IN THE 16TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF ST. IBERIA
STATE OF LOUISIANA

NO.: 00127719

DIVISION "A"

JOY MATURIN, ET AL

VERSUS

BAYOU TECHE WATER WORKS, INC., ET AL

FILED: _____

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DEPUTY CLERK

MOTION & INCORORATED MEMORANDUM FOR APPROVAL OF ATTORNEY'S FEES, EXPENSES, COSTS & CLASS REPRESENTATIVE INCENTIVE AWARDS ACCORDING TO THE PROVISIONS OF THE PRELIMINARILY AND FINALLY APPROVED CLASS ACTION SETTLEMENT

NOW INTO COURT, comes class counsel, and Movants, GORDON J. SCHOEFFLER and JACQUES P. SOILEAU, who through the instant Motion prays that this Honorable Court approve and order disbursement of the attorney's fees, expenses, costs, and incentive awards as prayed for herein; which are consistent with the parties' arms-length settlement and compromise of this matter, said settlement having been previously and preliminarily approved by this Honorable Court, and having then been set for final approval by the Court at a prescheduled "Fairness Hearing" to be held on March 15th, 2023, at 10:00a.m., in New Iberia, Louisiana. Movant herein requests that the instant Motion be set for consideration and decision simultaneously with, and/or immediately after, the Motion for Final Settlement Approval on March 15th, 2023, and that an executed order issue that day granting the relief sought herein.

I. PROPOSED ATTORNEY'S FEES ARE MERITED:

In the instant motion, attorney's fees are proposed as a percentage of the total settlement fund recovery. Particularly, the percentage prayed for is 35% of the total recovery fund established for the benefit of the class members through compromise. The amount of the settlement fund agreed upon by the settling parties is $1,000,000.00. Thus, the specific amount of attorney's fees for which Movant seeks approval is, $350,000.00.

As discussed more particularly in the sections that follow, the amount of attorney's fees prayed for in the instant matter were part of a proposed settlement package, and truly need no further justification. Nonetheless, the proposed fees were derived by carefully considering

applicable criteria for setting attorney's fees in class action litigation, and taking care to ensure that those fees both compensate class counsel fairly and adequately for the work and expense necessitated in achieving this result, but also that said fees do not overly burden the agreed upon settlement fund, and that fair compensation is available to each of the individual class members.

Attorney's fees in class action litigation are most commonly based upon a percentage of the overall common fund established for the benefit of the class, which is discussed at length in Section I. (d) below. This is so, particularly where a settlement contemplates attorney's fees being disbursed from a pre-set fund amount, as opposed to being sought separately, or in addition to the fund amount that was set aside for the class beneficiaries. Further, where the parties to a settlement contemplate actual amounts for attorney's fees and expense reimbursement, such amounts are invariably favored as a beneficial value to the class, and approved by the courts as part of the overall settlement package; this is particularly so, where as in this case, there have been no objections filed to the settlement as proposed. *See e.g., State v. La. Land & Exploration Co.*, 272 So.3d 937 (La. App. 3d 2019), *citing, "In Re: Oil Spill by the Oil Rig 'Deepwater Horizon' in the Gulf of Mexico, on Apr. 20, 2010 , No. 2179,* 2016 WL 6215974, at 18, (E.D. La. 2016) (discussing the value of pre-determined attorney's fees as part of the overall benefits to class members); *see also, Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996) ("The award to the class and the agreement on attorney fees represent a package deal. ..[T]hose fees are still best viewed as an aspect of the class' recovery).

What's more, the settlement of class actions is strongly encouraged. Parties are incentivized to compromise, in part by the courts' giving due deference to their settlement agreements when reasonable, which includes approving an agreed upon amount of attorney's fees that, as noted, becomes part and parcel of the overall "settlement package" when agreed to in advance by the parties. *Johnston, supra.* Agreements through compromise on such issues, also spare the resources of the judiciary, minimize the ultimate costs to class members (where higher costs directly diminish class recovery), and reduce costs of protracted litigation for all party litigants. The Louisiana Supreme Court in, *State v. Sprint Communications Co., L.P.*, 897 So.2d 85 (La. 2005), has held to this end:

> We are cognizant that the law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation. The parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial. These economic gains multiply

> when settlement also avoids the costs of litigating class status — often a complex litigation within itself. Furthermore, a settlement may represent the best method of distributing damage awards to injured plaintiffs, especially where litigation would delay and consume the available resources and where piecemeal settlement could result. *See, In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d at 784.

So, the percentage of fund based method for valuing the proposed attorney's fees in the instant matter, as agreed to in the package settlement before the Court, is the most common type of attorney fee evaluation made in class actions; and then, such fee assessments are especially favored by the courts when they are made part of the overall settlement agreement between the parties, as they have been here.

The next most common method for determining attorney's fees in class action litigation, usually in contested matters and/or when a benefit obtained for the class is *de minimus*, in the form of injunctive relief, statutory (as in the case of a "Citizen Suit" or a Civil Rights action), or otherwise non-monetary, is through what is commonly known as the "lodestar" method. *See, e.g., Covington v. McNeese State Univ.*, 118 So.3d 343, 348 (La. 5/7/13) (defining the lodestar method). This method essentially uses several criteria to determine the fairness of proposed hourly rates, and then multiplies that hourly rate by the sum of reasonably billable hours in the case. *Id.* That final product is then subject to adjustment based on several other criteria such as complexity and difficulty of the subject matter, special qualifications or expertise of the attorney, the significance of the litigation for future litigants (including whether new precedent was developed as a result of the litigation), whether *res nova* issues or matters of first impression were decided in the litigation, and the relative risk undertaken by Class Counsel in the matter, amongst other considerations. *See e.g., Johnson; and Rivet, infra.*

However, as demonstrated more particularly below, the application of a lodestar analysis would likely result in a far higher percentage of attorney's fees being taken from the fund for attorney's fees; this, in turn, would diminish the ultimate remuneration of class members to a far greater extent than the percentage of fund assessment of attorney's fees that is being *modestly* proposed here (quite frankly). This fact demonstrates with still more force, that the proposed percentage fee is exceedingly fair and reasonable to class members; particularly, it was derived with special attention to balancing the fairness and adequacy of the attorney's fee, against the fairness and adequacy of the available compensation to individual class members from the fund.

(a) ***Class Counsel Underwent an Extensive Litigation Process:***

The nature and dynamics of the instant litigation, in many ways, presented the proposition of class litigation with several issues of first impression. At its outset (over six years ago), the very viability of the action in the district court, in its entirety, was challenged on jurisdictional grounds, with Defendants claiming that the Louisiana Public Service Commission (LPSC) had exclusive jurisdiction over actions for damages by private customers against their water providers. That preliminary issue alone was successfully litigated at the district court level by Plaintiffs, and before the PSC, and was successful despite appellate precedent from another circuit suggesting contrary treatment.

After substantial motion practice, the matter was submitted to the trial court for certification and certification was initially denied. Plaintiffs appealed and the Third Circuit reversed and remanded the matter to the trial court for further certification hearing proceedings. At the conclusion of the second certification hearing, the trial court approved the instant class. Defendants appealed to the Third Circuit, and Plaintiffs responded in opposition. In the interim of the pending appeal, Plaintiffs and Defendants engaged in a mediation wherein the parties formulated the instant compromise.

Besides the substantial motion and appellate practice involved in this case, as well as two certification trials, the parties herein engaged in substantial written discovery, exchanging thousands of documents in this regard, all of which were required to be thoroughly reviewed in preparation of the parties' respective cases. Dozens of depositions were taken all over the state. Motions to compel were filed, and orders regarding same were issued, including protective orders, which designated discoverable materials and established places, dates, and times for Plaintiffs to appear and inspect and obtain copies of sought-after discovery materials.

Further, thousands more documents were obtained either through subpoena or through Louisiana's version of the federal Freedom of Information Act (FOIA); particularly, those documents were obtained from Louisiana state regulatory agencies, including the Louisiana Department of Health and Hospitals (LDHH), the Louisiana Public Service Commission (LPSC), and the Louisiana Department of Natural Resources (LDNR), all of whom had some regulatory authority, in some capacity, over the Defendant water company, and kept records or files regarding said water company.

Also, records were subpoenaed, and/or affidavits were obtained, from previous and current vendors of the Defendant water company, including water well installation and repair professionals, water quality and chemical control professionals, previous engineers used by the Defendant water company, and prior employed engineers of the LDHH water division. All of this information had to be synthesized, organized, and communicated to respective expert witness engineers retained by either party, who in turn compiled their respective expert reports in this matter.

After accumulation of substantial information by both sides through written discovery, the parties began taking depositions of critical witnesses. Many of those depositions, including the 1442 deposition of the Defendant water company, the deposition of the Defendant water company's official engineer, and the two engineers designated as experts by the respective parties, involved perusal of the thousands of documents produced through written discovery, subpoena, and public requests, as well as substantial research in preparation for those depositions, as well as the drafting of questions relating to pertinent documents and information for each of those witnesses; indeed, a multitude of these documents were attached as exhibits to several of these depositions, and were ultimately offered into the record through motion practice and/or as evidence at the class certification hearing.

In addition to the extensive technical testimony related above, testimony was obtained by many different customers of the Defendant water company as fact witnesses. All of these witnesses appeared and gave depositions, supplementing their respective Affidavits. Several of them were even called to testify in person at the class certification hearing, in addition to the two customer witnesses who were designated as class representatives. In that vein, prior to their testimony at the class certification hearing, each of the two named class representatives gave extensive deposition testimony. Each of these depositions of the customer fact witnesses and the class representatives also required extensive preparation, research, and review of pertinent documents; as did the presentation of those individuals as live witnesses at the class certification hearing.

To be sure, substantial time was spent by all parties in trial preparation, organization of exhibits for presentation, witness preparation, and other matters ancillary to trial. The matter proceeded accordingly and at the conclusion of the second phase of the certification hearing, the Court granted class certification and thereafter rendered written reasons for judgment.

Following this, as noted, Defendants appealed, and engaged Plaintiffs in settlement negotiations through mediation. The parties came to a tentative agreement and set about putting pen to paper in order to outline the general settlement agreement that was ultimately reached and is being presented to this Honorable Court for final approval. However, before the settlement agreement that had been reached in concept could be presented to the Court, there were many finer details to work out among the parties. During this time period, several multi-party conferences were held either in person or telephonically.

Once the major substantive details of the settlement had been ironed out, as well as general timing and procedural issues, the parties agreed to enlist the assistance of a third party claims administrator and logistics firm in order to facilitate and finalize the settlement agreement contemplated by the parties. Again, several settlement conferences were held with these third party firms, and eventually the final details regarding logistics and timing issues associated with implementation of the proposed settlement agreement began to crystalize. At this juncture, the parties were able to put the finishing touches on the joint pleadings for preliminary approval of the settlement agreement that had for so long been a work in progress. Further, the finalization of an actual detailed settlement agreement was generated, as was a complete form of the proposed notices, including the notice content, the methods of notice, the timing of notices, and procedural delays between the various steps required between preliminary and final approval of the settlement agreement between the parties.

Getting to this point, required several iterations of draft motions and exhibits that were circulated amongst the parties for comment and/or contribution. The various drafts were edited and/or revised several times through a multitude of email exchanges between defense counsel, class counsel, and the retained administrative firms.

The joint motion, upon finalization, was then filed and presented to the Court, and was given preliminary approval with a fairness hearing date set for March 15, 2023. Pursuant to that approval, the notices of settlement to class members issued in compliance with all deadlines and time periods as required by the parties' settlement agreement, and in accordance with applicable law. From the date of issuance of notices, Class Counsel kept and maintained a separate telephone line, designated exclusively to field calls from class members who had received notice of the settlement agreement, and had further questions about the settlement agreement. Class Counsel and/or Third Party Claim Administration personnel fielded calls during this time period from

numerous customers on the system who had received the notices and were seeking further information regarding the class settlement agreement. Class Counsel obtained all contact information for each customer who called with inquiries, and satisfactorily answered all of their questions and/or explained the details of the settlement agreement to their respective satisfaction. As noted, at the end of the period allotted for either objections or opt-outs to be filed by noticed class members, no such objections or opt-outs were filed in opposition to the proposed settlement.

With the delays having run in accordance with the preliminarily approved settlement agreement, all that remains to finalize the settlement agreement is to seek the Court's final approval of said settlement agreement. As of the date of the filing of the instant Motion, the parties have coordinated dates with the Court, and fully anticipate that the Motion for Final Approval of the settlement agreement will be considered and approved at the pre-scheduled fairness hearing on March 15th, 2023. Class Counsel, as indicated elsewhere herein, anticipates that the instant Motion will also be considered and decided at the March 15th , 2023 Fairness Hearing.

Upon receiving final approval from the Court, the funds required by the settlement agreement will be forwarded by the Defendants to the designated administrators, and this will be disbursed by the administrators according to the particular provisions of the parties' finalized settlement agreement. Yet, it is conceivable still, that Class Counsel may need to continue to be available, and assist in locating or otherwise communicating with class members regarding final execution of the settlement agreement, until all of the obligations pursuant to the settlement agreement have been satisfied and are extinguished.

All of the foregoing has been detailed to say the following: all told, Class Counsel has incurred well over 1400 billable hours combined in this litigation sequence; and (as noted) Class Counsel stands to incur still more billable hours before this matter can be brought to complete and final resolution. Indeed, if one were to ask, one would find that the cumulative hours billed by the four Defense attorney's defending this matter (exclusive of those hours contributed to by the third party administrators who have only joined this enterprise on the very back end), in all likelihood, well exceed the modest estimate of billable hours incurred by Class Counsel, which hourly sums of the respective parties, in essence, represent the reciprocated efforts of the respective party litigants in the context of this litigation.

Thus, Class Counsel agreed, as part of the settlement agreement being submitted for final approval, to accept a flat fee of 35% of the established fund ($1,000,000.00) recovered for the

benefit of the class in this matter; and this percentage would apply regardless of the eventuality of appellate practice in the underlying litigation. Class Counsel feels that this percentage will be both fair to Class Counsel (although perhaps not optimal or even ideal); while also ensuring an ample fund sufficient for remuneration of the individual class members.

What's more, strict application of the "lodestar" method mentioned above, in order to valuate Class Counsel's attorney's fees (as opposed to the proposed 35% of fund recovered) – especially given the extensive amount of work done by Class Counsel in this case – would ultimately provide *substantially* less compensation to class members, while providing significantly more to Class Counsel as attorney's fees.

(b) Litigation Involved Complex & Specialized Subject Matters:

The subject matter of the underlying lawsuit concerned a highly technical subject matter, and covered such areas as water plant engineering and design, water treatment and water quality, toxicology, fluid dynamics and fluid pressure, hydrogeology and well design, and water chemistry generally. The litigation also required application and interpretation of highly technical and specialized rules of the Louisiana Department of Health and Hospitals (LDHH), as well as dissection of complex constitutional and administrative legal and procedural issues with regard to other relevant Louisiana agencies that share some regulatory overlap with LDHH.

In short, it is safe to say that the issues surrounding fault and breach of delictual or contractual duties in this case (as well as causation) were not hardly as simple to develop factually and present legally, as say, a rear end collision giving rise to a neck injury. This case involved factual details and scientific concepts that are not typically common knowledge to, or commonly experienced by, the ordinary lay person. Effective litigation of the subject matter, therefore, required counsel familiar with this subset of specialized knowledge within the legal field; generally speaking, such specialized areas of legal practice merit and garner higher hourly billing rates, and hence, higher legal fees overall.

(c) Class Counsel's Background:

Movants class counsel, have academic and litigation expertise in environmental matters, similar to the instant case, and have over 50 years of combined experience as complex litigation attorneys.

A survey of typical hourly rates for attorneys, reveals that class action attorney's, particularly in Louisiana, have an average hourly rate of $400.00/hr. *See, e.g.* R.L. Burdge, *United*

States Consumer Law, Attorney Fee Survey Report 2015 -2016 (March 13, 2018) at p. 249. Similarly, attorney's in complex, highly technical legal fields, regardless of whether they are engaged in mass litigation or not, particularly attorneys specializing in energy, land use, & environmental litigation, commonly have hourly rates of $245.00/hr - $455.00/hr. *See,* https://www.priorilegal.com/practice-areas/energy-land-use-and-environmental; *and Valeo 2016-2019 Energy Attorney Hourly Rate Report.*

Other highly technical fields of law share roughly this same range of average hourly fees, such as in product liability litigation (*See, Product Liability Attorney Hourly Rate Report 2020* - ResearchAndMarkets.com), or in administrative practice before various highly technical government agencies on the state and federal levels. *See, e.g. USAO Attorney's Fees Matrix, U.S. Dept. Justice* (attorneys with 11-15 years of experience, in 2020, are assessed an hourly rate of $510.00/hr). Movant's litigation practice almost exclusively involves litigation with corresponding administrative practice, whether it be at the USPTO, the International Trade Commission (USITC), the US Consumer Product Safety Commission (CPSC), or the various environmentally oriented agencies on both the state and federal levels. In that vein, it is worth noting too that a patent practitioner, on the administrative level (prosecuting patents at the USPTO as opposed to litigating patent infringement), typically has an hourly rate in the range of $ 400.00 - $700.00. *IP Watchdog,* https://www.ipwatchdog.com/2015/04/18/patent-cost-understanding-patent-attorney-fees/id=56970.

In private practice, when retained for hourly work, including work in the environmental realm, such as permitting and defending enforcement actions, Movant's standard hourly rate is $300.00/hr. This hourly rate is consistent in patent and intellectual property matters as well, with a standard hourly rate of $300/hr. Indeed, when fresh out of law school, working as defense counsel in complex litigation including environmental and intellectual property litigation, Movant's billing rate was $200.00/hr. This rate was the rate applicable in 2005, absent 15+ years of litigation experience. Also worth noting, is that when working exclusively as a consultant and engineer for energy and chemical companies, Movant's hourly billing rate was $250/hr; and in those instances, Movant was not even billing as an attorney at all.

Hence, given Movant's background, experience, specialization in a highly technical legal field, and hourly rates established through custom and practice of $300.00/hr, it should be clear to this Honorable Court that the $300/hr rate for the purposes of analyzing legal fees in this case is

both fair and reasonable; and further, that said rate comports with typical hourly rates billed by attorney's with similar backgrounds, and in similar legal fields. What's more, much of the data and studies cited herein concerning "typical" hourly fees are five to six years old already. More recent studies cite even higher average hourly fees and call attention to a steady annual increase in said hourly fees.

Finally, it is also worth pointing out to the Court that in 2020, even non-professional, non-technical occupations charge hundreds of dollars per hour for their goods and/or services. By way of example: massage therapists charge $50.00/hr - $90.00/hr[1]; auto mechanics charge $50.00/hr-$215.00/hr[2]; plumbers charge $175.00/hr - $450.00/hr[3]; and, tattoo artists charge $150.00/hr - $450.00/hr[4]. Certainly then, given this market data and considering reasonable consumer expectations, an ordinary consumer can reasonably be expected to anticipate paying an hourly rate of $300.00/hr (if not more) for utilization of an attorney's services who is specialized in a highly technical field of law. Thus, even if the instant matter were not class litigation as it is (wherein the average hourly fee established is $400.00/hr), the mere fact that the instant litigation concerns a highly technical and specialized field of legal practice, alone, more than sufficiently justifies the modestly proposed hourly rate of $300.00/hr as typical, fair, and reasonable, and commensurate with compensatory rates that are ordinarily seen in the context of this type of litigation.

Given the foregoing, if in the instant matter, Class Counsel were seeking approval of fees exclusively *via* the "lodestar" method, assuming only 1400 billable hours (between three attorneys) at $300.00/hr, then the raw estimate of attorney's fees in this matter would be $420,000.00. This raw number could then be adjusted further upward still, considering the *Johnson* or *Rivet* factors cited *supra*. As the Court can see, the fees for which Movant seeks approval in the instant matter are far, *far* less than that which would obtain from a strict lodestar analysis. (*i.e.*, 35% of $1,000,000.00 = $350,000.00, which is far less than the $420,000.00 plus fee *modestly* derived through application of the lodestar method)[5]. *See e.g., Cope v. Duggins*, 203 F.Supp.2d 650 (E.D.

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1 https://thervo.com/costs/massage-prices

2 https://www.aaa.com/autorepair/articles/auto-repair-labor-rates-explained

3 https://www.homeadvisor.com/cost/plumbing/#:~:text=The%20cost%20of%20a%20plumber,fee%20of%20%24300%20on%20average.

4 https://fash.com/costs/how-much-do-tattoos-cost

La. 2002) (court affirming attorney's fees representing 312% of plaintiffs' overall recovery, and finding fee reasonable, especially where the requested attorney's fee was far less that what the fee would have been if strictly adhering to the "lodestar" method of fee calculation); *accord, Thomas v. A. Wilbert & Sons, LLC*, 217 So.3d 368 (La. App. 3d 2017) (attorney's fees representing 200% ($6.3 million) of the plaintiffs' overall recovery benefit value of $3.2 million were affirmed by the La. Third Circuit despite defendant's contentions that the trial court should have required plaintiff's counsel to provide an accounting of actual hours billed instead of generally estimating work done, and then undertake a detailed "lodestar" analysis for a reasonable fee calculation; the Third Circuit specifically held that trial court had discretion to evaluate and estimate fees based upon general estimations derived from use of the *Rivet* factors); *see also, Crooks v. Department Of Natural Resources*, 263 So.3d 540 (La. App. 3d 2018) (court approving attorney's fees representing roughly 51% of overall recovery amount (over $22,000,0000.00 in attorney's fees)).

Indeed, with percentage-of-recovery based fees in class actions generally, as the monetary size of the overall recovery decreases, the percentage of recovery assessed as a fee increases (and *vice versa*). So, for example 35% would be considered as a standard percentage attorney fee in class fund settlements ranging from $0 - $10 million dollars; while only 8% would be considered a reasonable fee in "megafund" class action settlements ($2B - $4B dollars). *See, In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F. Supp. 2d 437 (EDNY 2014). (court conducted a survey of "megafund' cases and provided an ideal graduated scale for attorneys' fees; the scale set forth in *Interchange Fee* provides a marginal fee percentage at various levels of recovery; the above cited percentage-fee per dollar-fund-recovered figures were included in the *Interchange Fee* court's scale); *source*, http://www.thenalfa.org/blog/contingency-fee-percentages-in-megafund-class-actions/. *Interchange Fee* acknowledges and memorializes the general trend in class action percentage fee assessments that as recoveries go higher, the marginal fee percentage decreases (and as recoveries go lower, the marginal fee percentage increases). *Id.* at 445; *see also*, Alison Frankel, *In Biggest Cases, Class Action Lawyers are Low-Balling Fee Requests – And That's a Good Thing*, REUTERS: ON THE CASE (November 1, 2016) (article lowballing); *and, In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on Apr. 20, 2010* , No. 2179, 2016 WL 6215974, at 18, (E.D. La. 2016) (BP class action opinion discussing propriety of assessed attorney's fees in "megafund" class action settlement).

Results Achieved by Counsel

Louisiana Code of Civil Procedure art.595 A. provides that where a beneficial result of class litigation is achieved for the class, class counsel is entitled to an award of attorney's fees, costs, and expenses. In the instant case, through utilization of skill, effort, and resources, applied in a specialized and highly technical field of law, Class Counsel has secured the establishment of a fund for distribution to individual class members. Additionally, the Defendant water company was finally compelled to begin a regular flushing program, to implement an alternative water disinfectant regime, and retain competent managerial staff to run the water company

Clearly then, the class has obtained a direct benefit from the instant class litigation, said combined benefit being valued in the multi-million dollar range, and said benefit including the establishment of a cash compensatory fund for qualified class members. Further, the risk of the litigation endeavor on their behalf was borne exclusively by Class Counsel. As noted in the joint motion for final approval of the settlement, concluding the matter through compromise guaranteed a reasonable class benefit to class members, and mitigated against negative risks associated with protracted litigation. Thus, Class Counsel is statutorily entitled to be compensated by a fair and reasonable attorney fee, taking into account all of the factors discussed herein. And as stated emphatically herein and throughout, the amount of the proposed fee is exceedingly fair, and even modest by most measures.

(d) Method Elected for Estimation of Proposed Fees Strikes the Fairest Balance:

In interpreting and applying Louisiana's class action statutes, which are found in Louisiana's Code of Civil Procedure, arts. 591 *et seq.*, courts consistently rely on both federal and state jurisprudence, interchangeably and *in pari materia*, since Louisiana's state class action statutes in its Code of Civil Procedure were modeled upon Fed. Rule Civ. Proc. art. 23. *Dupree v. Lafayette Insurance Co.* 51 So.3d 673, 2009-2602 (La. 11/30/10) p. 5 n.5, pp. 8–9 n. 6, 51 So.3d at 678 and 679. ("The legislature in 1997 extensively revised Louisiana Code of Civil Procedure Article 591 *et seq.*, essentially adopting current federal law, Fed. Rule Civ. Proc. 23, and codifying this court's class certification jurisprudence.") *See also, State v. La. Land & Exploration Co.*, 272 So.3d 937, 939 - 942 (La. App. 2019) (La. 3rd Cir. citing federal jurisprudence extensively as authority for assessment of attorney's fees)

As noted previously, attorney's fees in class actions are most commonly allocated by use of a percentage of the overall fund established by judgment or settlement. However, the next most

common method for assessing attorney's fees in class action litigation is by utilization of the "lodestar" method. Under lodestar, "it is necessary to determine the number of hours reasonably expended to perform the legal services for which compensation is requested." *Cope v. Duggins*, 203 F.Supp.2d 650 (E.D. La. 2002), *citing, Nisby v. Commissioners Court of Jefferson County*, 798 F.2d 134, 136 (5th Cir.1986); *see also, Covington v. McNeese State Univ.*, 2012–2182 (La. 5/7/13), 118 So.3d 343, 348. (defining the lodestar method). The reasonable number of hours is then multiplied by a reasonable hourly rate for the attorney providing the services. "The product of the two figures is the "lodestar." *Id.*

For the reasons discussed in previous sections, however, the more appropriate measure for attorney's fees in the instant case, is the more commonly used percentage-of-recovery method. In this case, the suggested percentage of recovery is 35%; this is 5% less than what is typical in standard "contingency fee" agreements in modern law practice, with 40% of recovery being the norm for litigation short of appellate practice, and 45% of recovery being the norm where the litigation involves appellate practice. *See e.g.*, https://www.warriorsforjustice.com/everything-need-know-contingency-fee-no-win-no-fee-lawyers. Indeed, as noted, this is precisely the type of contingency fee agreements that the class representatives have in this case. With regard to the percentage of fund method for evaluating attorney's fees in class actions, the relevant jurisprudence expressly notes that the method is based upon, and should be comparable to, "contingency fee" percentages that are so common in tort practice. *See Johnston, infra.*, 83 F.3d 241, 246 (8th Cir. 1996); *and In re Washington Public Power Supply System Sec. Litig.* ("WPPSS"), 19 F.3d 1291, 1296 (9th Cir. 1994)(fee award should not be based on "individual hours," but rather on the percentage that counsel "would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client").

Indeed, for well over a century, the U.S. Supreme Court has "recognized consistently that a litigant or 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." *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980). Under this "common fund doctrine … a private plaintiff, or plaintiffs' attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 227 n.10 (5th Cir. 2008) (*quoting, In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d

768, 820 n.39 (3d Cir.), *cert. denied*, 516 U.S. 824 (1995)). Accordingly, where a class action results in a recovery that has monetary value for class members, the attorneys whose efforts contributed to that recovery are entitled to payment of a reasonable fee from the recovery.

This principle, expressed in the High Court's *Boeing* decision, was derived from the following line of Supreme Court authority: *Alyeska Pipeline Serv. Co. v. Wilderness Soc.*, 421 U.S. 240, 257 (1975); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 393 (1970); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 164-66 (1939); *Central R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 123-27 (1885); *Trustees v. Greenough*, 105 U.S. 527, 532-37 (1881).

See, e.g., In re Continental Illinois Sec. Litig., 962 F.2d 566, 568 (7th Cir. 1992) ("Having employed their professional skills to create a cornucopia for the class, the lawyers for the class were entitled under the principles of restitution to suitable compensation for their efforts"); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 673 (N.D. Tex. 2010) ("The use of a common fund to pay attorney's fees in class action settlements is well established"); *In re Vioxx Prods. Liab. Litig.*, 760 F.Supp.2d 640, 647 (E.D. La. 2010) (the "equitable common fund doctrine was originally, and perhaps still is, most commonly applied to awards of attorneys' fees in class actions"); *Turner v. Murphy Oil,* 472 F.Supp.2d 830, 856-57 (E.D. La. 2007) (*quoting* Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §13:76 (4th ed. 2002)) ("When a plaintiff in an individual or representative capacity creates, increases, or preserves a fund by settlement or judgment, which benefits an ascertainable class, the court in exercising its equity jurisdiction, may grant class counsel fees by directing payment from the fund"); Eldon E. Fallon, *Common Benefit Fees in Multi-District Litigation*, 74 LA. L. REV. 371 (2014).

Rule 23(h) of the Federal Rules of Civil Procedure (as well as LSA-CCP art. 595 A,. as previously noted), specifically recognizes these principles, providing that, where a case is certified as a class action, "the court may award reasonable attorneys' fees and nontaxable costs authorized by law or by agreement of the parties." Fed. R. Civ. P. 23(h); LSA – C.C.P. art. 595 A. While the agreement with the Defendants – alone or in combination with the Common Fund Doctrine – justifies the award for attorney's fees, district courts are called upon to give reasonable approval of the proposed fees, just as they are called upon to give such reasonable approval to the settlement overall. *High Sulfur*, 517 F.3d at 228 (citations omitted); LSA – CCP art. 594.

In Louisiana jurisprudence, it is well settled that courts may inquire into the reasonableness of attorney fees as part of their inherent authority to regulate the practice of law, "[r]egardless of

the language of the statutory authorization for an award of attorney fees or the method employed in… making an award of attorney fees...." *Rivet v. State, Dept. of Trans. and Development*, 680 So.2d 1154 at 1161, (La. 9/5/96). A trial court, in its discretion, may use any rational assessment in evaluating the reasonableness of attorney's fees, and is not necessarily bound by a lodestar assessment, or any other particular method for attorney fee evaluation. *Thomas v. A. Wilbert & Sons, LLC*, 217 So.3d 368 (La. App. 2017); *see also Rivet, supra*; *and, Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *and its progeny*. Indeed, the trial court has much discretion in fixing an award of attorney fees and its award will not be disturbed on appeal absent a showing of an abuse of discretion. *Id.*

Trial courts exercising this discretion in class litigation, as noted herein, clearly favor application of the percentage-of-settlement-fund method for valuation of attorney's fees in class action litigation. AWARDING ATTORNEYS' FEES AND MANAGING FEE LITIGATION at 63-68 (Fed. Jud. Ctr. 1994). This view was first crystallized by the US Third Circuit Court of Appeal in a 1985 report issued by a Task Force appointed by the Court to "develop[] … recommendations to provide fair and reasonable compensation for attorneys in those matters in which fee awards are provided by federal statute or by the fund-in-court doctrine..." TASK FORCE REPORT, 108 F.R.D. at 238.

The US Third Circuit Task Force, together with the courts and academics, noted a wide range of inequities that attended the use of the lodestar approach in common fund matters, which would be ameliorated by exclusive use of a percentage based methodology: Recommending the use of the percentage method when a common settlement fund is created, the influential US Third Circuit Task Force's Report determined that a lodestar approach (1) "increases the workload of an already overtaxed judicial system"; (2) is "insufficiently objective and produce[s] results that are far from homogenous"; (3) "creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law"; (4) "is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount"; (5) "encourages lawyers to expend excessive hours, ... engage in duplicative and unjustified work, inflate their 'normal' billing rate, and include fictitious hours or hours already billed on other matters, perhaps in the hope of offsetting any hours the court may not allow"; (6) "creates a disincentive for early settlement of cases"; (7) "does not provide the district court with enough flexibility to reward or deter lawyers to that desirable objectives, such as early settlement will be fostered"; and (8) "works to the particular disadvantage of the

public interest bar" by undermining the efficacy of many of the fee statutes that Congress has enacted because the lodestars in the "money" cases, such as securities, "are set higher than in cases under statutes promoting nonmonetary social objectives such as the Civil Rights Attorneys Fees Awards Act of 1976." *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F.Supp.2d 732, 746-747 (S.D. Tex. 2008) (*citing and quoting* Task Force Report, 108 F.R.D. at 247-49) (footnotes and emphasis omitted). *See also Union Asset*, 669 F.3d at 643 ("The percentage method brings certain advantages. The district court in this case selected it over the lodestar method in part because it allows for easy computation [and] it aligns the interests of class counsel with those of the class members...."); *Burford v. Cargill, Inc.*, No. 05-0283, 2012 WL 5471985 at *1 (W.D. La Nov. 8, 2012) ("the percentage method [is] the most sensible approach in this matter because it is predictable, encourages settlement, and reduces incentives for protracted litigation");

See also, Vioxx, 760 F.Supp.2d at 650-51 ("courts find that the percentage method provides more predictability to attorneys and class members or plaintiffs, encourages settlement, and avoids protracted litigation for the sake of racking up hours, thereby reducing the time consumed by the court and the attorneys"); *In re Cabletron Systems, Inc. Sec. Litig.*, 239 F.R.D. 30, 37 (D.N.H. 2006) (stating that the percentage method "allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure."); *In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litig.*, 447 F.Supp.2d 612, 628-629 (E.D. La. 2006) (citations omitted) ("The lodestar method has been under increasing criticism because of the practical difficulties in applying it. The method has been called difficult to apply, time consuming to administer, inconsistent in result, and capable of manipulation. Furthermore, the lodestar method creates inherent incentive to prolong the litigation until sufficient hours have been expended") (internal quotations and citations omitted); *In re Catfish Antitrust Litig.*, 939 F.Supp. 493, 500-01 (N.D. Miss. 1996) ("'The lodestar method makes considerable demands upon judicial resources since it can be exceptionally difficult for a court to review attorney billing information over the life of a complex litigation and make a determination about whether the time devoted to the litigation was necessary or reasonable. ... Resolution of other cases on this court's already crowded docket would be severely delayed if the court had to attack such an administrative behemoth'") (citations omitted); Vaughn R. Walker & Ben Horwich, *The Ethical Imperative of a Lodestar Cross-Check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases*, 18 GEO. J. LEGAL ETHICS 1453, 1456-57 (2005) ("Lodestar Cross Check").

For these reasons and others, the vast majority of Courts of Appeal, including the U.S. Fifth Circuit, have approved of (or, in some cases, mandated) the use of the percentage method to award attorneys' fees in common fund cases. *Union Asset*, 669 F.3d at 644 ("the Fifth Circuit has never reversed a district court judge's decision to use the percentage method, and none of our cases preclude its use.... To be clear, we endorse the district courts' continued use of the percentage method . . ."); *see also, e.g., In re Thirteen Appeals Arising out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995); *In re Cendant PRIDES*, 243 F.3d 722, 732 (3rd Cir.), cert. denied, 534 U.S. 889 (2001) ("The percentage-of-recovery method is generally favored in cases involving a common fund...."); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 515-16 (6th Cir. 1993) (noting "the recent trend towards adoption of a percentage-of-the-fund method," and permitting use of this method in common fund cases); *Continental Illinois,* 962 F.2d at 572 (fee award should not be based on "individual hours," but rather on the percentage that counsel "**would have received had they handled a similar suit on a contingent fee basis**, with a similar outcome, for a paying client"); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *In re Washington Public Power Supply System Sec. Litig.* ("WPPSS"), 19 F.3d 1291, 1296 (9th Cir. 1994);

See also, Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990) ("a reasonable fee under the common fund doctrine is calculated as a percentage of the recovery"); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989) (endorsing use of percentage approach); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir.), *cert. denied*, 488 U.S. 822 (1988) ("a fee award based on a percentage of a common fund" is appropriate); *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hospital Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993) (requiring application of the percentage-of-benefit method in common fund cases).

Indeed, virtually all of the recent common fund fee awards made by the district courts within the Fifth Circuit have utilized the percentage method to award fees in common fund cases. *See, e.g., In re FEMA Trailer Formaldehyde Products Liab. Litig.*, MDL No. 07-1873, 2013 WL 1867117, *3 (E.D. La. May 2, 2013); *Burford, supra*, 2012 WL 5471985 at *1; *In re OCA, Inc. Sec. and Derivative Litig.*, No. 05-2165, 2009 WL 512081 at *19 (E.D. La. Mar. 2, 2009); *Enron,* 586 F.Supp.2d at 766, 778; *Murphy Oil,* 472 F.Supp.2d at 859-61; *In re Bayou Sorrel Class Action,*

No. 04-1101, 2006 WL 3230771 at *3 (W.D. La. 2006); *Educational Testing*, 447 F.Supp.2d at 628-29; *Batchelder v. Kerr-McGee Corp.*, 246 F.Supp.2d 525, 531 (N.D. Miss. 2003); *In re Combustion, Inc.*, 968 F.Supp. 1116, 1135-36 (W.D. La. 1997); *Catfish*, 939 F.Supp. at 499-501. *See also*, Brian t. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, JOURNAL OF EMPIRICAL LEGAL STUDIES, VOLUME 7, ISSUE 4, 811 -846 (December 2010). Accordingly, we respectfully submit that the proper method for assessment of fees by this Honorable Court in this case is also through the use of the percentage-of-fund method.

Proposed Fees Are Fair, Reasonable, & Typical of Fees Sought in Complex Class Litigation

As indicated by the relevant studies and jurisprudence, much of which are cited above, as well as the discussion and analysis concerning same, the percentage of fees sought in the instant matter is exceedingly reasonable. As noted, the percentage of fund method is likened to a "contingency fee". Standard contingency fee agreements provide for 40 % of the recovered amount. In fact, the class representatives in this case each signed such a contingency fee agreement. While not determinative of the method for evaluating attorneys' fees in litigation generally, the fact of a contingency fee is given great weight and consideration by the trial court in assessing the reasonableness of proposed attorney's fees. *See, e.g., Short v. Plantation Management Co.*, 781 So. 2d 46 (La. App. 1st Cir. 2000).

Thus, in summary, the fairness of the proposed attorney's fee herein is amply demonstrated by the following: (1) as a result of Class Counsel's efforts and risks undertaken in this class litigation, a compensatory fund was established for the benefit of the subject class, and the water company has had to implement remedial measures to address the ongoing water quality problems for the benefit of water company's customers; (2) Class Counsel is only seeking a flat 35% percentage of the recovery fund as an attorney's fee in this case, regardless of the extensive amount of litigation engaged in throughout this process; and (3) if the lodestar method of fee estimation were utilized, attorney's fees could amount to more than 61% of the total established recovery fund. Thus, it should be obvious and apparent to this Honorable Court that the proposed fee for Class Counsel is fair and reasonable, and should therefore be approved by the Court.

(e) No Objection to Proposed Fees:

Finally, the amounts prayed for in fees, expenses, and costs through the instant motion were set forth in the preliminary settlement proposal, which were then advertised to *all* class members through the approved notice process. No objections were made to the proposed fees and

reimbursement sought herein; and thus the fees, expenses, and costs contemplated as part of the settlement package (that were not objected to) should be approved by this Honorable Court.

Lack of objection by well-informed members of the class validates the reasonableness of a fee petition. *Ford*, 2012 WL 6562615, at *4 (*citing Armstrong v. Bd. of School Directors of City of Milwaukee*, 616 F.2d 305, 326 (7th Cir. 1980)); *see Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (citing lack of class objection as justification for approval of an exceptionally high percentage fee award).

Thus, in the instant case, the proposed amounts prayed for should be approved by this Honorable Court; particularly, since in addition to being fair, just, and reasonable independent of any other consideration, those amounts were also acquiesced in and consented to by the non-objecting class members, after having been given due notice and opportunity to object to same.

II. PROPOSED REIMBURSABLE EXPENSES AND COSTS:

LSA – CCP art. 595 provides that in the event of a settlement beneficial to class members, in addition to attorney's fees, Class Counsel is entitled to be reimbursed for actual expenses incurred in the litigation effort, and even those that may not otherwise be taxable as costs – just as such expenses are commonly recoverable in addition to an attorney fee that was recovered pursuant to a contingency fee agreement. LSA-CCP art. 595.

As noted in the Joint Memorandum for Preliminary Approval, the combined amount of expenses incurred by Class Counsel is, $24,403.43 expense and taxable costs, include but are not limited to: filing fees, airline tickets and hotels, court reporter fees, expert witness fees, legal document services; deposition preparation fees; postage, mailings and public record request fees; laboratory fees; subsequent expert witness invoices; and other miscellaneous expenditures such as purchases of professional publications, relevant hardware and materials for demonstrative exhibit preparation. Thus, expenditures and costs, totaling $24,403.43, should be approved by this Honorable Court in addition to the above proposed attorney's fees.

Given the indisputable expenses and costs submitted for reimbursement in connection with litigation of the instant matter, this Honorable Court should, in its Order Approving Attorney's Fees, Expenses, Costs, & Incentive Payments, Order that litigation expenses and costs in the full amount of $24,403.43 be and are hereby approved as immediately reimbursable expenses to Class Counsel, directly payable from the established fund; and further, that the designated administrator be commanded forthwith, to immediately disburse said amount from said fund, but in no case later

than four (4) days from the date upon which the Defendant insurer transfers the remaining amounts owed to populate the general fund that was established pursuant to the parties' compromised settlement agreement.

The payment of the aforesaid exceedingly reasonable amount, attributable to Class Counsel's costs and, is to be made in addition to the amounts discussed in Section I. above regarding Class Counsel's attorney's fees. Further, the payments of Class Counsel's attorney's fees, and the amounts representing Class Counsel's litigation costs and expenditures, are payments separate and apart from the amounts described in Section III. that follows; said amounts represent separate proposed incentive payments to class representatives for their participation in the litigation and their successful service as class-representatives for the ultimate benefit of the entire class.

III. CLASS REPRESENTATIVE INCENTIVE PAYMENTS:

Class incentive awards are customarily awarded to class representatives who serve diligently in their designated roles, and ultimately succeed in bringing about a beneficial result to individual class members through their efforts as class representatives. Theodore Eisenberg, Geophery P Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* 53 UCLA LAW REVIEW 1306 (2006). "[C]ourts consistently approve incentive awards in class action lawsuits to compensate named Plaintiffs for the services they provide and burdens they shoulder during litigation." *Camp v. Progressive Corp.*, 2004 WL 2149079, at *8 (E.D. La. 2004) (internal quotation omitted).

The class representatives in the instant case took time away from their personal schedules to prepare for and participate in depositions, as well as various meetings and conferences, and then to prepare for and testify at the class certification hearing that was held in open court. They also committed their time and services in discovery matters, including coordinating and communicating with other putative class members, and responding to extensive written discovery. As such, the class representatives in the instant matter are entitled to an incentive award for their successful service as class representatives.

As indicated by the aforecited empirical study on class representative incentive awards, in looking at about 350 class actions, the typical award per class member averaged $15,992.00 (*mean*); and the midpoint (in dollars) for the entire range of incentive awards, from lowest to highest, was $4, 357.00 (*median*). *Accord, Crooks v. Dept. Nat. Resources*, 263 So. 3d. 540 (La.

App. 3rd Cir. 2018) (An example of Louisiana's Third Circuit Court of Appeal affirming the sole class representative's incentive award of $10,000.00, validating the typicality of the range for such incentive payments as set forth in the previously cited empirical study).

In the instant matter, class representatives have agreed to accept each $15,000.00 as class representative awards, totaling a $30,000.00 class representative incentive payment cumulatively. This award is less than the *per representative* average established by the aforecited empirical study, but roughly comports with the *per representative* median amount found to be awarded to class members in that same study. Further, this amount was designated in the preliminary order approving the proposed settlement that is now pending final approval; was advertised to the class in the designated manner; and was not objected to by any class member or third party.

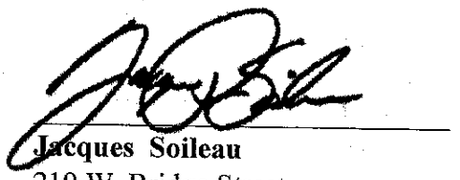
Therefore, given the preliminarily approved settlement agreement, the lack of any objection thereto, the fact that the amounts sought comport with amounts typically awarded for such incentive payments, and the fact that the individual class representatives explicitly consent to the prosed incentive award amounts, incentive awards of $15,000.00 should be ordered payable to each of the respective class representatives in accordance with the compromise reached between the parties. Accordingly, the designated administrator in this matter should be ordered to disburse said payments directly from the established general fund, made payable directly to said class representatives, and immediately upon final approval of the proposed settlement agreement.

IV. PRAYER FOR APPROVAL OF ATTORNEY'S FEES, COSTS & EXPENSES:

Considering the above and foregoing, Movant prays that this matter be set for consideration on this Honorable Court's docket, as part of the prescheduled "Fairness Hearing", set for March 15th 2022, at 10:00 a.m., and that the instant motion be considered and decided on said date, simultaneously with the currently pending Joint Motion for Final Approval of Class Settlement, which is also set for consideration and decision at the aforesaid prescheduled "Fairness Hearing".

Further, Movant prays that in light of the settlement agreement, and the lack of objection to same, and for all of the other reasons herein discussed, that this Honorable Court grant the instant motion forthwith and issue an order commanding the designated fund administrator to disburse payments from the general fund in the amounts herein prayed for representing: (1) attorney's fees payable directly to Class Counsel; (2) expenses and costs payable directly to Class Counsel; and (3) class representative incentive payments payable directly to each of the two respective class representatives.

RESPECTFULLY SUBMITTED:



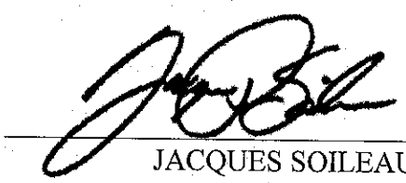
Jacques Soileau
219 W. Bridge Street
Breaux Bridge, LA 70517
Phone 337.412.2044
Fax 337.332.4562
Bar Roll No. 29677

CERTIFICATE OF SERVICE

I HEREBY CERTIFY *that a copy of the above and forgoing has this day been forwarded to* ***all counsel of record*** *in this proceeding by:*

__Hand Delivery ***__ U.S.P.S. First Class Mail*** ***_X_Email*** ***__Facsimile***

Pursuant to Louisiana Code of Civil Procedure Art.1313 Breaux Bridge, Louisiana this 8 day of March, 2023.



JACQUES SOILEAU

IN THE 16TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF ST. IBERIA
STATE OF LOUISIANA

NO.: 00127719

DIVISION "A"

JOY MATURIN, ET AL

VERSUS

BAYOU TECHE WATER WORKS, INC., ET AL

FILED: _____ _____
DEPUTY CLERK

ORDER

APPROVING & AWARDING ATTORNEY'S FEES, EXPENSES, & PLAINTIFF CLASS REPRESENTATIVES INCENTIVE PAYMENTS, IN ACORDANCE WITH THE COURT'S March 15, 2023 ORDER FINALLY APPROVING THE PARTIES' CLASS ACTION SETTLEMENT AGREEMENT

WHERAS, Class Counsel filed a Motion for Approval of Attorney's Fees, Expenses, and Class Representative Incentive Payments, said motion being heard, considered, and decided by the Court at the March 15, 2023 Fairness Hearing, wherein the Court gave final approval of the Parties' class action Settlement Agreement and signed the corresponding Order of Approval of said Settlement Agreement on that same date; and

WHEREAS, the Settlement Administrator, designated in accordance with the finally approved Settlement Agreement, has advised the Court that no Class Member has opted out of the Class and there has been no opposition or objection to the Settlement Agreement finally approved by this Court on March 15, 2023; and where no Class Member, or any other person or third party, attended the duly noticed Fairness Hearing or lodged any objection or opposition to the Court's final approval of the Settlement Agreement, or the amounts of Class Counsel's proposed attorney's fees, expenses, and class representative incentive payments; and

WHEREAS, having considered the written submissions, argument, and evidence of Class Counsel at the March 15, 2023 Fairness Hearing, and there being no objection or opposition to Class Counsel's proposed attorney's fees, expenses, and class representative incentive payments by any party or otherwise duly noticed Class Member prior to or at the March 15, 2023 Fairness Hearing; the attorney's fees, expenses, and class representative incentive payments, in the full

amounts prayed for by Class Counsel in Motion, are hereby **ORDERED FINALLY APPROVED** and the relief sought in Class Counsel's Motion is hereby **GRANTED**, and in the following particulars:

IT IS ORDERED, ADJUDGED, AND DECREED that the amounts proposed by Class Counsel in Motion as an award for attorney's fees, expenses, and incentive payments are fair, reasonable, and adequate;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Class Counsel's request for attorney's fees, expenses, and incentive payments comports with the terms of the Finally Approved Settlement Agreement, and are commensurate with the amounts disclosed to Class Members in the Court approved notice of settlement to Class Members; and that after due notice to Class Members and expiration of all associated time delays for Class Members to object, no Class Member or Party has objected to the amounts of attorney's fees, expenses, or incentive payments requested by Class Counsel, either prior to or on the date of the Fairness Hearing; and thus, Class Counsel is entitled to an award of attorney's fees, expenses, and incentive payments in the full amounts prayed for in Motion.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Class Counsel be awarded (1) attorneys' fees in the amount of $350,000.00; and (2) reimbursable expenses in the amount of $24,403.43; the designated claims administrator shall pay these sums to Class Counsel from the established Settlement Fund in no more than four (4) days from the date upon which the administrator receives the Settlement Fund proceeds from the Defendant Insurer, AAIC, who, in accordance with the terms of the finally approved Settlement Agreement, shall pay said funds to said claims administrator within twenty (20) days of the Effective Date of the finally approved Settlement Agreement.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Class Counsel's requested incentive payments to each of the Plaintiff Class Representatives, Joy Maturin and Norris Maturin, in the amount of $15,000.00 to each said Class Representative, be awarded as prayed for. Recognizing these representative Plaintiffs' efforts on behalf of the Class, this Court finds the awards of $15,000.00 to each of the named Class Representatives to be fair, reasonable, and appropriate. The designated claims administrator shall pay these sums to the named Class Representatives, in care of Class Counsel, from the established Settlement Fund in no more than four (4) days from the date upon which the administrator receives the Settlement Fund proceeds

from the Defendant Insurer, AAIC, who, in accordance with the terms of the finally approved Settlement Agreement, shall pay said funds to said claims administrator within twenty (10) days of the Effective Date of the finally approved Settlement Agreement.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in accordance with section 6.5 (b) & (c) of the Settlement Agreement, this Court retains continuing and exclusive jurisdiction over the Parties to interpret, implement, administer, and enforce the Settlement Agreement; and continuing and exclusive jurisdiction over the proper administration of the Settlement Fund and timely disbursements therefrom by the designated claims administrator, including but not limited to the proper and timely disbursement of the attorney's fees, expenses, and incentive payments that are being awarded by this Order.

READ, RENDERED, AND SIGNED this _____ day of March, 2023, at New Iberia, LA.

Hon. Anthony Thibodeaux
16TH JUDICIAL DISTRICT COURT JUDGE