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Attorneys for Plaintiff

JAIME MILSTEAD, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

ROBERT FIANCE BEAUTY SCHOOLS,
INC.; GBR, INC.; REIGNBOW ACADEMY,
INC.; and PAUL FERRARA, each conducting
business as "Robert Fiance Beauty Schools,"

Defendants.

SUPERIOR COURT OF NEW JERSEY
CAMDEN COUNTY
LAW DIVISION

DOCKET NO. CAM-L-328-16

CLASS COUNSEL'S PETITION FOR ATTORNEY'S FEES AND COSTS

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Summary of Relief Sought

Class counsel have worked diligently to prosecute the claims in this 2016 class action to a successful conclusion and they now seek approval of an award of attorney's fees and costs of \$225,000; an amount that is \$77,542.50 less than class counsel's raw, unadjusted lodestar and costs in this matter.

Introduction

Any fees to be received by class counsel in this matter are entirely contingent. Plaintiff did not pay any fees to class counsel. Plaintiff was not even charged a consultation fee. Nor did Plaintiff pay any costs, all of which were advanced by counsel. Rather, class counsel brought this matter under a fee-shifting statute, and risked hundreds of hours of attorney time pursuing this matter, with no guarantee of any recovery – or even reimbursement for their costs – unless they prevailed.

Pursuant to class counsel's usual practice – which is the preferred practice recommended by the Manual for Complex Litigation and the case law – there was no simultaneous negotiation of relief for the class and attorney's fees in this matter. Rather, the substantive relief for the class was negotiated first. After agreement on the relief for the class was reached, class counsel offered to simply submit the proposed settlement to the Court for approval without any agreement between the parties as to attorney's fees and costs and rely on the Court to determine the appropriate fees and costs de novo. Defendants declined that proposal and the parties then engaged in another round of arms-length bargaining over fees and costs. As a result of that second round of negotiations, Defendants agreed to pay a combined award of attorney's fees and litigation costs of \$225,000 – an amount less than class counsel's actual lodestar and costs – subject to Court approval. Defendants have further agreed that this payment will be paid separately by the Defendants, so that any fees and costs approved by the Court will not reduce the value of the proposed settlement for the class as a

whole or any individual class member.

For the following reasons, it is submitted that the requested award of attorneys' fees and costs of \$225,000 is reasonable and should be approved.

I. NO CLASS MEMBER HAS OBJECTED TO THE PROPOSED AWARD OF ATTORNEYS' FEES OR COSTS

The lack of any objections by class members to the requested award of attorneys' fees and costs is a factor that weighs heavily in favor of the proposed award. See Bredbenner v. Liberty Travel, Inc., 2011 WL 1344745 at *20 (D.N.J. 2011) (“**The absence of any objection weighs in favor of the fee request.**”); Chemi v. Champion Mortg., 2009 WL 1470429 at *11 (D.N.J. 2009) (“**This absence of objections weighs in favor of Plaintiffs' request.**”); In re Remeron Direct Purchaser Antitrust Litig., 2005 WL 3008808 at *13 (D.N.J. 2005) (“**The lack of objections from the Class supports the reasonableness of the fee request.**”); In re Rent-Way Sec. Litig., 305 F. Supp. 2d 491, 514 (W.D. Pa. 2003) (“**The absence of substantial objections by other class members to the fee application supports the reasonableness of Lead Counsel's request**”); Meijer, Inc. v. 3M, No. 04-5871, 2006 U.S. Dist. LEXIS 56744, at *68 (E.D. Pa. Aug. 14, 2006) (“**The Court finds that this total absence of objections to the requested fees weighs in favor of approval.**”); In re Linerboard Antitrust Litig., 2004 WL 1221350 at *5 (E.D. Pa. June 2, 2004) (“**The absence of objections supports approval of the Fee Petition.**”); In re Rent-Way Secs. Litig., 305 F. Supp. 2d 491, 515 (W.D. Pa. 2003) (“**[T]he absence of substantial objections by other class members to the fee application supports the reasonableness of Lead Counsels' request.**”); Elkins v. Equitable Life Ins. Co., Civil Action No. 96-296-CIV-T-17B, 1998 U.S. Dist. LEXIS 1557, at *105 (M.D. Fla. Jan. 27, 1998) (“**The lack of objections is itself important evidence that the requested fees are fair.**”).

Here, no class member has objected to either the settlement as a whole, or to class counsel's request for fees and costs. As indicated by the above-referenced cases, this factor weighs in favor of approval of the fee request.

II. THE PROPOSED AWARD OF ATTORNEYS' FEES AND COSTS WAS NEGOTIATED AT ARMS-LENGTH, ONLY AFTER SUBSTANTIVE RELIEF FOR THE CLASS HAD ALREADY BEEN AGREED UPON

Pursuant to class counsel's usual practice, class counsel refused to even discuss the issue of attorneys' fees until after agreement had already been reached by the parties on the substantive relief for the class. This practice guarantees that the interests of the class are placed first – as they should be – and that the issue of attorneys' fees is a secondary consideration. See *Munoz v. Ariz. State Univ.*, 80 F.R.D. 670, 671-72 (D. Ariz. 1978) (“Attorneys fees are subsidiary to the issue of settlement and should be considered subsequent to reaching a tentative settlement by the parties.”). See also Manual for Complex Litigation Fourth § 21.7 (2004) (recommending against simultaneous negotiation of class relief and attorney fees).

In the case at bar, months of contentious, arms-length negotiations on the substantive relief to the class finally resulted in an agreement on such relief. Plaintiff's counsel then offered Defendants the option of either letting the Court determine the appropriate award of attorney's fees and costs de novo or engaging in a second round of negotiations to see if the parties could also reach agreement on the fee issues as well. Defendants chose to negotiate the issue of fees and costs. During the fee negotiations, Defendants had every incentive to try to minimize the amount Defendants would pay in fees and costs. Indeed, Defendants had no incentive whatsoever to want to “overpay” class counsel. The parties eventually agreed that Defendants would pay a combined award of attorneys' fees and costs of \$225,000, subject to court approval. As indicated previously, this is an amount which is less than class counsel's actual lodestar and costs.

III. THE FACT THAT THE REQUESTED AWARD WILL BE PAID SEPARATELY BY DEFENDANTS, AND WILL NOT REDUCE THE VALUE OF THE CLASS RELIEF, WEIGHS IN FAVOR OF APPROVAL

Numerous courts have held that, where – as here – attorney’s fees will be paid separately by a represented defendant, this factor weighs in favor of a finding that the negotiated fee amount is reasonable. See DeHoyos v. Allstate Corp., 240 F.R.D. 269, 322 (W.D. Tex. 2007) (“**courts are authorized to award attorneys’ fees and expenses where all parties have agreed to the amount, subject to court approval, particularly where the amount is in addition and separate from the defendant’s settlement with the class.**”); Ingram v. Coca-Cola Co., 200 F.R.D. 685, 695 (N.D. Ga. 2001) (holding in a class action fee petition “**the Court should give substantial weight to a negotiated fee amount, assuming that it represents the parties’ best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney’s fees.**”); M. Berenson Co. v. Faneull Hall Marketplace, 671 F. Supp. 819, 829 (D. Mass. 1987) (“**As part of the settlement of a class action to pay the plaintiffs’ attorneys’ fees, ideally the parties will settle the amount of the fee between themselves.**”); Johnson v. Ga. Highway Express, Inc., 488 F.2d 714, 720 (5th Cir. 1974) (noting with regard to attorneys’ fee in class actions: “**In cases of this kind, we encourage counsel on both sides to utilize their best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney’s fees.**”); Elkins v. Equitable Life Ins. Co., Civil Action No. 96-296-CIV-T-17B, 1998 U.S. Dist. LEXIS 1557, at *99 (M.D. Fla. Jan. 27, 1998):

“The Court finds that the fee negotiations in this case were conducted at arm’s-length, and only after all material terms of the settlement had been agreed upon. Because the previously negotiated settlement structure provided that the fee awarded would be paid by Equitable of Iowa, separate and apart from any recovery to the Class, Equitable of Iowa had a particular incentive to bargain strenuously to keep the fee as low as possible. There is absolutely no evidence in this case that the settlement

was in any way collusive. Under these circumstances, the Court gives great weight to the negotiated fee in considering the fee request.” (emphasis added) (citations omitted)

In the fee negotiations between the parties, Defendants were ably represented by their counsel. These fee negotiations took place only after agreement had been reached on the substantive relief for the class. Thus, Defendants had no reason to agree to pay any more for attorney’s fees and costs than they thought they had to. Against this background, Defendants knowingly and voluntarily agreed to a payment of \$225,000 for fees and costs – to be paid separately by Defendants from the relief to be provided to the class – subject to Court approval. There is only one logical reason why Defendants would make such an agreement: because Defendants believed that the Court might award a greater amount in fees and costs if the matter were submitted to the Court de novo and Defendants wanted the reassurance of such a “cap.”¹ These facts weigh in favor of approval of the requested award of fees and costs.

IV. THE REQUESTED FEE IS ALSO REASONABLE WHEN COMPARED TO THE FEES THAT COULD HAVE BEEN AWARDED UNDER THE LODESTAR METHOD

Without a negotiated agreement of fees, Defendants’ would have had to pay attorney’s fees calculated under the lodestar method. In Rendine v. Pantzer, 141 N.J. 292 (1995), the New Jersey Supreme Court set forth a modified version of the federal lodestar method by which attorneys’ fees are to be calculated and awarded in a case brought under a New Jersey fee-shifting statute, as this case was. The first step in the Rendine process is to calculate the raw attorney lodestar. See Rendine, 141 N.J. at 334-35:

¹ The class would get no additional benefit if the Court decided not to approve the full amount of the agreed-upon award of fees and costs. Rather, Defendants would simply be allowed to keep some of the money they already voluntarily agreed to pay in fees.

“Under the LAD and other fee-shifting statutes, the first step in the fee-shifting process is to determine the ‘lodestar’: the number of hours reasonably expended multiplied by a reasonable hourly rate.”

See also Incollingo v. Canuso, 297 N.J. Super. 57, 63 (App. Div. 1997):

“To determine appellants’ counsel fees, the judge should have applied the procedure articulated by the Supreme Court in Rendine v. Pantzer, 141 N.J. 292, 661 A.2d 1202 (1995). In a case with a fee-shifting statute, a trial court’s first step is to determine the lodestar.” (emphasis added)

In calculating the raw lodestar under Rendine, the court uses the same basic formula used in federal fee-shifting statutes. The court begins by determining the number of hours reasonably spent by counsel on the litigation. Rendine, 141 N.J. at 334-335. Next, the court multiplies the number of hours by the counsel’s normal hourly billing rate. Rendine, 141 N.J. at 337.

The final step in the Rendine method is for the Court to calculate a “risk” or “contingency” enhancement which, as a matter of New Jersey law, *must* be added to any lodestar award under a New Jersey fee-shifting statute where the fee was in any way contingent. In the words of the New Jersey Supreme Court in Rendine, 141 N.J. at 338:

“Both as a matter of economic reality and simple fairness, we have concluded that a counsel fee awarded under a fee-shifting statute cannot be ‘reasonable’ unless the lodestar, calculated as if the attorney’s compensation were guaranteed irrespective of result, is adjusted to reflect the actual risk that the attorney will not receive payment if the suit does not succeed.” (emphasis added)

Thus, under the New Jersey Supreme Court’s ruling in Rendine, the court must make an upward adjustment of the raw lodestar **“to reflect the actual risk that the attorney will not receive payment if the suit does not succeed.”** Rendine, 141 N.J. at 338. In a case – such as the case at bar – where counsel’s payment was entirely contingent on success, Rendine requires that the raw lodestar be increased to reflect the risk of non-payment or the fee is unreasonable as a matter of New Jersey law. The “typical” enhancement added under Rendine is between 20 and 35 percent of the raw

lodestar. Rendine, 141 N.J. at 343. Where the relief recovered is non-monetary in nature and/or of public benefit, however, the enhancement may as high as be double counsel's lodestar. Id. at 343.

Thus far, class counsel have expended 548.9 attorney hours and 16.2 paralegal hours in this matter. See Accompanying Cert. of Stephen P. DeNittis at Paragraph 15. See also Chart A, below. If those hours were billed at counsels' usual hourly rates – rates which have been approved as fair and reasonable by dozens of New Jersey state and federal courts – class counsel's current raw, unadjusted lodestar would be \$302,542.50. See DeNittis Cert. at Paragraph 17. Thus, the \$225,000 combined award of fees and costs being sought in this petition is **\$77,542.50 less than** class counsel's raw, unadjusted lodestar.

Chart A

Name	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	Current Hours	Hourly Rate	Current Lodestar
PARTNERS												
Stephen P. DeNittis	34.0	35.0	14.5	5.4	74.0	22.5	3.2	12.5	3.4	204.5	\$550.00	\$112,475.00
Joseph Osefchen	20.0	70.5	132.3	26.0	1.0	24.6	2.4	32.0	0.0	308.8	\$550.00	\$169,812.50
Shane Prince	6.5	6.0	7.0	0.0	0.0	12.0	4.1	0.0	0.0	35.6	\$525.00	\$18,690.00
TOTAL PARTNERS	60.5	111.5	153.8	31.4	75.0	59.1	9.7	44.5	3.4	548.9		\$300,977.50
PARALEGALS												
Dawn Farley	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.5	0.0	5.5	\$100.00	\$550.00
Jessica Bianchi	0.0	0.0	3.2	0.0	0.0	0.0	0.0	7.5	0.0	10.7	\$100.00	\$1,070.00
TOTAL PARALEGALS	0.0	0.0	3.2	0.0	0.0	0.0	0.0	13.0	0.0	16.2		\$1,565.00
TOTALS:	60.5	111.5	157.0	31.4	75.0	59.1	9.7	57.5	3.4	565.1		\$302,542.50

Moreover, because this is a totally contingent matters, then a contingency multiplier of at least 20% and as high as 50% would have been appropriate under Rendine. In that case, the final, modified lodestar of class counsel would be \$363,051.00; **\$138,051.00 less than** the \$225,000 combined award of fees and costs being sought in this petition.

As such, it is submitted that the request for fees and costs is considerably less than what would have been awarded under the lodestar method outlined in Rendine. This underscores the reasonableness of class counsel's current petition.

V. THE REQUESTED COSTS ARE REASONABLE AND SHOULD BE APPROVED


The actual out-of-pocket litigation costs spent by class counsel on the prosecution of this matter were \$978.82. A detailed explanation of these costs can be found in the accompanying Certification of Stephen P. DeNittis at Paragraph 18. It is submitted that each of these costs were necessary for the successful prosecution of this matter, and should be approved by this Court as reasonable.

Conclusion

For the foregoing reasons, the petition for attorney's fees and costs in the amount of \$225,000 is reasonable and should be granted.

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