

on Monsanto related corn crops in Illinois, but instead the payroll records indicate that they were paid the minimum Illinois hourly wage amount. Plaintiffs also assert violations of the Migrant and Seasonal Agricultural Protection Act, 29 U.S.C. §§ 1801 *et seq.*

ARGUMENT

I. An Award to Plaintiffs

Plaintiffs each are seeking an award of \$3,000, which as to Mr. Perez-Perez, would be for damages that he could account for given his record keeping of his work, alternatively awarded as an incentive award, and to Mr. Nieves, as damages, and/or an incentive award. Notably the Settlement Agreement is structured so that any amount of Plaintiff's award is paid separately from the settlement class' fund. (Doc. 94, PageID #:601). As such, the amount of the award has no impact on the amounts to be distributed to the members of the settlement class.

Class representatives can receive modest compensation, an “incentive fee” or “incentive award”, for what usually are minimal services in the class action suit even though class counsel manages the case. *See Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 876-77 (7th Cir. 2012); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 *UCLA L. Rev.* 1303, 1308 (2006); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1080 (7th Cir. 2013). Where the settlement agreement between the parties allocates specific funds for an incentive award, the Court can make such an award. *See Hadix v. Johnson*, 322 F. 3d 895, 897-98 (6th Cir. 2003). “Incentive awards are appropriate if compensation would be necessary to induce an individual to become a named plaintiff in the suit.” *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399, 410 (7th Cir. 2000) (*citations omitted*). Here Plaintiffs are migrant farm workers that were brought from Florida to Illinois by a Farm Labor Contractor who recruited them to do detassling work on Monsanto related fields.

In this case, Plaintiffs assisted counsel in preparing the Complaint, as amended, and participated over the telephone in the December 17, 2018 settlement conference with helped lay the groundwork to the eventual settlement. An incentive award of \$3,000 in an employment related case is within the range of reasonableness given other incentive awards in this district. *See Wolfe v. TCC Wireless, LLC*, No. 16 C 11663, 2018 U.S. Dist. LEXIS 40596, at *7 (N.D. Ill. Mar. 12, 2018) (approving a \$5,000 award to one named plaintiff and \$7,500 to another) (*citing Briggs v. PNC Fin. Servs. Grp., Inc.*, 2016 U.S. Dist. LEXIS 165560, 2016 WL 7018566, *2 (N.D. Ill. Nov. 29, 2016) (approving \$12,500 service award to two plaintiffs in FLSA settlement for a total of \$25,000 in service awards); *Castillo v. Noodles & Company*, 2016 U.S. Dist. LEXIS 178977, 2016 WL 7451623 (N.D. Ill. Dec. 23, 2016) (approving \$10,000 service award to four plaintiffs in FLSA settlement for a total of \$40,000 in service awards)).

II. Attorney's Fees and Costs

A court “may award reasonable attorneys’ fees and non-taxable costs that are authorized ... by the parties’ agreement.” Fed. R. Civ. P. 23(h). Where attorneys’ fees do not diminish the class benefits, “the Court’s fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members.” *McBean v. City of New York*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006). *See also Dehoyos v. Allstate Corp.*, 240 F.R.D. 269, 322 (W.D. Tex. 2007); *Local 56 United Food & Comm. Workers Union v. Campbell’s Soup Co.*, 954 F. Supp. 1000, 1005 (D. N.J. 1997). Importantly, the awards of no class members are being reduced by any amount that may be awarded to Plaintiffs’ counsel in attorney’s fees or costs.

There is a “strong presumption” that the lodestar method yields a reasonable fee. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 554, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010). A reasonable hourly rate is calculated by taking into consideration the prevailing market rates in the

relevant community. *Blum v. Stenson*, 465 U.S. 886, 895, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984); *Gonter v. Hunt Valve Co.*, 510 F.3d 610, 618 (6th Cir. 2007). However, because this case was taken on a success contingent basis, no amount of fees are actually charged to the client, therefore necessitating the Court to examine other evidence to determine and award a reasonable hourly rate for Plaintiff's counsel. *Tolentino v. Friedman*, 46 F.3d 645, 652 (7th Cir. 1995) ("it is necessary that counsel be awarded fees commensurate with those which they could obtain by taking other types of cases.")

The parties have agreed that, subject to the Court's approval, that Plaintiff's counsel is to receive \$32,500 (thirty-two thousand five hundred dollars). (Doc. 94, PageID #:601). In computing the lodestar, the hourly billing rate applied is the hourly rate that is normally charged in the community where counsel practices, i.e., the "market price." *See, e.g., Blum v. Stenson*, 465 U.S. 886 at 895; *McDonald v. Armontrout*, 860 F.2d 1456, 1459 (8th Cir. 1988) ("in most cases, billing rates reflect market rates – they provide an efficient and fair short-cut for determining the market rate"); *Spencer v. Comserv Corp.*, 1986 WL 15155, Fed.Sec.L.Rep. ¶93, 124, at 95, 532 (D. Minn. Dec. 30, 1986) ("compensating a nationally recognized securities class action attorney at his hourly rate is entirely appropriate."); *Lindy Bros.Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3rd Cir. 1973) ("The value of an attorney's time generally is reflected in his normal billing rate.").

In state wage and hour cases filed in Cook County, Illinois, "Law Division, the range of attorney fees is about \$325 an hour to \$550 an hour, and occasionally higher". *Thomas v. Weatherguard Constr. Co.*, 2018 IL App (1st) 171238, ¶ 36, 429 Ill. Dec. 886, 895, 125 N.E.3d 1000, 1009 (*quoting* the trial court judge). Plaintiffs' counsel, each, are experienced in the litigation of employment cases, including class actions. *See* (Appendix 1, Mr. Warner); (Appendix

2, Ms. Hendricks); (Appendix 3, Ms. Kakalec). Plaintiffs assert that the hourly rate within the District’s boundaries are within the “community” where counsel practices as applied to this case. Mr. Warner, who has been practicing law for almost 18 years, primarily in this District, is the least senior attorney, of the three, and his rate has been approved in this District in class action litigation at \$550 per hour. (Id, p. 6) (*Pilaraski v. Rent Recover of Better NOI LLC*, 17-cv-8659, Doc #:106, (N.D. Ill. Sept. 25, 2019) (Pallmeyer, C.J.). (“finding a lodestar amount for Mr. Warner, being \$550 (five hundred fifty) dollars per hour . . . to be reasonable[.]”); *see also Prusak v. Lumber Liquidators, Inc.*, 12 C 6984, Doc. 192, PageID #:3645 (N.D. Ill. Nov. 11, 2014) (\$450 per hour) (Pallmeyer, J.); *Schwersenska v. Giove*, 3:13-cv-50383, Doc. #:57 (N.D. Ill. Feb. 17, 2015) (M.J. Johnston) (finding the petitioned for rates of \$400 for work done in 2014 and \$450 in 2015 as “reasonably incurred at a reasonable rate”). A similar or higher hourly rate of \$550 in this locality should apply to Mr. Hendricks, who practices in Michigan and Ms. Kakalec, who practices from New York.

In this case, Ms. Kakalec expended 94.4 hours of time, (Appendix 3, Exhibit A). Ms. Hendricks expended 102.2 hours of time and Migrant Legal Assistance Project advance \$645.88 in costs. (Appendix 2, Exhibit B). Mr. Warner expended 47.2 hours and advanced Plaintiffs \$812.51 in costs that his firm advanced Plaintiffs in this litigation. (Appendix 1, Exhibit A). Mr. Warner’s billing excludes time related to communications amongst co-counsel, with some exceptions. In total counsel for the Plaintiffs expended 243.8 hours (a lodestar of \$134,090 if an hourly rate of \$550 per hour is applied) and advanced \$1,458.39 in costs. Accordingly, the request for \$32,500 provided for under the settlement is within the range of what is reasonable, fair and adequate, and significantly lower than counsel’s lodestar.

The settlement in this case complies with Seventh Circuit case law concerning class action awards, and is consistent with the principles set forth in *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014), *Redman v. RadioShack Corp.*, 768 F.3d 622 (7th Cir. 2014) and *Eubank v. Pella Corp.*, 753 F.3d 718 (7th Cir. 2014). First, the award to the class is distinct and separate from the attorney's fees in this case. (Doc. 94, PageID #:601). Thus, the size of the attorney's fees award does not affect the award to the class, unlike cases such as *Pearson*, participate (or not) in the settlement, thus satisfying the requirements of Fed. R. Civ. P. 23, and of due process. In light of the results achieved for the class members, and the length of time and difficulty in achieving those results, an award of \$32,500 to Class Counsel is fair and reasonable.

A court "may award reasonable attorneys' fees and non-taxable costs that are authorized ... by the parties' agreement." Fed. R. Civ. P. 23(h). Where attorneys' fees do not diminish the class benefits, "the Court's fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members." *McBean v. City of New York*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006). *See also Dehoyos v. Allstate Corp.*, 240 F.R.D. 269, 322 (W.D. Tex. 2007); *Local 56 United Food & Comm. Workers Union v. Campbell's Soup Co.*, 954 F. Supp. 1000, 1005 (D. N.J. 1997). Importantly, the awards of no class members are being reduced by any amount that may be awarded to Plaintiffs' counsel in attorney's fees or costs.

CONCLUSION

WHEREFORE, Plaintiff requests this Honorable Court to award an incentive award of \$3,000 to each Plaintiff and approve of an award of \$32,500 attorney's fees and costs as being within the range of fair, reasonable, and adequate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **October 8, 2020**, I electronically filed with the Clerk of the Court of the Northern District of Illinois the foregoing document via the ECF System which will automatically send notification to all attorneys who are registered and so appeared:

Respectfully submitted,
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