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CIRCUIT CLERK
COOK COUNTY, IL
2011CH15446
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
Similarly Situated; and Stewart F. Cooke, III,)
as Special Representative of the Estate of)
Stewart Cooke,)**

Plaintiffs,)

v.)

**Retirement Plan for Chicago)
Transit Authority Employees;)
Board of Trustees of the)
Retirement Plan for Chicago)
Transit Authority Employees;)
Retiree Health Care Trust; and)
Board of Trustees of the)
Retiree Health Care Trust,)**

Defendants.)

Case No. 11-CH-15446

Calendar 9

Hon. Cecilia A. Horan

**CLASS COUNSEL’S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS’
FEES AND COSTS AND CLASS REPRESENTATIVE SERVICE AWARDS**

Robinson Curley P.C. (“Class Counsel”) respectfully submits this Supplemental Memorandum in Support of Class Counsel’s Application for Award of Attorneys’ Fees and Costs and Class Representative Service Awards.¹ Per the Court’s May 25, 2023 Order Preliminarily Approving Settlement (“Preliminary Approval Order”), ¶ 9, and the Notice sent to the last-known addresses of all Class Members, *see* Notice, Exhibit B to Agreement, p. 1, Class Counsel filed its Application for Award of Attorneys’ Fees and Costs and Class Representative Service Awards (“Fee Application”), and Class Counsel’s Memorandum in Support thereof (“Fee Application

¹ Capitalized terms not defined herein are used as defined in the Class Action Settlement Agreement (“Agreement”).

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Memorandum”), on September 11, 2023. On or shortly after that date, as also set forth in the Notice, p. 1, the Fee Application and Fee Application Memorandum were posted on the Settlement websites maintained by the Claims Administrator and Class Counsel. *See* Supplemental Curley Declaration (“Supp. Curley Dec.”), Exhibit 1 hereto, ¶ 5. No Defendant or Class Member has filed or submitted any response or objection to Class Counsel’s Fee Application or the Fee Application Memorandum. *See id.*, ¶ 10.

Class Counsel’s Fee Application Memorandum describes the outstanding result the Settlement in this case achieves for the Class, and demonstrates why Class Counsel’s requests for attorneys’ fees and expense reimbursement, and the Service Awards for the Class Representatives, are reasonable, meet all applicable legal standards, and should be granted. Since filing the Fee Application, Class Counsel has spent significant additional time working on behalf of the Class, including continuing to work with the Claims Administrator on the notice program, responding to Class Member inquiries, and working to obtain approval of the Settlement.

The Reaction of the Class Strongly Supports Granting the Requested Attorneys’ Fees, Expense Reimbursement, and Service Awards

The time for Class Members to submit objections to the Fee Application expired on September 25, 2023. *See* Preliminary Approval Order, ¶ 11; Notice, p. 7. Notwithstanding the widespread notice provided to Class Members advising them that an application for (1) attorneys’ fees in the amount of 33⅓ percent of the Settlement Fund, (2) reimbursement of costs of approximately \$480,000, and (3) Service Awards for the Class Representatives totaling \$75,000 would be submitted to the Court, *see* Notice, p. 3, no Class Member has objected to those requests.

The absence of any objection to the Fee Application supports finding that Class Counsel’s requests for attorneys’ fees and expense reimbursement, and the requested Service Awards, are fair and reasonable and should be approved. *Spano v. Boeing Co.*, No. 06-CV-743-NJR-DGW,

2016 U.S. Dist. LEXIS 161078, *4 (S.D. Ill. Mar. 31, 2016) (“This Court finds the lack of any significant number of objections to be a sign of the Class’s overwhelming support for Class Counsel’s request.”); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 U.S. Dist. LEXIS 162557, *10-11 (N.D. Ill. Oct. 22, 2014) (where no class member objected to counsel’s 33⅓ percent fee request, “[t]he absence of objections indicates that the fee is fair and reasonable and consistent with prevailing market rates”); *McDaniel v. Qwest Comms. Corp.*, No. 05 C 1008, 2011 U.S. Dist. LEXIS 154591, *13 (N.D. Ill. Aug. 29, 2011) (“absence of objection is a rare phenomenon ... and indicates the appropriateness of the [fee] request”) (internal quotations omitted); *Retsky Family Limited Partnership v. Price Waterhouse LLP*, No. 97 C 7694, 2001 U.S. Dist. LEXIS 20397, *11 (N.D. Ill. Dec. 10, 2001) (“Furthermore, no member of the plaintiff class has objected to the request for attorney’s fees. This also suggests that the requested attorney’s fees are reasonable.”).

“The reaction by members of the Class” to the Fee Application “is entitled to great weight by the Court.” *Maley v. Del Global Technologies Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (where notices set forth fee request of 33⅓ percent plus reimbursement of all costs and expenses not to exceed \$700,000, and no class member objected, “this overwhelmingly positive response by the Class attests to the approval of the Class with respect to the ... fee and expense application”); *In re Sequoia Sys., Inc. Sec. Litig.*, No. 92-11431-WD and Civ. A. No. 93-11331-WD, 1993 WL 616694, *1 (D. Mass. Sept. 10, 1993) (finding “influential” the absence of any class member’s objection to fee request of one-third). As in the above-cited cases, the absence of any objection here to Class Counsel’s request for fees and expense reimbursement, and the Service Awards, overwhelmingly supports the reasonableness of those requests.

CERTIFICATE OF SERVICE

The undersigned certifies that on October 9, 2023, I caused copies of the attached **CLASS COUNSEL'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVE SERVICE AWARDS** to be served by e-mail on the following:

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*Attorneys for Defendants Retiree Health Care Trust
and Board of Trustees of the Retiree Health Care Trust*

/s/ C. Philip Curley
One of Plaintiffs' Attorneys

Exhibit 1

Supplemental Curley Declaration

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
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Plaintiffs,)

v.)

**Retirement Plan for Chicago)
Transit Authority Employees;)
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Retirement Plan for Chicago)
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Hon. Cecilia A. Horan

SUPPLEMENTAL DECLARATION OF C. PHILIP CURLEY

C. Philip Curley hereby declares as follows:

1. I am a Shareholder and the Treasurer of Robinson Curley P.C. (“RC”). RC is Class Counsel in this class action lawsuit (the “Litigation”). I am an attorney and have been licensed to practice law in the State of Illinois since 1979; a member of the bar of the United States Supreme Court, the Seventh Circuit Court of Appeals, and the United States District Court for the Northern District of Illinois; and have been admitted to practice *pro hac vice* in many state and federal jurisdictions across the United States.

2. I have personal knowledge of the matters set forth herein based on my active participation in and supervision of the Litigation on behalf of the Plaintiffs and the Class. If called upon as a witness, I could and would testify competently thereto. I respectfully submit this

Declaration in support of Plaintiffs' Reply Memorandum in Support of Motion for Final Approval of Class Action Settlement, and Class Counsel's Supplemental Memorandum in Support of Class Counsel's Application for Award of Attorneys' Fees and Costs and Class Representative Service Awards.

3. On August 31, 2023, the Court notified Class Counsel that the case number on the Notice contained a typographical error.¹ On September 7, 2023, the Claims Administrator mailed a postcard to all Class Members, at their most-current addresses the Claims Administrator had on file, informing them of the error and instructing anyone who had attempted to communicate with the Court using the incorrect case number to contact the Claim Administrator so it could verify the communication was received. No Class Member has told either Class Counsel or the Claims Administrator that they tried to communicate with the Court using the wrong case number.

4. Class Counsel and the Claims Administrator have received inquiries from persons indicating they had heard about the Settlement but had not received the Notice, and asking if they are eligible to participate. After investigation, it was determined that one such person was a deceased Class Member who had taken early retirement but had not been included on the list of Class Members the Trust provided to Class Counsel. The Class Member's next of kin was notified of the omission, provided with the Notice and Next of Kin form, and will receive the decedent's *pro rata* share of the Net Settlement Fund. No other Class Members that were omitted from the list have been identified.

5. The Notice was posted on both Settlement-related websites, and Class Members were advised in the Notice and on both Settlement-related websites that the last day for Class Members to file objections to the Settlement, the Plan of Distribution, and the Fee and Expense

¹ Capitalized terms not defined herein are used as defined in the Class Action Settlement Agreement ("Agreement").

Application, was September 25, 2023. On September 11, 2023, Plaintiffs filed their Motion and Memorandum in Support of Motion for Final Approval of Class Action Settlement Agreement, and Class Counsel filed its Motion and Memorandum in Support of Class Counsel's Application for Award of Attorneys' Fees and Costs and Class Representative Service Awards, all supported by my Declaration and the Declarations of the Claims Administrator and Class Representative Jerry Williams. As advised in the Notice, all of those filings were available on the public docket and posted on both Settlement-related websites on or shortly after their filing date, September 11, 2023.

6. Class Representatives Jerry Williams, Larry Whitehead, and Stewart Cooke were all officially retired from the CTA on January 1, 2007. None of them were on disability leave from the CTA at that time.

7. Ethel Carter and Mary Fields were at all relevant times "Participants" in the Trust's health plan and paid monthly premiums to the Plan. Ms. Carter's Claim amount is \$20,684, and her estimated Individual Settlement Amount is \$12,299. Ms. Fields's Claim amount is \$12,546 and her estimated Individual Settlement Amount is \$7,460.

8. Ms. Carter was never deposed or called as a witness in this case, and the documents she provided to Class Counsel were never marked as exhibits in any deposition, or used as evidence in the summary judgment/summary determination proceedings or the damages trial.

9. Class Counsel, in consultation with the Trust, Plaintiffs' actuaries, and the Claims Administrator, have reconfirmed that Ms. Carter's and Ms. Fields's Claim amounts and estimated Individual Settlement Amounts (1) were based on accurate premium data provided by the Trust, (2) were properly calculated pursuant to the Plan of Distribution, and (3) were accurately communicated to the Claims Administrator.

10. No Defendant or Class Member has filed with the Court or submitted to Class Counsel or the Claims Administrator any objection to Class Counsel's Application for Award of Attorneys' Fees and Costs and Class Representative Service Awards.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: October 9, 2023

/s/ C. Philip Curley

C. Philip Curley

Exhibit 2

Proposed Order Granting Fee Application

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**Jerry Williams and Larry Whitehead,)
Individually and on Behalf of All Others)
Similarly Situated; and Stewart F. Cooke, III,)
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Defendants.)

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[PROPOSED]

**FINAL ORDER GRANTING CLASS COUNSEL’S APPLICATION
FOR AWARD OF ATTORNEYS’ FEES AND COSTS AND
CLASS REPRESENTATIVE SERVICE AWARDS**

This matter came before the Court on October 23, 2023, for final hearing on, among other things, Class Counsel’s Application for Award of Attorneys’ Fees and Costs and Class Representative Service Awards (“Fee and Expense Application”). The Court having considered all papers filed and matters submitted to it at the hearing concerning the Fee and Expense Application, and no objection having been made by any Defendant or Class Member to the Fee and Expense Application, or to the attorneys’ fees, expense reimbursements, or Service Awards requested therein, the Court hereby GRANTS the Fee and Expense Application and ORDERS as follows:

1. The Court has jurisdiction over the subject matter of this Litigation and all matters relating to the Settlement, including the Fee and Expense Application, and has personal jurisdiction over all of the Settling Parties and the Class Members.¹

2. Notice of the Fee and Expense Application was given to all Class Members who could be identified with reasonable effort. The Court finds that the form and method of notice to the Class: (a) were implemented in accordance with the Court's Order Preliminarily Approving Settlement dated May 25, 2023; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances to apprise Class Members of (i) the effect of the proposed Settlement (including the releases to be provided thereunder); (ii) Class Counsel's Fee and Expense Application; (iii) their right to object to any aspect of the Settlement, the Plan of Distribution, and/or the Fee and Expense Application; and (iv) their right to appear at the Settlement hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement and the Fee and Expense Application; and (e) satisfied the requirements of the Illinois Code of Civil Procedure and all other applicable laws and rules.

3. The Fee and Expense Application was filed by Robinson Curley P.C. ("Class Counsel" or "RC"), which has written retainer agreements with Plaintiffs in this case and which was appointed sole Class Counsel by Order dated July 7, 2020. RC filed the Fee and Expense Application on behalf of itself and (1) Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich LLP ("Dowd"), (2) Klausner, Kaufman, Jensen & Levinson ("Klausner"), and (3) attorney Mark W. Solock ("Solock") (RC, Dowd, Klausner, and Solock are collectively referred to as "Counsel"), each of which also have written retainer agreements with and represented individual plaintiffs at

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different times prior to class certification and, along with Class Counsel, contributed substantially toward creation of the Settlement Fund in this case, and all of whom have entered into a written agreement, approved by Plaintiffs, concerning the allocation of any attorneys' fees and expenses that may be awarded in this case.

4. The Court hereby approves payment to Counsel of attorneys' fees collectively in the amount of 33 $\frac{1}{3}$ percent of the Settlement Amount (\$26,666,667) ("Fee Award"), together with interest earned thereon, until paid, at the same rate and for the same time period as earned on the Settlement Amount.

5. The Court, having considered the materials submitted by Class Counsel in support of the Fee Award, finds that the amount of Fee Award is fair and reasonable under the "percentage-of-the-recovery" method considering, among other things, the following factors that favor granting the Fee Award:

- (a) the Fee Award is in accord with authority in Illinois courts (both state and federal) and elsewhere, and consistent with awards in similar cases;
 - (b) the contingent nature of the Litigation;
 - (c) the substantial risks of the Litigation, and the very real possibility that the Class could recover nothing and Counsel would go uncompensated;
 - (d) the quality of legal services provided by Counsel resulting in the Settlement;
 - (e) Counsel's expenditure of substantial time and resources over the fifteen years of this Litigation;
 - (f) the substantial monetary and non-monetary benefits achieved for the Class;
- and

- (g) the Notice specifically and clearly advised the Class that Class Counsel would seek the Fee Award in the amount sought, and no objections have been made.

6. The Escrow Agent is hereby authorized and ordered to distribute to Class Counsel the Fee Award and interest thereon. Class Counsel is hereby authorized and ordered to distribute the Fee Award and interest thereon to Counsel in accordance with the written allocation agreement entered into among Counsel and approved by Plaintiffs.

7. The Court, having considered the materials submitted by Class Counsel in support of the request for reimbursement of Counsel's expenses, finds that the expenses incurred and paid by Counsel were reasonable, necessary, and directly related to the prosecution of the Litigation, and that proper notice was given to the Class and no objections have been made, such that the request for reimbursement is granted in the amount of \$485,682.42 ("Expense Amount"), together with interest earned thereon, until paid, at the same rate and for the same time period as earned on the Settlement Amount. The Escrow Agent is hereby authorized and ordered to distribute to Class Counsel the Expense Amount and interest thereon. Class Counsel is hereby authorized and ordered to distribute the Expense Reimbursement and interest thereon to Counsel in accordance with the written allocation agreement entered into among Counsel and approved by Plaintiffs.

8. The Court hereby approves service awards in the following amounts to the Class Representatives ("Service Awards"), together with interest earned thereon, until paid, at the same rate and for the same time period as earned on the Settlement Amount:

- (a) \$55,000 to Jerry Williams;
- (b) \$10,000 to Larry Whitehead; and
- (c) \$10,000 to the Estate of Stewart Cooke.

9. The Court, having considered the materials submitted by Class Counsel in support of the request for Service Awards, finds that proper notice was given to the Class and no objections have been made, and that the Service Awards are reasonable in light of the time, effort, burdens, and risks the Class Representatives committed to and undertook that benefitted the absent Class Members in this Litigation. The Escrow Agent is hereby authorized and ordered to distribute to Class Counsel the Service Awards and interest thereon. Class Counsel is hereby authorized and ordered to distribute the Service Awards and interest thereon to the Class Representatives as provided herein.

10. The Fee Award, Expense Amount, and Service Awards shall be paid from the Settlement Fund in accordance with the terms, conditions, and obligations of the Agreement, which terms, conditions, and obligations are incorporated herein.

11. Pursuant to Illinois Supreme Court Rule 304(a), the Court expressly finds that there is no just reason to delay enforcement or appeal of this final order.

ENTER:

Date: _____

Hon. Cecilia A. Horan Judge No. 2186
Meeting ID: 956 5899 1093
Password: 129359
Dial-in: 312-626-6799