



## I. BACKGROUND.

In September 2018, the Objectors filed supplemental objections on issues surrounding the administration of the class settlement. (Doc. 670); (Doc. 672). In particular, the Objectors argued that although the Settlement Administrator, KCC, “should recover its fees from the residual funds if possible . . . the ‘administrative infeasibility’ cutoff—set at \$5.00 per check—is too high, and should be reduced to \$2.50.” (Doc. 672, PageID##:23386, 23390–23391.) At the Fairness Hearing, the Objectors presented oral argument on this issue. (Doc. 714, Tr. 81–84.)

Before the Fairness Hearing, the Objectors moved for fees based on other aspects of their work. (Doc. 691.) Because the Objectors had not yet succeeded on the issue of administrative infeasibility, however, they indicated that they intended to move for fees on that issue at a later time. (Doc. 691, PageID#: 23651, n.1.) The Court ultimately rejected the Objectors’ fee petition as presented. *Charvat v. Valente*, No. 12-cv-05746, 2019 U.S. Dist. LEXIS 187225, at \*42 (N.D. Ill. Oct. 28, 2019). This Court has not yet had the opportunity to consider, however, the Objectors’ contribution toward lowering the administrative infeasibility threshold.

On appeal, the Objectors have reached a proposed Settlement Agreement with the Parties that would reduce the administrative infeasibility threshold from \$5.00 to \$2.50, allowing class members to receive additional rounds of funds. (Doc. 739.) The Settlement Agreement would resolve all other issues on appeal, and it would result in a payment to Objectors’ counsel for their work and expenses that would come from the Parties, rather than from the Class.

The total payment to Objectors' counsel will be \$50,000—split evenly between Hilton Parker LLC and Lacey, Price & Wagner, PLLC— which is a modest amount designed to reflect the fact that the Objectors were unsuccessful in their initial fee petition. In the initial petition, Objectors' counsel stated a lodestar of over double the amount they now stand to receive. (Doc. 691, PageID#:23663.)

Further, since that time, the Objectors have incurred an additional lodestar of \$27,002.50, which includes time spent preparing for and preserving arguments at the Fairness Hearing and pursuing their appeal. (Decl. of Jonathan Hilton, "Exhibit 1.") Total litigation expenses, including the \$4,000 that Objectors Shelton and John have paid for local counsel before this Court, are \$7,956.37. (*Id.*)

## II. LAW.

The Seventh Circuit has urged that, where a settlement is reached of an objector's appeal, "the parties should . . . address[] objector's fees up front as part of the comprehensive settlement negotiations." *In re Sw. Airlines Voucher Litig.*, 898 F.3d 740, 744-45 (7th Cir. 2018). Where an objector has benefitted the class, both class counsel and defendants may contribute to an award of fees to objectors' counsel. *Id.* (ordering payment out of class counsel's share); *In re Harnischfeger Indus., Inc.*, 212 F.R.D. 400, 417 (E.D. Wis. 2002) (class counsel and defendants may both contribute); *see also Safeco Ins. Co. of Am. v. Am. Int'l Grp., Inc.*, 710 F.3d 754, 757 (7th Cir. 2013) (defendants may settle an objection on appeal so long as there is no detriment to the class). "A proper attorneys' fee award is based on success obtained and expense (including opportunity cost of time) incurred." *Mirfasihi v. Fleet Mortg. Corp.*, 551 F.3d 682, 687 (7th Cir. 2008).

### III. ARGUMENT.

The Court should approve the Settlement Agreement because it benefits the class by lowering the administrative infeasibility threshold from \$5.00 to \$2.50, making it more likely that more money will flow to class members rather than to KCC or a *cy pres* recipient. Although the present value of this contribution is difficult to quantify, the Parties have heeded the Seventh Circuit's admonition to address the Objectors' fees "up front as part of the comprehensive settlement negotiations." *In re Sw. Airlines Voucher Litig.*, at 744-45.

The proposed total award of fees is modest, given that the Objectors' total litigation expenses are \$7,956.37 and their total lodestar for this matter is significantly greater than the fee award they stand to receive. Thus, the Settlement Agreement takes into account that "[a] proper attorneys' fee award is based on success obtained and expense (including opportunity cost of time) incurred." *Mirfasihi*, 551 F.3d at 687.

Lastly, the Settlement Agreement protects and preserves class funds because the Objectors' fees will be paid jointly by Class Counsel and Defendants. This will ensure that class members receive the full amount of the benefit created by a lower administrative infeasibility threshold.

### IV. CONCLUSION.

For these reasons, the Court should indicate that it will approve the proposed Settlement Agreement.

Respectfully Submitted,

Dated: January 29, 2020

s/ Jonathan Hilton

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#### **CERTIFICATE OF SERVICE**

I, Jonathan Hilton, Esq., do hereby certify that on this 29th day of January, 2020, I caused true and accurate copies of the foregoing to be served via the Court's CM/ECF system, which shall cause service on all counsel of record.

s/ Jonathan Hilton