a common-fund judgment equal to 100% of the class members' contract damages, plus interest.

Second, the average amount to be received by each class member (before the deduction of any attorney fees, expenses, or service awards) is more than $70,000. (*See* DN 258-1, Column F.) Thus, unlike in *Nyazee*, the amounts to be received by the 64 absent class members will in no way be "dwarfed" by the proposed service awards to the three named plaintiffs. On the contrary — absent a service award, the actual amounts to be received by Plaintiffs Boswell ($17,716) and Lutton ($20,376) are approximately $50,000 lower than the average amount to be received by the class members. (*See* DN 258-1, Column F.)

For the above reasons, Plaintiffs respectfully ask the Court to order service awards of $50,000 for each of the three class representatives, to be paid from the total judgment amount.

III. CONCLUSION

For the above reasons, Plaintiffs respectfully request the Court find that the attorney's fees at the rate of 33% of the total judgment amount plus $35,745.86 in costs is reasonable and therefore, award those fees and expenses to class counsel from the total judgment amount. Plaintiffs further respectfully ask the Court to order service awards of $50,000 for each of the three class representatives, to be paid from the total judgment amount.

Dated this 24th day of June, 2016

Respectfully Submitted,

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CERTIFICATE

I certify that on June 24, 2016, a true and correct copy of the foregoing was filed with the Court using the CM/ECF system which will send a notice of electronic filing to the following:

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