IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TIMOTHY NELLIS, JANEL DRANES LUCY SOUSA, DAVID CASTILLO, and EDWARD CAMARENA on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	**Case No. 1:20-cv-02486**
v.	)	**Judge Robert M. Dow Jr.**
VIVID SEATS LLC, a Delaware Corporation,	)	
Defendant.	)	

PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS FROM CLASS SETTLEMENT FUND

Pursuant to Fed. R. Civ. P. 23(h) and Fed. R. Civ. P. 54(d)(2), Plaintiffs Timothy Nellis, Janel Dranes, and Lucy Sousa (collectively "Plaintiffs") and Class Counsel respectfully move this Court for an award of attorneys' fees, expenses, and incentive awards. For the reasons stated in the accompanying memorandum, and the supporting declaration of Nicholas A. Coulson, Plaintiffs respectfully request that this Court grant their motion.

DATED: May 29, 2021

Respectfully Submitted

s/ Nicholas A. Coulson

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Class

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TIMOTHY NELLIS, JANEL DRANES LUCY SOUSA, DAVID CASTILLO, and EDWARD CAMARENA on behalf of themselves and all other similarly situated,	)	**Case No. 1:20-cv-02486**
Plaintiffs,	)	**Judge Robert M. Dow Jr.**
v.	)	
VIVID SEATS LLC, a Delaware Corporation,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS FROM CLASS SETTLEMENT FUND

Pursuant to Fed. R. Civ. P. 23(h) and Fed. R. Civ. P. 54(d)(2), Plaintiffs and Class Counsel respectfully move this Court for an award of attorneys' fees, costs, and expenses from the Settlement Fund achieved in this case for the benefit of the Class.[1] For the reasons stated herein, Plaintiffs and Class Counsel submit that the requested fees, costs, and expenses are fair, reasonable, and adequate in view of the excellent result obtained for the Class.

FACTUAL BACKGROUND

I. INTRODUCTION

Plaintiffs refer the Court to their Unopposed Motion for Preliminary Approval of Settlement ([Doc. No 46] 9-21) for a full description of Plaintiffs' allegations, the history of this litigation, the Settlement Agreement, and the process by which the Settlement Agreement was reached. In summary, this case was brought on April 23, 2020 on behalf of a class of consumers who purchased tickets through Vivid Seats' online ticket exchange but subsequently did not receive refunds, particularly after events across North America were cancelled on a massive scale in the wake of the Covid-19 pandemic. ([Doc No. 1]). Plaintiffs raised claims for breach of contract, breach of implied contract, breach of express warranty, conversion, unjust enrichment, negligent misrepresentation, and numerous state consumer statutes for Defendant's alleged failure to provide contractually guaranteed refunds. A settlement was reached prior to Defendant's anticipated motion to compel arbitration of all of the Plaintiffs' claims.

[1] In the interests of full disclosure, the Settlement Agreement and the Preliminary Approval Order call for this motion to be filed by the Notice Date, which is the date on which the last mailed notice is sent by the administrator. The Notice Date was originally to be May 31, 2021, which is a postal holiday. As a result, the parties agreed to have the notices sent by May 28, 2021, the business day prior, in order to comply with the Preliminary Approval Order's requirement that notice be sent within 60 days. To the extent that the mailing of the notices on May 28, 2021 renders this motion a day late, Plaintiffs and Class Counsel apologize to the Court and submit that the foregoing constitutes good cause for considering the motion in any event.

Under the proposed Settlement Agreement, Defendant will pay $7.5 Million into a common fund from which class members who purchased tickets to events that were cancelled may make claims for payment. Defendant will also provide highly beneficial injunctive relief, including a universal extension of existing, non-expired Credits held by all Settlement Class Members through December 31, 2022 and a protocol for receiving a choice of cash or vouchers upon the cancellation of any postponed or rescheduled event. In exchange for this relief, Defendant will obtain a release of the relevant claims from the proposed Class.

LEGAL STANDARD

"In a certified class action, the court may award reasonable attorney's fees [and nontaxable costs] that are authorized by law or by the parties' agreement." *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1030 (N.D. Ill. 2011) (quoting Fed. R. Civ. P. 23(h)). The Seventh Circuit directs that when fees are to be awarded from a common fund, "the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys." *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635-36 (7th Cir. 2011) (citing *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718-19 (7th Cir. 2001) ("*Synthroid I*")). "The court must base the award on relevant market rates and the *ex ante* risk of nonpayment."' *Id*. "To determine the market for attorney's fees, the court should look to 'actual fee contracts that were privately negotiated for similar litigation, information from other cases, and data from class-counsel auctions.'" *Id.* (quoting *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005)). "The Seventh Circuit has recognized, however, that 'such estimation is inherently conjectural,' and thus a district court's award of fees is reviewed for abuse of discretion." *In re Dairy Farmers of Am., Inc., Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 843-44 (N.D. Ill. 2015) ("*Dairy Farmers*")

(quoting *Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011); citing *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013))

In determining the appropriate fee under the guidance of *Synthroid I*, this Court has stated that "[t]he… method—which has emerged as the favored method for calculating fees in common-fund cases in this district—sets the fee award as a percentage of the recovered settlement fund, plus expenses and interest." *Dairy Farmers*, 80 F. Supp. 3d at 844. While the Court retains discretion to apply the competing lodestar method, "[t]he approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class." *In re Ky. Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, No. 09 C 7670, 2011 U.S. Dist. LEXIS 157910, at *9 (N.D. Ill. Nov. 30, 2011) (citation omitted). In recent years, "courts in this district have generally used the net value of a settlement as a reference for awarding fees, not counting administrative costs and incentive awards." *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 200 (N.D. Ill. 2018).

ARGUMENT

I. THE COURT SHOULD GRANT PLAINTIFFS' REQUESTED ATTORNEYS' FEES BECAUSE THEY ARE FAIR, REASONABLE, AND ADEQUATE

Class Counsel's efforts have achieved an excellent result for the Settlement Class in a case where no other attorneys or putative class representatives sought to obtain redress. There was no criminal, civil, regulatory, or other governmental proceeding that laid the groundwork for Plaintiffs' case, such that the settlement is entirely the product of Class Counsel's efforts in the instant litigation. Despite the substantial risk of nonrecovery, particularly because of potential hurdles in overcoming a motion to compel arbitration or obstacles to class certification, Class Counsel quickly and efficiently directed this case to a resolution that will ensure that every Class Member whose ticketed event does not take place has the meaningful option to select cash or

usable voucher refunds and that the cash benefits of the settlement will be at least $7.5 million. In view of all of the relevant factors and circumstances, the Court should utilize the percentage of the fund method and award Class Counsel a fee amounting to one-third of the net settlement funds.

A. The Court Should Utilize the Percentage of the Fund Method to Determine the Appropriate Fee.

"Ultimately, the district judge's job is to approximate the market rate between willing buyers and willing sellers that would have prevailed had the parties negotiated the rate at the outset of the representation." *Amadeck v. Capital One Fin. Corp. (In re Capital One Tel. Consumer Prot. Act Litig.)*, 80 F. Supp. 3d 781, 794-95 (N.D. Ill. 2015) (citing *Silverman v. Motorola Solutions, Inc*., 739 F.3d 956, 957 (7th Cir. 2013)). "Although the court need not adopt the calculation method that is most prevalent in the marketplace as it existed at the time of the hypothetical negotiation, such an approach is more efficient for the court and more likely to yield an accurate approximation of the market rate." *Id.* (citation omitted). In a consumer class action, this means the percentage approach. *See Id.* ("had an arm's length negotiation been feasible, the court believes that the class would have negotiated a fee arrangement based on a percentage of the recovery, consistent with the normal practice in consumer class actions. An ex ante agreement based on lodestar requires a client to monitor counsel, and the class-member 'clients' here had little incentive to do so.").

Beyond its prevalence in the marketplace, this Court has recognized the preferability of the percentage of the fund method in common fund class settlements as the lodestar analysis generally entails consideration of a "somewhat-arbitrary (and under-vetted) calculation[.]" *Dairy Farmers*, 80 F. Supp. 3d at 849. Where the percentage method is utilized for primary purposes, "[a] district court is under no obligation to cross-check the requested fees against the lodestar. *Dairy Farmers*, 80 F. Supp. 3d at 849 (citing *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir.

2011)). Indeed, "[t]he use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive." *Pavlik v. FDIC*, No. 10 C 816, 2011 U.S. Dist. LEXIS 126016, at *14 (N.D. Ill. Nov. 1, 2011) (quoting *Will v. Gen. Dynamics Corp.*, No. 06-698-GPM, 2010 U.S. Dist. LEXIS 123349, at *10 (S.D. Ill. Nov. 22, 2010)).

Here, the named Plaintiffs agreed to a fee of one-third of the funds recovered in the litigation, though Class Counsel recognizes that this fact is accorded relatively little import in consumer class actions.[2] *See, e.g., Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015). But it does evidence the fact that this is the sort of case in which "the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys" such that "the normal rate of compensation in the market is 33.33% of the common fund recovered." *City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 909 (S.D. Ill. 2012). As noted in *Amadeck*, percentage-based awards are "normal practice in consumer class actions." *Amadeck*, 80 F. Supp. 3d 781, 794-95. Beyond the monitoring concerns stated in that *Amadeck*, an hourly billing arrangement would have created a possibility of outstripping any eventual recovery even under the unusual circumstances of its utilization on a contingent basis.

Finally, basing the fee on a lodestar analysis would have the perverse effect of punishing Class Counsel for litigating this case efficiently and resolving it favorably at an early procedural stage. *See, e.g.*, *Will v. Gen. Dynamics Corp.*, No. 06-698-GPM, 2010 U.S. Dist. LEXIS 123349, at *10 (S.D. Ill. Nov. 22, 2010) ("class counsel's efficiency should not be used 'to reduce class

[2] Declaration of Nicholas A. Coulson in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Incentive Awards from Class Settlement Fund ("Coulson Fee Decl.") ¶ 6.

counsel's percentage of the fund that their work produced") (quoting *In re Synthroid Mktg. Litig*., 325 F.3d 974, 979-980 (7th Cir. 2003) ("*Synthroid II*"); *Synthroid I,* 264 F.3d at 721 ("the lodestar approach creates the … incentive to run up the billable hours). Despite their investment of hundreds of hours in this case, Class Counsel's present lodestar would admittedly require the application of a large multiplier to match their requested fee.[3]

The percentage approach is appropriate here because it is preferred in this district and throughout the Seventh Circuit. It is by far the dominant methodology in consumer class actions, and therefore the methodology that most likely would have been utilized if the Class could have agreed to it prior to the litigation, as the named Plaintiffs and Class Counsel did. It removes the need for any application of the "arbitrary[,]" "potentially counterproductive[,]" and "unnecessary" lodestar method and its associated perverse incentives. *See Pavlik v. FDIC*, 2011 U.S. Dist. LEXIS 126016, at *14; *Synthroid I,* 264 F.3d at 721. And as addressed below, it most fairly compensates Class Counsel for achieving an excellent result after undertaking risky litigation without any guarantee of recovery.

B. A Fee Amounting to One-Third of the Net Settlement Funds is Appropriate.

Plaintiffs and Class Counsel request attorneys' fees in the amount of $2,376,998. This amounts to one-third of the net settlement funds, meaning $7.5 million less the costs of administration and incentive awards. The maximum potential total of the incentive awards is $12,500, and the anticipated maximum costs of administration are $356,506.[4,5] A fee of one-third

[3] While Class Counsel anticipates spending many more hours obtaining final approval of the settlement and overseeing its administration, at present they have expended approximately 316.5 attorney hours. (Coulson Fee Decl. ¶ 4).

[4] $7,500,000 - $12,500 - $356,506= $7,130,994.
$7,130,994/3= $2,376,998.

[5] *See* Coulson Fee Decl. ¶ 3. Prior to the Fairness Hearing, Plaintiffs will supplement the record

of the direct monetary relief in the non-reversionary common fund, without including administration costs or incentive awards, is fully warranted in view of the caliber of this settlement.

In the wake of the Covid-19 pandemic, dozens of putative class actions were filed seeking refunds for various products or services that were rendered undeliverable by the public health emergency. About one year later, relatively few of them have survived. At least two cases involving alleged failures to provide refunds for event tickets were ordered into arbitration. *See Tezak v. Live Nation Entm't*, No. 20-cv-2482, 2021 U.S. Dist. LEXIS 44903, at *6 (N.D. Ill. Mar. 10, 2021); *Hansen v. Ticketmaster Entm't, Inc.*, No. 20-cv-02685-EMC, 2020 U.S. Dist. LEXIS 233538, at *1 (N.D. Cal. Dec. 11, 2020). The various claims in a case alleging Major League Baseball's failure to provide required refunds were either ordered to arbitration or dismissed. *Ajzenman v. Office of the Comm'r of Baseball*, 492 F. Supp. 3d 1067, 1082 (C.D. Cal. 2020), later proceedings at No. CV 20-3643 DSF (JEMx), 2020 U.S. Dist. LEXIS 206289, at *35 (C.D. Cal. Oct. 6, 2020). StubHub, the largest competitor to Vivid Seats, has brought a fully briefed but undecided motion to compel arbitration in the multidistrict litigation created to manage the similar claims it faces. *See In Re: StubHub Refund Litigation*, Case No. 4:20-md-02951-HSG (N.D. Cal.) (Doc. No. 48-59). Numerous cases involving airline, educational, and other refunds have been dismissed or ordered into arbitration. *See, e.g. Chong v. Ne. Univ.*, No. 20-10844-RGS, 2021 U.S. Dist. LEXIS 89597, at *3 (D. Mass. May 10, 2021) (college tuition); *Hickey v. Univ. of Pittsburgh*, Civil Action No. 2:20-cv-690, 2021 U.S. Dist. LEXIS 80574, at *19 (W.D. Pa. Apr. 27, 2021) (college tuition); *Ryan v. Temple Univ.*, No. 5:20-cv-02164-JMG, 2021 U.S. Dist. LEXIS 77157, at *29 (E.D. Pa. Apr. 22, 2021) (college tuition). *Fensterer v. Capital One Bank (USA), N.A.*, No.

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with the final costs of administration (which could result in a minor adjustment to the appropriate attorneys' fee) but they will almost certainly not vary significantly enough to materially impact the analysis set forth herein.

20-5558(RMB/KMW), 2021 U.S. Dist. LEXIS 41520, at *10 (D.N.J. Mar. 5, 2021) (airfare); *Ward v. American Airlines, Inc.*, Case No. 4:20-cv-00371-O (N.D. Tex.) (Doc. No. 74) (airfare); *Barnett v. Fitness Int'l, LLC*, No. 20-60658-CIV-DIMITROULEAS, 2020 U.S. Dist. LEXIS 171460, at *14 (S.D. Fla. Sep. 17, 2020) (gym memberships); *Williams v. Planet Fitness, Inc.*, No. 20 CV 3335, 2021 U.S. Dist. LEXIS 57596, at *20 (N.D. Ill. Mar. 26, 2021) (gym memberships).

While Plaintiffs and Class Counsel were and remain confident in the merits of their case, the fact remains that the circumstances surrounding the pandemic, along with the fact that the Defendant intended to seek to enforce a mandatory arbitration provision that it asserted applies to the claims in this case, constituted significant potential barriers to any recovery on behalf of the Class. That the settlement was reached in the face of these obstacles speaks both to the risks undertaken by Class Counsel and the quality of the result. Class Counsel undertook to convince Defendant that it faced a substantial risk of losing a motion to compel arbitration. The totality of Defendant's reasons for entering into the Settlement Agreement are known only to it, but the result speaks to a successful effort.

This Court has previously synthesized the various factors relevant to determining an appropriate fee.

> In *Synthroid I*, the Seventh Circuit held that the "market rate for legal fees depends in part on (1) the risk of nonpayment a firm agrees to bear, in part on (2) the quality of its performance, in part on (3) the amount of work necessary to resolve the litigation, and in part on (4) the stakes of the case." 264 F.3d at 721; see also *Taubenfeld v. AON Corp*., 415 F.3d 597, 599 (7th Cir. 2005). The probability of success at the outset of the litigation is also relevant to this inquiry, see *Florin v. Nationsbank of Ga., N.A*., 34 F.3d 560, 565 (7th Cir. 1994), as is the "complexity, length and expense of the litigation." *Isby v. Bayh*, 75 F.3d 1191, 1198-99 (7th Cir. 1996).

Dairy Farmers., 80 F. Supp. 3d at 844. An analysis of these factors demonstrates the appropriateness of the requested fee.

A. Fee Awards in Other Common Fund Cases – The Market Rate- Support the Requested Fee.

As this Court noted in *Dairy Farmers*, there is "no shortage of cases" in which courts in this district have awarded fees representing approximately one-third of a cash settlement. *Dairy Farmers*, 80 F. Supp. 3d at 846. While certain studies have asserted that average common fund awards have constituted less than one-third (particularly, as distinct from here, in cases wherein the recovery is tens of millions of dollars), the Court also noted that "cases within this circuit have cited the [studies] and yet still awarded fees above the reported averages." *Id.* More recently, courts in this district have held that a "request for one-third of the settlement in attorneys' fees is consistent with the market in the Northern District of Illinois." *Brewer v. Molina Healthcare, Inc*., Civil Action No. 1:16-CV-09523, 2018 U.S. Dist. LEXIS 105816, at *9 (N.D. Ill. June 12, 2018). Similarly, that "a third of the net fund is [an] appropriate award." *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201-02 (N.D. Ill. 2018) (noting that "a typical contingency agreement in this circuit might range from 33% to 40% of recovery"). Indeed, fees as high as 39.5% of the common fund have recently been deemed "consistent with the market in the Northern District of Illinois." *Sanchez v. Roka Akor Chi. LLC*, No. 14-cv-4645, 2017 U.S. Dist. LEXIS 65478, at *17 (N.D. Ill. Apr. 20, 2017). Accordingly, Class Counsel's requested fee comes in at or below the market rate in this District.

B. The Complexity, Length, and Expense of This Type of Litigation Supports the Requested Fee.

To the benefit of the Settlement Class, this case was resolved before protracted litigation, the incurrence of substantial costs such as expert testimony, or factually or procedurally complex motion practice. None of this would have been known in *ex ante* fee negotiations, and as this Court noted in *Dairy Farmers*, it is the "*likely* complexity, length, and expense of the litigation" that

matters. *Dairy Farmers*, 80 F. Supp. 3d at 847 (emphasis added). In any event, from its inception the litigation had to be conducted in view of complex issues like potential assent to mandatory arbitration, choice of law and its impact on class certification, methods to establish class-wide damages, and the interplay between various states' consumer protection laws. While some of the underlying allegations (such as breach of contract) are straightforward, the litigation as a whole bears nearly every hallmark of procedural, factual, and legal complexity. This counsels in favor of awarding Class Counsel's requested market rate fee.

C. The Risk Undertaken by Class Counsel Supports the Requested Fee.

"When determining the reasonableness of a fee request, courts put a fair amount of emphasis on the severity of the risk (read: financial risk) that class counsel assumed in undertaking the lawsuit." *Dairy Farmers,* 80 F. Supp. 3d at 847-48 (citing See *Sutton v. Bernard*, 504 F.3d 688, 693 (7th Cir. 2007)). As previously noted, Plaintiffs' case faced a substantial risk of nonrecovery. Failing to overcome Defendant's anticipated motion to compel arbitration, or to obtain and maintain class certification, or to prevail on liability and damages, would be the death-knell of Plaintiffs' case. Whereas "[o]ne proxy for assessing risk is whether the litigation followed on the heels of some prior criminal or civil proceeding involving the same parties or subject matter[,]" no such proceeding occurred here, which demonstrates that Class Counsel did not "benefit[] from the work of others[.]" *Id.* at 848. All of Class Counsel's efforts were "proprietary[,]" as distinct from a "so-called piggyback lawsuit." *Id.* In view of these risks, Class Counsel's requested fee is further warranted.

D. The Quality of Class Counsel's Performance Supports the Requested Fee.

"[A]nother litmus test for assessing reasonableness is quality of Class Counsel's performance in achieving the settlement—that is, whether this is the type of outcome that willing

clients would have envisioned from the outset." *Id.* at 849. While looking to the end result to make this determination is a somewhat circular exercise, the Settlement Agreement is the most appropriate proxy for Class Counsel's performance in this case given its relatively short history. The desirability of the Settlement Agreement, which the Court will assess more fully with the benefit of Class Member feedback, speaks strongly to the appropriateness of the requested fee. Any Class Member whose ticketed event has been cancelled or becomes cancelled will have the opportunity to obtain a cash refund. In the event that the funds for already-cancelled events are oversubscribed, claiming Class Members will receive a pro-rated share of their refund in cash and retain the remainder in the form of a voucher. This exceeds the type of outcome that willing clients – the vast majority of whom likely believed they had no useful remedy – would have envisioned from the outset.

II. THE COURT SHOULD GRANT PLAINTIFFS' REQUESTED EXPENSES BECAUSE THEY ARE FAIR, REASONABLE, AND ADEQUATE

Class Counsel "are entitled to reimbursement for those expenses incurred in the creation or preservation of [a] common fund." *Dalton v. Jones, Bird & Howell*, No. 91-3730, 1993 U.S. App. LEXIS 11377, at *9 (7th Cir. May 13, 1993). Because this case was litigated under the confines of the pandemic, Class Counsel have not incurred expenses for travel. Indeed, the only relatively significant expense and the only one for which Class Counsel seeks reimbursement is $8,087 for mediation fees. (Coulson Fee Decl. ¶ 2). The Settlement Agreement was the immediate result of the mediation process such that these expenses were unquestionably incurred in the creation of the common fund. Plaintiffs and Class Counsel submit that this modest request should be approved.

III. THE COURT SHOULD GRANT THE REQUESTED SERVICE AWARDS BECAUSE THEY ARE MODEST AND WARRANTED BY THE CIRCUMSTANCES

Plaintiffs request modest incentive awards of $2,500 each. "In deciding whether an incentive award is proper and, if so, in what amount, 'relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.'" *Gehrich v. Chase Bank United States*, 316 F.R.D. 215, 239 (N.D. Ill. 2016) (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)). Even where a case has not "proceed[ed] past the earliest phases of formal discovery before it was settled[]" incentive awards as high as $5,000 each are justified where named plaintiffs "work[ed] with class counsel, approv[ed] the settlement agreement" and "volunteer[ed] to play an active role if the parties continued litigating through trial." *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015). "Courts regularly approve $5,000 incentive awards in common fund cases like this one." *Id.* Often such awards are larger. *See* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1333 (2006) (finding an average aggregate award of $29,055.20 and average individual award of $6,358.80). And here, Class Member payments are likely to reach hundreds or thousands of dollars based on the cost of events tickets, such that the requested awards are not disproportionate.

The named Plaintiffs attached their name to a consumer class action that has received national media attention. And as in *Kolinek,* they worked with class counsel, approved the settlement agreement and volunteered to play an active role if the parties continued litigating through trial. Under the circumstances, a modest $2,500 incentive award for each named Plaintiff is fully warranted.

CONCLUSION

Plaintiffs and Class Counsel obtained an excellent result for the Class. In recognition of that, they request that the Court grant their request for $2,376,998 in attorneys' fees, $8,087 in costs, and incentive awards of $2,500 each.

DATED: May 29, 2021

Respectfully Submitted

s/ Nicholas A. Coulson

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CERTIFICATE OF SERVICE

I, Nicholas A. Coulson certify that on March 9, 2021, a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS FROM CLASS SETTLEMENT FUND was filed through the CM/ECF system, which caused notice to be sent to all counsel of record.

Dated: May 29, 2021 /s/ *Nicholas A. Coulson*