IN THE COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

DOREEN BARROW, et al.,	Case No. CV 2013 07 2047
Plaintiffs	Judge: Oster
v.	MOTION FOR APPROVAL OF CREATION OF COMMON FUND AND PAYMENT OF EXPENSES AND FEES
VILLAGE OF NEW MIAMI, et al.,	AND
Defendants	MEMORANDUM IN SUPPORT OF ADOPTION OF PROPOSED FINAL FORM OF JUDGMENT

Plaintiffs Doreen Barrow, *et al.*, respectfully request that this Court enter judgment in the form proposed and attached as Exhibit A.

The proposed entry provides for the creation of a common fund and for the distribution of the proceeds of the common fund to the members of the Class in accordance with the Court's February 8, 2017 Entry. This Memorandum addresses three issues that have not previously been addressed by the Court: interest, attorneys' fees and service awards to the Class representatives.

MEMORANDUM

A. The Court Should Award Interest As Part Of Equitable Restitution.

This Court, in granting the Plaintiffs' Motion for Summary Judgment on Count IV, held that the members of the class are entitled to restitution. Under the common law, orders of equitable

restitution include orders to repay the money withheld with interest.[1] The Restatement of Restitution explains:

> . . . a person who has a duty to pay the value of a benefit which he has received, is also under a duty to pay interest upon such value from the time he committed a breach of duty in failing to make restitution if, and only if:
>
> (a) the benefit consisted of a definite sum of money, or
>
> (b) the value of the benefit can be ascertained by mathematical calculation from the terms of an agreement between the parties or by established market prices, or
>
> (c) payment of interest is required to avoid injustice.

Restatement (1st) of Restitution, § 156 (1937). In this case, factors (a) and (c) have been satisfied, as the benefit received by the Village is a definite sum of money and, as the Court noted on page 1 of its February 8, 2017 decision, restitution is in the interest of justice.[2] The date of the breach of the duty is when the Village used the unconstitutional ordinance and the threat of further government action to compel Class Members to make the payments. *Id.* comment (a) ("Where restitution is due because of the rescission of a transaction for fraud or duress, there is a breach of the duty of restitution at the time of the transaction . . . ").

The Ohio Supreme Court has approved of interest on restitution orders. *Bar Assn. of Greater Cleveland v. Bostnar*, 18 Ohio St.3d 343 (1985) (affirming judgment of restitution, including interest on funds retained). Interest on equitable restitution claims has also commonly been awarded by federal courts. *See also Frederick Cty. Fruit Growers Ass'n v. Dole*, 709 F.Supp. 242, 247 (D.D.C.1989) (ordering

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[1] The interest due is part of the equitable remedy ordered by the Court, and is not considered to be pre-judgment interest. *See Ryan v. City of Chi.*, 274 Ill.App.3d 913, 211 Ill.Dec. 21, 654 N.E.2d 483 (1995) ("interest was awarded here as part of the court's overall judgment of equitable restitution and not as a separate award of prejudgment interest").

[2] It would be an injustice to allow a government entity to profit from unconstitutional actions by retaining the interest earned by the money obtained from unconstitutional actions. The failure to award interest in this situation would create a perverse incentive encouraging unscrupulous government actors to actually *benefit* from unconstitutional actions. *See Parke v. First Reliance Std. Life Ins. Co.*, D.Minn. No. 99-1039 (JRT/FLN), 2002 U.S. Dist. LEXIS 18762 (Sep. 25, 2002) (noting that ". . . defendant made a profit on that money in the form of interest earned. Plaintiff merely seeks to have defendant disgorge the interest it earned on the money due to" plaintiff).

interest as part of equitable restitution running from date that money was improperly withheld); *Skretvedt v. E.I. Dupont de Nemours*, 372 F.3d 193 (3d Cir. 2004) (awarding interest as part of equitable restitution in recognition of fact that defendant "profited" with respect to the funds retained).

B. The Court Should Approve An Award of 33% As And For Class Counsel's Attorney Fees, Plus Reimbursement Of Advanced Litigation Expenses.[3]

Plaintiffs and the Class are represented by the following attorneys: Charles Rittgers, of Rittgers & Rittgers; Michael K. Allen of Michael K. Allen & Associates; Joshua A. Engel of Engel & Martin, LLC; and Paul M. De Marco, Esq., Markovits, Stock & DeMarco, LLC. These four senior attorneys brought to this case significant credentials, experience, and expertise in complex litigation and class actions, including cases involving similarly complicated legal issues. Class Counsel are applying for an award of 33% of the $3,433,982.24 common fund, or a total of $1,133,214.14 for attorney fees, plus $1237.10 as reimbursement for the reasonable litigation expenses that they advanced. *See* Affidavit of Joshua Engel ¶¶5-7.

"When awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir.1993). "In general, there are two methods for calculating

[3] The Village has requested discovery concerning counsel's fees. This is improper and should be viewed as a further effort to delay the resolution of this matter. In cases like this, where fees are paid out of a common fund and not by the defendant, a defendant has no cognizable interest in the amount of the fees ultimately awarded from money belonging to the class. As a result, the Village has no standing to request discovery on this issue or otherwise challenge the amount of fees sought. *See Copeland v. Marshall*, 641 F.2d 880, 905 n.57, (D.C. Cir. 1980) ("In 'common fund' cases, the losing party no longer continues to have an interest in the fund; the contest becomes one between the successful plaintiffs and their attorneys over division of the bounty."); *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 855 (10th Cir. 1993) (concluding where "the fee awarded to objecting counsel came out of the common fund remaining after payment of class counsel's fee," only "the plaintiff class . . . could be considered aggrieved by that award"); *Prandini v. National Tea Co.*, 557 F.2d 1015, 1020 (3d Cir. 1977) ("a defendant is interested only in disposing of the total claim asserted against it; . . . the allocation between the class payment and the attorneys' fees is of little or no interest to the defense").

attorney's fees: the lodestar and the percentage-of-the-fund." *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App'x 496, 498 (6th Cir. 2011). In general, the percentage-of-the-fund method is preferred in common fund cases. *See Rawlings*, 9 F.3d at 515 ("We are aware of the recent trend towards adoption of a percentage of the fund method in such cases."). It has been observed that "the percentage of the fund method more accurately reflects the results achieved." *Rawlings*, 9 F.3d at 516 (internal citations omitted). "[U]nder the percentage of the fund method, the court simply determines a percentage of the settlement to award the class counsel.'" *Londardo v. Travelers Indem. Co.*, 706 F.Supp.2d 766, 789 (N.D. Ohio 2010) (quoting *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F.Supp.2d 907, 922 (N.D. Ohio 2003)).

Here, Class Counsel are applying for a fee award of 33% of the common fund, in line with the contingent fee arrangement that counsel maintained with each of the named plaintiffs. *See* Engel Aff. ¶10. In Ohio, "[c]ourts have noted that the range of reasonableness in common fund cases is from 20 to 50 percent of the common fund." *See Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 2015 WL 1498888 (E.D. Mich*), citing In re Telectronics Pacing Sys., Inc., Accufix Atrial "J" Leads Prods. Liab. Litig.*, 137 F.Supp.2d 1029, 1046 (S.D. Ohio 2001); *In re Cincinnati Gas & Elec. Co. Sec. Litig.*, 643 F.Supp. 148, 150 (S.D. Ohio 1986); *see also Lonardo*, 706 F.Supp.2d at 803 (26.4%); *Kritzer v. Safelite Solutions, LLC*, No. 2:10–cv–0729, 2012 WL 1945144, (S.D. Ohio May 30, 2012) (52%); *Gascho v. Global Fitness Holdings, LLC*, 2014 WL 1350509 (S.D. Ohio) (21%).[4]

When reviewing the reasonableness of an attorney fee award requested in a class action, courts consider factors such as (1) the value of the benefit rendered to the class; (2) whether the services were

[4] Scholarly empirical studies have found that the percentage-of-the-fund method is preferred by courts and nearly two-thirds of awards using the percentage of-the-fund method fell between 25% and 35%, with the most common percentages being 25%, 30%, and 33⅓%. See Brian T. Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 J. Empirical L. Stud. 811 (2010), at 833-34, 838.

undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.[5] *Moulton v. United States Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009); *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996).

1. The value of the benefits rendered to the Class

It is undeniable that Class Counsel achieved a remarkable and extraordinary degree of success in this case. Class counsel obtained a permanent injunction early in the litigation which prevented continuing and irreparable harm to members of the class and the public from the Village's unconstitutional actions. *See Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy certainly would serve the public interest."); *Campbell v. Miller*, 373 F.3d 834, 840 (7th Cir. 2004) (Williams, J., dissenting) ("[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable harm is necessary")' *Hillside Productions, Inc. v. Duchane,* 249 F.Supp.2d 880, 900 (E.D. Mich 2003) (where a plaintiff's procedural due process rights were likely violated, a finding of irreparable harm should follow as a matter of law).

The total amount of the monetary judgment requested — $3,433,982.24 — would represent the full amount that Class Counsel sought on behalf of Plaintiffs and the restitution subclass, encompassing both the refund of the unconstitutionally collected funds and the interest demanded. In other words, Class Counsel secured what amounts to full injunctive and monetary relief for the Members of the Class. In fact, the refunds to which individual Class Members would be entitled if

[5] Courts sometimes consider the value of the services rendered by the attorneys if measured on an hourly basis. While Class Counsel are not seeking fees on an hourly basis, it is worth noting that this matter has involved significant expenditure of time, including two prior appeals and one current appeal. More appeals are expected. The Village has also pursued aggressive litigation tactics at every opportunity, including filing numerous motions for reconsideration and other motions, such as a motion for notice, which disregarded the settled law of this case.

the proposed judgment is entered probably rank as more favorable to Class Members than they would have been able to attain through hypothetical individual actions of their own. Not only would a Class Member who, hypothetically, filed his or her own individual action have had to overcome the Village's arguments against a finding of liability and awards of full damages and interest, each such Class Member inevitably would have had to pay more in filing fees or attorneys' fees than the expected recovery. Alternatively, if a Class Member was able to obtain representation at the customary one-third contingent fee—the same amount requested by Class Counsel—the individual Class Member would have had to pay the full amount of litigation expenses, as opposed to the expenses being divided among tens of thousands of Class Members.[6] The efforts of Class Counsel spared all of those tens of thousands of Class Members the risks posed by individual litigation at their own expense. The value of the benefits secured by Class Counsel weighs strongly in favor of their fee request.

2. Whether services were rendered on a contingent fee basis

As noted above, by dint of their original engagement with the named plaintiffs, attorneys for the named plaintiffs operated under a 33% contingent-fee arrangement with them and made additional cash outlays to continue financing the various proceedings over a multi-year period. The fee requested is in line with that contingent-fee arrangement.

"[C]ontingency fee arrangements indicate that there is a certain degree of risk in obtaining a recovery. Class and Plaintiffs' Counsel accepted this litigation on a contingency fee basis, evidencing their recognition of the risk in this case." *In re Telectronics Pacing Systems, Inc.*, 137 F.Supp.2d 1029, 1041 (S.D. Ohio 2001). With no guarantee of any return, Class Counsel have devoted their time and resources to this case and have advanced litigation expenses over a four-year period, in order to

[6] Each fine imposed was approximately $95.00. The filing fee for an individual case would exceed the expected recovery. Moreover, it is unlikely that an attorney would incur the expenses and time to take any individual case on a contingent basis.

provide a common, timely benefit to the entire Class. That Class Counsel took these risks over many years, persisting at every level against attorneys being paid hourly, also militates in favor of granting their fee request.

3. Society's interest in rewarding attorneys who produce such benefits

Class Counsel acted in the public interest by protecting the Class Members, as well as the general public, from ongoing constitutional violations through obtaining preliminary and permanent injunctive relief. *See G&V Lounge, Inc. v. Mich. Liquor Control Common*, 23 F.3d 1071, 1079 (6th Cir. 1994) (noting "it is always in the public interest to prevent the violation of a party's constitutional rights"); *Doe v. Lee*, U.S.D.C., D. Conn. No. NO. 3:99CV314, 2001 U.S. Dist. LEXIS 7282 (May 18, 2001) ("there is a distinct public interest in having this Court discharge its duty to protect and enforce [constitutional] rights").

Moreover, it unquestionably was in the public's interest for these attorneys to press for refunds of this public entity's unconstitutional collections. *See* February 8, 2017 Entry at 1 (citing Federalist Papers). Had not these attorneys been willing to take on this particular cause without a guaranteed return, however, the members of the Class would have had neither the incentive nor the opportunity to secure refunds on their own. "Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling ... claimants to pool their claims and resources" to achieve a result they could not obtain alone. *Telectronics*, 137 F.Supp.2d at 1043. This factor, too, weighs in favor of granting Class Counsel's fee request.

4. The complexity and difficulty of the litigation

This case was hardly a cakewalk for the attorneys representing the named plaintiffs and the other Class Members. The Court is well aware that this litigation has been hard fought from the beginning. At every stage of this case, Class Counsel grappled with novel, complex liability and remedy issues and met with fierce resistance by determined opponents. Class Counsel were required to:

support their request for class certification twice; move for summary judgment twice; defend against two Twelfth District appeals and an attempted appeal to the Supreme Court of Ohio; conduct discovery; overcome numerous motions for reconsideration filed by the Village; and, finally, press for the discovery needed to calculate the amount owed to Class Members. The complexity and difficulty of this litigation, and Class Counsel's success in overcoming them, weigh heavily in favor of granting Class Counsel's fee request.

5. The professional skill and standing of counsel on both sides

The professional skill and standing of Class Counsel and counsel for the Village were very high and were reflected in the protracted fights over liability, class certification, and damages. This factor weighs in favor of granting Class Counsel's fee request as well.

6. Summary on Fees

Class Counsel's request for an attorney fee award of 33% of the common fund is in line both with Counsel's contingent-fee arrangement with the named plaintiffs and with awards in class actions of this type. This request finds strong support in the remarkable benefits their efforts generated for the Class. The proposed judgment, if entered, affords Class Members all the relief the named plaintiffs were seeking on their behalf, while eliminating the risks posed by individual litigation. In addition to the results Class Counsel obtained for the Class, their fee request also finds strong support in the palpable risks they took and were able to allay, and in the complexities, difficulties, and determined resistance they faced and overcame. The fee request should be granted.

Also, as stated in the attached Affidavit of Joshua Engel, Class Counsel advanced litigation expenses in the amount of $1237.10, for which reimbursement is appropriate.

C. The Court Also Should Approve Service Awards for the Six Class Representatives.

Service awards, also known as incentive awards, are payments that are intended to cover the time and money that class representatives spend fulfilling their responsibilities as representatives of a

class. Courts approving such awards have stressed that they "are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class." Hadix v. Johnson, 322 F.3d 895, 897 (6th Cir. 2003). "Yet applications for incentive awards are scrutinized carefully by courts who sensibly fear that incentive awards may lead named plaintiffs to expect a bounty for bringing suit or to compromise the interest of the class for personal gain." Id. This is far from such a situation.

The Class Representatives devoted their time to this cause without any expectation of such a bounty, or even any knowledge of the existence of these awards. Their initiative, time, and effort were essential to the prosecution of the case and were central to the remarkable results achieved. By virtue of their involvement and dedication over the four-year period, these individuals exemplified what class representatives should be. In every respect, they provided commendable representation and service to those who ultimately comprised the Class, and they did so without any expectation or assurance of a reward. Class Counsel respectfully submit that the six Class Representatives deserve to be compensated for their service to Class Counsel and the Class. We therefore ask that the Court approve service awards of $950 for each of them.

While the requested awards make them more than whole when measured purely against the time and money they spent on this case, that is not a bar to awards of the magnitude sought here, so long as they are tailored to the contributions they made to benefit the Class. *See Gascho v. Global Fitness Holdings, LLC*, Civil Action No. 2:11–cv–436, 2014 WL 1350509, *27 (S.D. Ohio April 4, 2014). Numerous courts have approved incentive awards significantly greater than those sought here for the six Class Representatives. *See, e.g., Johnson v. Midwest Logistics Sys., Ltd.*, No. 2:11–cv–1061, 2013 WL 2295880, at *5 (S.D. Ohio May 24, 2013) (approving an incentive award of $12,500); *Hainey v. Parrott*, No. 1:02–cv–733, 2007 WL 3308027 (S.D. Ohio Nov.6, 2007) (approving an incentive award of $50,000 for each class representative); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D.

366, 373–74 (S.D. Ohio 1990) (approving incentive awards ranging from $35,000 to $55,000). The service awards sought in this instance are not excessive and should be granted.

D. This Court Retains Jurisidction

The Notice of Appeal filed by the Village does not prevent this Court from acting to enter a Final Judgment. This Court retains jurisdiction to enter the proposed Final Order and Judgment even though the Village has filed a pre-mature Notice of Appeal. The subject of the Final Judgment is the manner of of distributing the restitution previously Ordered by this Court. The final judgment in this case is 100% consistent with the grant of summary judgment the Village seeks to appeal. The manner of distributing the restitution issue is completely unrelated to the Village's appeal of the summary judgment decisions that have been entered against the Village on the question of the Class' entitlement to restitution. *See Yee v. Erie Cty. Sheriff's Dept.*, 51 Ohio St. 3d 43, 44 (1990) ("when a case has been appealed, the trial court retains all jurisdiction not inconsistent with the court of appeals' jurisdiction to reverse, modify or affirm the judgment").

Moreover, there is not yet an appealable order and thus the Notice of Appeal filed by the Village is insufficient to create appellate jurisdiction and to strip this Court of its ability to entire final judgment in this case. Although the Court previously granted summary judgment to plaintiffs, a number of issues remain pending, including the actual amount of restitution to be paid to the class as a whole and the manner of distribution of those funds. Ohio law on this is clear: an order granting summary judgment alone, without providing any remedy, is interlocutory and not appealable. *See, e.g., Coon v. Barnes*, 95 Ohio App.3d 349, 351-352 (3d Dist.1994) (order granting summary judgment for the plaintiff in an action for an injunction, "without providing any remedy establishing the respective rights and obligations of the parties to permit compliance or enforcement," was not a final, appealable order); *State ex rel. Fisher v. Cleveland*, 2003-Ohio-2754, ¶ 8 (8th Dist.) (order granting summary judgment to plaintiffs was not a final, appealable order where it did not "expressly grant plaintiffs the

only forms of relief they requested, injunctive relief and attorney's fees"); *Haberley v. Nationwide Mut. Fire Ins. Co.*, 142 Ohio App.3d 312, 314 (8th Dist.2001) (trial court's order granting insurer's motion for summary judgment was not a final appealable order where it did not "expressly declare the rights and duties of the parties"). *See also Lycan v. Cleveland*, 146 Ohio St.3d 29, 2016-Ohio-422, 51 N.E.3d 593, ¶ 22-24 (trial court's order granting partial summary judgment in speed camera case did not provide a basis for reviewing *res judicata* issue because order was not final and appealable).

CONCLUSION

This Court should enter judgment in the form proposed and attached as Exhibit A, including the approval of expenses and attorney's fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing was served upon the following via e-mail on this the 6th day of March, 2017:

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Respectfully submitted,

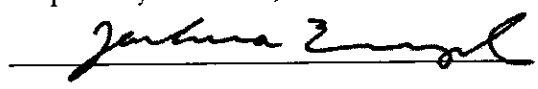

EXHIBIT A

IN THE COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

DOREEN BARROW, et al.,	Case No. CV 2013 07 2047
Plaintiffs	Judge: Oster
v.	FINAL ORDER AND JUDGMENT
VILLAGE OF NEW MIAMI, et al.,	
Defendants	

1. Incorporation of Prior Decisions and Definitions.

The Court, for purposes of this Order adopts the analysis set forth in its prior decisions granting Summary Judgment and Class Certification.

This Order and Judgment concerns Council Ordinance 1917 adopted by the Village of New Miami (the "Village") Council on July 5, 2012 (the "Ordinance"). The Ordinance created a Automated Speed Enforcement Program ("ASEP").

2. Judgment

The Court grants summary judgment in favor of the Defendants on Count I of the Complaint. The Court grants Summary Judgment in favor of the Plaintiff Class on Counts II, III, and IV.

On Count II, the Court issues a declaratory judgment that the Ordinance 1917 violates the "Due Course of Law" provision of the Ohio Constitution.

On Count III, the Court issues a permanent injunction prohibiting the Village from enforcement of the Ordinance. The Village is further permanently enjoined from adopting or modifying a new ASEP which violates the "Due Course of Law" guarantees of the Ohio Constitution. This Order is binding upon the parties to the action, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order whether by personal service or otherwise.

On Count IV, the Court orders The Village to pay equitable restitution in the amount of $3,066,422.11, plus interest in the amount of $367,560.13, for a total restitution to Subclass 1 of $3,433,982.24. The restitution shall be paid as set forth below.

2. Jurisdiction.

The Court has personal jurisdiction over the Parties and all Class Members and has subject-matter jurisdiction over this action, including, without limitation, jurisdiction to Order the relief in this Order.

Without in any way affecting the finality of this Final Order and Judgment, this Court expressly retains exclusive and continuing jurisdiction over the Parties, including the Class, and all matters relating to the administration, consummation, validity, enforcement and interpretation of this Final Order and Judgment, including, without limitation, for the purpose of entering such additional orders, if any, as may be necessary or appropriate to protect or effectuate this Final Order and Judgment, or to ensure the fair and orderly administration of the equitable restitution.

3. Certification of the Class.

The Court previously granted certification of the Class in this Action. The certification has been affirmed by the Twelfth District Court of Appeals.

4. Adequacy of Representation.

The Court previously affirmed the appointment of Plaintiffs Barrow, McGuire, Muirheid, Woods, Johnson and Doepke as Class Representatives and Michael Allen, Joshua Engel, Paul DeMarco, and Charles Rittgers as Class Counsel. Their appointment of Class Representatives and Class Counsel, respectively, is fully and finally confirmed. The Court finds that Class Representatives and Class Counsel and Plaintiff have fully and adequately represented the Class.

5. Creation of a Common Fund

The Village shall, within 30 days, pay the full amount of the equitable restitution into a fund to be established and administered by Class Counsel. The fund shall be considered to be a "common fund" established for the benefit of the class. Expenses not otherwise specified in this Order related to the administration of the fund and/or for the benefit of the Class shall be paid from the fund.

In the event that this Judgment and Order is stayed, the Court orders that interest shall accrue at the annual rate of 4% on the amount of equitable restitution to be paid into the fund by the Village.

6. Court Approved Expenses and Findings

The Court approves the following expenses to be paid out of the common fund prior to the payment of equitable restitution:

a. Fund Administrator

Class Counsel shall, with the approval of the Court, retain a fund administrator. The fund administrator shall be responsible for the payment of restitution to class members and other ministerial and accounting duties. The fund administrator shall be responsible for the payment of all expenses related to the administration of the fund, including postage, banking and professional fees. The fund administrator shall receive compensation (including expenses) in an amount not to exceed $343,000.00.

b. Class Representatives

Class Representatives shall receive $950 for the initiation of the action, work performed, and the risks undertaken. The Court finds that such a payment is reasonable and appropriate.

c. Class Counsel

The Court approves fees for Class Counsel in the amount of $1,133,214.14, plus 33% of any interest accrued on that amount subsequent to this Order. The fees for Class Counsel are calculated under the percentage of funds method as 33% of the total amount recovered. The Court finds that Class Counsel undertook significant work and efforts to secure a benefit for the Class. This finding is supported by the observation that this matter has twice been to the Court of Appeals on interlocutory matters and a further appeal is expected.

The Court finds the attorneys' fees to be reasonable. The Court finds that 33% of the common fund is consistent with contingent fee arrangements in the State of Ohio and in the range of awards in other class action lawsuits. The Court further finds that the percentage is reasonable taking into account the novelty and difficulty of the issues presented, the quality of counsel's services, the time needed for this litigation to conclude, the amount at stake, and the result obtained. Class Counsel are experienced in this type of litigation, diligently managed the case, and also handled the matter over the past four years on a purely contingent basis. Most significantly, Class Counsel secured substantial results for Class Members, both in terms of monetary compensation and also in obtaining preliminary and permanent injunctive relief which had a lasting, non-monetary public benefit.

The Court also approves Class Counsel's request for reimbursement of advanced litigation expenses in the amount of $1237.10.

7. Distribution of Funds to the Class

Prior to the distribution of funds, the fund administrator shall make all reasonable and diligent efforts to update the addresses of the class members.

a. Initial Distribution.

Following the payment of the Expenses approved in the previous section, the Fund Administrator shall distribute to each member of the class a share of the remaining funds. The amount to be distributed to each class member shall be proportionate to the payment made by the class member to the Village, plus that class member's share of interest.

b. Second Distribution

The claims administrator shall make reasonable efforts to locate any class members who did not actually receive the Initial Distribution, whether because of address changes, uncashed check, or otherwise. If found, such class members shall receive their initial distributions before the Second Distribution takes place.

No less than 270 days following the Initial Distribution, the fund administrator shall distribute to each member of the class who actually received a payment in the initial distribution a share of the remaining funds (whether due to undelivered, returned, or uncashed checks, or otherwise). The amount to be distributed to each class member shall be proportionate to the payment made by the class member to Village.

c. Final Distribution

Any funds remaining after the Second Distribution shall be apportioned to all motorists who did not previously received payments and shall be considered "Unclaimed funds." No less than 270 days following the Second Distribution, such funds shall be disposed of in accordance with the Ohio Unclaimed Funds statute, R.C. 169.01 *et seq.*

8. Costs

The Village shall pay all court costs, including reimbursement of the filing fee and any other costs incurred by Class Counsel. Such payment shall be made within ten days of demand by the Clerk or Class Counsel.

9. Certification

Upon completion of the administration of the fund, Class Counsel shall file an affidavit from the Fund Administrator concerning the amount of money distributed and certifying compliance with this Order.

SO ORDERED

_____

JUDGE