

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FIRST IMPRESSIONS SALON, INC.,
ROY MATTSON, KPH HEALTHCARE
SERVICES a/k/a KINNEY DRUGS,
INC., PIGGLY WIGGLY MIDWEST,
LLC, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

Case No. 3:13-CV-00454-NJR

NATIONAL MILK PRODUCERS
FEDERATION, COOPERATIVES
WORKING TOGETHER, DAIRY
FARMERS OF AMERICA, INC., LAND
O'LAKES, INC., and AGRI-MARK,
INC. d/b/a CABOT CREAMERY
COOPERATIVE, INC.,

Defendants.

**ORDER AWARDING ATTORNEY FEES, COSTS,
AND CLASS REPRESENTATIVE SERVICE AWARDS**

ROSENSTENGEL, Chief Judge:

Pending before the Court is a Motion for Attorney Fees and Costs (Doc. 531). For the reasons stated below, the Court grants the motion.

The Parties agreed to the proposed Settlement of this case in November 2019. (Doc. 521-1). On December 4, 2019, Plaintiffs' Motion for Preliminary Approval of Class Settlement (Doc. 521) was filed with the Court, and the Court's January 10, 2020 Preliminary Approval Order was entered. Notice was timely provided to the Class regarding the terms of the proposed settlement, and Plaintiffs moved for an award of

attorney fees, costs, and Class Representative service awards. *See* Notice to the Court on the Completion of Class Notice Program (Doc. 533). On February 26, 2020, Plaintiffs timely filed their motion requesting Final Approval of the Settlement and their motion for attorney fees, reimbursement of costs, and service awards for the Class Representatives (Docs. 530, 531). Plaintiffs' Motion requested an award of attorney fees in the amount of thirty-three and one-third percent (33 1/3%) of the Settlement Fund, and of the accrued interest (Doc. 531 at 2). Plaintiffs also seek \$5,271,266.99 as reimbursement of their attorney costs and Class Representative service awards of \$25,000 for each of the four class representatives. *Id.*

In the Preliminary Approval Order, this Court directed that “[i]n the written objection, the Class Member must state his or her (or company) full name, address, and affirm that he, she or it, is a Class Member, and must state whether they intend to appear at the Final Fairness Hearing . . . Any documents supporting the objection must also be attached to the objection.” (Doc. 525, ¶ 12). On February 18, 2020, an objection (Doc. 528) was filed in response to Plaintiffs' Motion for Attorney Fees and Costs by Matthew Robbins. Robbins has not complied with this Court's Preliminary Approval Order because he did not affirm that he is a Class member, he did not state whether he intended to appear at the Final Fairness Hearing, and he did not provide any supporting documentation. Plaintiffs timely responded to the objection on April 10, 2020. (Doc. 537). On April 27, 2020, the Court held a Fairness Hearing to consider whether the proposed Class Action Settlement was fair, reasonable, adequate, and in the best interests of the Class (specifically, the two subclasses). Robbins did not appear at the hearing.

Having thoroughly considered the Settlement Agreement, this Motion, the single

objection thereto, memoranda, and the entire record in these proceedings, the Court

FINDS:

1. Without proof that Robbins does in fact have standing to object, he lacks standing in this matter. *See Pearson v. NBTY, Inc.*, 772 F.3d 778, 786 (7th Cir. 2014) (the objector must have a stake in the outcome of the award of attorney fees, as a member of the class, to have standing). Robbins did not provide the information required under paragraph fourteen of this Court's Preliminary Approval Order, and he has, therefore, waived his rights to object. (Doc. 525, ¶ 14).
2. Class counsel has requested attorney fees based on a percentage of the fund doctrine. This is the method utilized in this Circuit for calculating common fund attorney fees. *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) ("When determining a reasonable fee, the Seventh Circuit Court of Appeals uses the percentage basis rather than a lodestar or other basis.")
3. A lodestar cross-check, although not required, underscores that the amount of Class Counsel's requested fees is reasonable. The fees awarded here are reasonable, based on such factors as: (a) the complexity of this antitrust case, (b) the experience and quality of the attorneys who litigated this case on behalf of Plaintiffs and the Class, (c) the Settlement fund established provides for significant payments to Class members, and (d) significant risks undertaken by Class Counsel.
4. Because there was no guarantee that Class Counsel would secure any recovery for the Class, for their services, or reimbursement for the expenses they had advanced in this contingent class action lawsuit, federal courts apply a risk adjustment

multiplier. The average multiplier that results from this fee request falls well within the range approved in this District for contingent class representation.

5. An analysis by this Court of the factors that federal courts in this Circuit regularly consider shows that the proposed attorney fees requested have been well-earned by Class Counsel's litigation efforts, and they are fair, reasonable, and adequate to the Class.
6. The requested attorney fees, litigation costs, and service awards for the Class Representatives are fair, reasonable, and adequate.
7. This Court has previously appointed Don Barrett of Barrett Law Group, Dianne Nast of NastLaw, LLC, and Michael L. Roberts of Roberts Law Firm as Co-Lead Counsel for the Class.
8. The Court previously appointed and confirmed First Impressions Salon, Inc., Roy Mattson, Piggly Wiggly Midwest, LLC and KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. as Class Representatives (Doc. 521, ¶7). The Class Representatives have invested significant time and resources in this litigation by, among other things: familiarizing themselves with pleadings, responding to Defendants' discovery requests, producing documents, sitting for depositions, and preparing for trial.

CONCLUSION

For these reasons, Plaintiffs' Motion for Attorney Fees and Costs is **GRANTED** in its entirety. It is **ORDERED** that Class Counsel receive \$5,271,266.99 as reimbursement of reasonable litigation costs from the initial payment of the settlement proceeds, which was deposited pursuant to the Settlement Agreement. It is further **ORDERED** that Class

Counsel receive attorney fees in the amount of thirty-three and one-third percent (33 1/3%) of the \$220 million common fund, and of accrued interest. The Court designates and authorizes the previously appointed Co-Lead Counsel, John (Don) W. Barrett of Barrett Law Group, PA, Dianne Nast of NastLaw, LLC, and Michael L. Roberts of Roberts Law Firm, in their sole discretion to distribute the attorney fees to co-counsel. Among the factors Co-Lead Counsel should consider are the consistency, quantum, duration, and intensity of the fee applicants' commitment to the litigation, participation and leadership in the various common benefit contributions performed, and the timing the common benefit work was performed. The attorney fees should be paid no sooner than the date when all the settlement proceeds are deposited into the class escrow fund for distribution to the class. It is further **ORDERED** that the Class Representatives receive service awards of \$25,000 each.

IT IS SO ORDERED.

DATED: April 27, 2020

Handwritten signature of Nancy J. Rosenstengel in black ink, with a circular seal of the U.S. District Court for the District of New Jersey partially visible behind the signature.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge