UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION	Case No. 1:16-cv-08637
This Document Relates To:	Honorable Thomas M. Durkin
All End-User Consumer Plaintiff Actions	
JOHN ANDREN, Objector.	

OBJECTOR JOHN ANDREN'S CONTINGENT OPPOSITION TO END-USER CONSUMER PLAINTIFFS' CORRECTED SECOND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

Class counsel has moved for an interim attorneys' fee award of 30% from the $22,350,000 in additional settlement funds, net expenses, ***and*** an award of 30% from interest accrued to the common fund. Dkt. 7706-1 at 2. At least the first part of the second request would be in line with the Court's prior fee award, which is currently on appeal. Dkt. 7309. Class member and objector John Andren raises two contingent objections with respect to the second request.[1]

I. The second fee motion should be partially stayed until the Seventh Circuit resolves Andren's appeal over the first fee award.

The prior 30% fee award is before the Seventh Circuit and will be argued Wednesday at 2 pm. *See In re Broiler Chicken Antitrust Litigation*, *appeal of John Andren*, No. 24-2387. To the extent that the prior fee award is altered or vacated, it will radically change this second request, as class counsel admits when they assert: "[a]pplying this Court's first fee award findings to this fee motion is not just logically sound but legally required." Dkt. 7706-2 at 14.

The Seventh Circuit is generally expeditious in returning opinions, so staying the decision on attorneys' fees serves the interest of judicial economy. This power to stay proceedings "is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *cf. Emily v. FGF Brands (USA) Inc.*, No. 18-cv-7644, 2019 WL 2482728, 2019 U.S. Dist. LEXIS 98488, at *9 (N.D. Ill. Jun. 12, 2019).

Class counsel's entire motion need not be stayed. Andren does not object in this case to the payment of class service awards,[2] nor to the reimbursement of expenses—including $1.85 million for

[1] Class counsel does not dispute that John Andren is a member of the class as outlined in his original objection. Dkt. 5182 at 1-2 & Ex. 1. Pursuant to Rule 23(e)(5)(A), this objection applies to the entire class.

[2] Class representative "incentive" or "service awards" have sometimes been controversial in the wake of *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020) (holding that service awards are not allowed under common law doctrine and *Trustees v. Greenough*, 105 U.S. 527 (1882)). The Seventh Circuit has rejected the argument against a categorical prohibition—twice. *Scott v. Dart*, 99 F.4th 1076, 1084-85 (7th Cir. 2024) (criticizing *NPAS* and citing prior decision, *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992)). There may be settlements where outsized service awards are used to persuade skeptical representatives into accepting a bad deal or where such awards siphon excessive money from the class, but $2000 service awards to representatives should not have this effect, especially where the representatives have borne discovery.

estimated future administrative expenses. These expenses were previously disclosed as the flat ceiling for expenses by administrator A.B. Data, and are unremarkable for a consumer settlement of this size.

Andren contingently objects only to the attorneys' fee award for all the reasons he previously argued before this Court. *See* Dkts. 6990, 7208. These arguments have been presented to the Seventh Circuit. *See* Exhibits A-C (opening brief, opposition brief, and reply brief from appeal No. 24-2387). In particular, Andren continues to believe that the best market evidence consists of freely-volunteered attorney offers and agreements rather than *ex post* fee awards—specifically Chicago Teachers' fee scale from *Interest Rate Swaps* and the bids submitted by co-lead counsel, the latter of which were discounted due to those cases having some level of prior government investigation. Dkt. 7309 at 3. While the *IRS* fee scale *was* considered by the Court, it was combined with a mass of fee awards of cited by an expert for CIIP plaintiffs as "examples" (not a representative sample) of fee awards "33 percent or greater" (Dkt. 5050-1 at 45-47), which class counsel did not rely on. *See* Ex. A at 18, 26-29; Ex. C at 11-15. Had the Court not included these non-representative fee awards, its spreadsheet would have calculated a 26-27% mean and median fee award. Ex. A at 15; Ex. B at 21. Andren also contends that class counsel's continued voluntary participation in the Ninth Circuit suggests that a 25% fee award for a large fund is no less than the market rate. Ex. A at 20-22, 41-43; Ex. C at 16-17.[3]

Andren does not seek to relitigate this point without further guidance from the Seventh Circuit, but he does reserve his objection here to the extent the Circuit vacates or alters the prior fee award. If, on the other hand, the prior fee award is entirely affirmed, Andren withdraws this contingent objection.

II. Class counsel may not be entitled to attorneys' fees on interest earned solely from the class's portion of the common fund.

Andren's second conditional objection is entirely distinct from the first, and turns on a fact not clear from the record: has class counsel already received their first attorneys' fee award?

[3] Class counsel admits awareness in its of the *ex post* fee award generally awarded in a jurisdiction when it files suits, remarking "Class Counsel also knew no megafund rule would apply in this jurisdiction." Dkt. 7706-2 at 15. This is exactly why continued participation in the Ninth Circuit is illuminating.

If not—if the entire $203 million in settlements (net only expenses) remains in the common fund, then allowing fees on the interest would be appropriate. Such award would simply bring the total fee award back up to a true 30% of the fund.

But it seems possible, even likely, that class counsel deducted and took possession of their 30% years ago. Most of the underlying settlement agreements say that class counsel should be paid within "15 days after any order by the Court awarding attorneys' fees"—not after finality, and the agreements emphasize this by adding provisions for repayment, without interest, in the case of reduced fee awards. *See* Dkts. 4377-2 at 20 (Fieldale); 4377-3 at 20 (Peco); 4377-5 at 23-24 (Tyson); 4921-1 at 13 (Pilgrim's Pride); 5250-3 at 20 (George's) 5250-5 at 22 (Mar-Jac). Class action practitioners commonly refer to this sort of provision as "quick pay." *Hart v. BHH, LLC*, 334 F.R.D. 74, 77 (S.D.N.Y. 2020). Such provisions are dubious because they afford class counsel a preferential treatment not afforded to absent class members. *See, e.g. id.* ("counsel understandably wants the reward they have earned. But so does the class"); *Eubank v. Pella Corp.*, 753 F.3d 718, 724 (2014) (finding an advance to class counsel, even more hasty than in this case, to be "suspicious"); *Hymes v. Earl Enters. Holdings*, 2021 WL 1781461, 2021 U.S. Dist. LEXIS 26534, *32 (M.D. Fla. Feb. 10, 2021) (finding quick pay "especially troubling" where the agreement did not provide for repayment of interest in the event that the fee award was later undone).

If class counsel did in fact receive their 30% years ago, requesting fees on the interest is inappropriate because it causes attorneys' fees to **exceed** 30% of the fund, inappropriately siphoning away the time value of money that is supposed to be held for class benefit. This is because class counsel already received 30% and so have been able to enjoy the time value of their fee in the subsequent years. Had class counsel wanted to invest the money the same way as the settlement fund is invested, they could have earned an exactly proportional amount of interest as the class has and thus still retain a full 30% fee. In all likelihood, class counsel invested their money even more gainfully than that by investing in their own litigation, but regardless they would have already earned the time value of their fee award simply by virtue of receiving it years ago.

Consider this example, which uses round numbers and no expenses for conceptual clarity. Let's say class counsel receives $60 million (30%) of a $200 million common fund. Say the unawarded $140 million bulk of the fund earned $14 million after a few years. Had class counsel in this example invested their money identically, they would have earned $6 million over the same period, such that their total fee award remains exactly 30% of the total fund ($154 million + $66 million). But if counsel goes back and asks for 30% from the $14 million in interest, then awarding another $4.2 million brings the present-day total value of their payments to $70.2 million, which would be 31.9% of the settlement value, making their fee a higher percentage merely from the delay in administration. The time value of money is important because the relevant ratio for attorneys' fees is the "the part of the common fund that the settlement beneficiaries will receive." *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014). The $51 million that class counsel received in 2024 (or 2022) is more valuable than the same amount of cash today simply because you can put it in a bank and earn risk-free interest on it, which the class has not been able to do yet. If class counsel in fact withdrew money from the common fund years ago, it seems more likely that they owe the common fund money than vice versa.[4]

The mathematical effects of this would be even more clearly lopsided if the fund persisted for decades and doubled or tripled. It would reward attorneys not for doing any work, but simply for not distributing class funds so they could collect fees based on interests rates they had nothing to do with.

That said, Andren is not certain this is what class counsel proposes. He hopes class counsel provides (or the Court requests) information about the state of the common fund. If interest was

[4] The various settlement agreements say that in the event of a reduced fee award, "Class Counsel will cause the difference in the amount paid and the amount awarded to be returned to the Settlement Fund." *E.g.* Dkt. 4377-5 at 25 (Tyson agreement). This might have made sense in 2020, when the interest rates in qualified settlement funds had been persistently so low for over a decade, but if class counsel withdrew $57.4 million for the vacated fee award in 2022 (Dkt. 5855), they ought to have returned $5.74 million *plus interest* proportional to what the common fund earned over this period after the 2024 fee order. Dkt. 7309; *see also Hymes*, 2021 WL 1781461. This is necessary to restore the fund to the size it would have been had class counsel been awarded 30% to begin with. The interest that would have been earned from the $5.74 million difference from 2022-24 should be several hundred thousand dollars—or more if the fee award is ultimately reduced further.

earned from the whole fund including the amount awarded (but not dispersed) as attorneys' fees, Andren would withdraw this contingent objection as well.

CONCLUSION

The Court should stay its decision on the Second Fee Request until the Seventh Circuit resolves the appeal being heard this week. As class counsel says, the fee award for new settlement funds should be consistent with the prior award which the Seventh Circuit may affirm, alter, or remand. If remanded, Andren reserves his right to further brief both fee requests together in view of any directions from the Seventh Circuit.

Separately, to the extent that class counsel seeks fees on the time value of class funds after it was already awarded 30% of the then-present value of the fund—if it turns out this is what class counsel's request represents—the Court should deny those fees. Moreover, if class counsel too possession their 33% fee award in 2022 prior to the vacatur of that award, the Court should require an accounting of interest the class would have earned as interest from the difference between the 2022 and final fee award—and order the repayment of interest to bring the present-day value of attorneys' fees to 30% (or whatever percentage may be later awarded after the conclusion of Andren's appeal).

Dated: May 12, 2025

/s/ M. Frank Bednarz
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CERTIFICATE OF SERVICE

The undersigned certifies he electronically filed the foregoing Contingent Opposition to End-User Consumer Plaintiffs' Second Motion for Attorneys' Fees via the ECF system for the Northern District of Illinois, thus effecting service on all attorneys registered for electronic filing.

Dated: May 12, 2025

/s/ M. Frank Bednarz