UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MEGANNE NATALE and CHELSEA CHENG, individually and on behalf of all others similarly situated, Plaintiffs, v. 9199-4467 QUEBEC INC., d/b/a EARTH RATED, Defendant.	Case No. 2:21-cv-6775-JS-SIL Hon. Joanna Seybert

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS

Dated: September 9, 2024

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Class Counsel

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Plaintiffs Meganne Natale and Chelsea Cheng ("Plaintiffs"), by and through Class Counsel,[1] respectfully submit this memorandum in support of Plaintiffs' Motion for Award of Attorneys' Fees, Costs and Expenses and Services Awards.

INTRODUCTION

In light of this exceptional result, Plaintiffs respectfully request, pursuant to Fed. R. Civ. P. 23(h), that the Court approve an award of attorneys' fees of $275,000 (one third of the value of the Settlement), $4,240.04 in costs and expenses, and service awards of $5,000 to each Plaintiff for their service as class representatives. For these reasons, and as explained further below, this Court should approve the requested fees, costs, expenses, and incentive awards.

FACTUAL AND PROCEDURAL BACKGROUND

On December 7, 2021, Plaintiffs filed a putative class action against Defendant, alleging that Defendant misrepresented the Certified Compostable Poop Bags as "Certified Compostable" and that Plaintiffs and putative class members sustained financial injury as a result of Defendant's misrepresentations (ECF No. 1). On May 6, 2022, Plaintiffs filed the FAC (ECF No. 20).

On June 6, 2022, Defendant filed a Motion to Dismiss the FAC (ECF No. 21). Briefing on this motion was completed on July 21, 2022 (ECF Nos. 25, 26). On July 28, 2023, the Court issued an Order Granting in Part and Denying in Part Defendant's Motion to Dismiss the FAC (ECF No. 28). Defendant filed its Answer on August 25, 2023 (ECF No. 29), and the Court set a discovery conference for September 18, 2022 (ECF No. 58).

On September 11, 2023, the Parties filed a Joint Motion to Stay the Action so the Parties could attempt to negotiate a settlement (ECF No. 31). On September 12, 2023, the Court granted

[1] All capitalized terms not otherwise defined herein have the same definitions as set out in the settlement agreement. *See* Roberts Decl. Ex. 1.

the motion. Over the next several months, the Parties engaged in arm's-length negotiations regarding a potential class settlement of the Action. Roberts Decl. ¶ 8. These negotiations involved the exchange of informal discovery, which was largely the same information that would have been produced had the case proceeded to formal discovery. *Id*. Accordingly, the Parties were sufficiently informed of the strengths and weaknesses of their respective positions, the approximate size of the putative class, and the potential damages at issue to negotiate a reasonable settlement. *Id*.

Finally, on January 31, 2024, the Parties executed a term sheet memorializing the material terms of a nationwide class settlement. *Id.* ¶ 9. The Parties then executed the Settlement itself on March 13, 2024 and filed for preliminary approval the following day. *Id*. The Court preliminarily approved the Settlement on May 14, 2024. ECF No. 37

SUMMARY OF THE SETTLEMENT

Class Counsel's efforts resulted in an outstanding settlement. The Settlement creates a non-reversionary, $825,000 common fund from which Settlement Class Members with proof of purchase may submit a claim for a refund of $2.00 for each Certified Compostable Poop Bag purchased during the Class Period; and each Settlement Class Member with no proof of purchase may submit a claim for a refund of $2.00, for each Certified Compostable Poop Bag purchased during the Class Period, for up to three (3) Certified Compostable Poop Bags. Settlement ¶¶ 2.1(a), 2.3(a). The Settlement Fund represents approximately a 27.82% recovery of the Settlement Class's maximum actual damages in this matter, and the $2.00 award per Certified Compostable Poop Bag represents a 37.04% recovery of each individual Settlement Class Member's actual damages. Roberts Decl. ¶ 17.

Subject to approval by the Court, Defendant has agreed to pay Class Counsel reasonable attorneys' fees and to reimburse expenses in this action. Settlement ¶¶ 3.1-3.2. Class Counsel has agreed to petition the Court for no more than one-third (1/3) of the Settlement Fund (*i.e.*, $275,000) in attorneys' fees. *Id.* ¶ 3.1. Class Counsel may also seek reimbursement of their costs and expenses incurred on behalf of Plaintiffs and the Settlement Class. *Id*. In recognition for their efforts on behalf of the Settlement Class, Defendants has agreed that Plaintiffs may receive, subject to Court approval, service awards of $5,000 each as appropriate compensation for their time and effort serving as Class Representatives and as parties to the Action. *Id.* ¶ 3.3. Both amounts, if approved, shall be paid out of the Settlement Fund. *Id.* ¶ 1.30.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE APPROVED

Pursuant to Fed. R. Civ. P. 23(h), courts may award "reasonable attorney's fees and nontaxable costs that are authorized by law or the parties' agreement." Here, Class Counsel's requested $275,000 in attorneys' fees, which represents one-third (1/3) of the $825,000 Settlement Fund, is reasonable considering the relief provided to the Settlement Class. Settlement ¶ 3.1; Roberts Decl. ¶ 24. This percentage is in line with the one-third benchmark used in this Circuit under the percentage-of-the-recovery method—which the Court should employ—and should be approved as such. Alternatively, the requested attorneys' fees are reasonable under the lodestar method.

A. The Percentage Method Should Be Used To Calculate Fees

Courts in the Second Circuit apply one of two fee calculation methods: the "percentage of the fund" method or the "lodestar" method. *See Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). The Court has discretion in choosing which method to employ. *See*

McDaniel v. County of Schenectady, 595 F.3d 411, 419 (2d Cir. 2010) (holding that "the decision as to the appropriate method [is left] to 'the district court, which is intimately familiar with the nuances of the case'") (quoting *Goldberger*, 209 F.3d at 48). However, "[t]he trend in the Second Circuit is to use the percentage of the fund method … as it directly aligns the interests of the class and its counsel, mimics the compensation system actually used by individual clients to compensate their attorneys, provides a powerful incentive for the efficient prosecution and early resolution of litigation, and preserves judicial resources." *Monzon v. 103W77 Partners, LLC*, 2015 WL 993038, at *2 (S.D.N.Y. Mar. 5, 2015). "In fact, the 'trend' of using the percentage of the fund method to compensate plaintiffs' counsel … is now "firmly entrenched in the jurisprudence of this Circuit." *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 388 (S.D.N.Y. 2013); *see also GB ex rel NB v. Tuxedo Union Free School Dist.*, 894 F. Supp. 2d 415, 427 (S.D.N.Y. 2012) (noting "courts in the Second Circuit no longer use the 'lodestar' method for computing attorneys' fees" in fee-shifting cases) (citing *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, 522 F.3d 182 (2d Cir. 2008)).

As the Second Circuit has stated, the percentage method "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). "In contrast, the 'lodestar create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in gimlet-eyed review of line-item fee audits.'" *Id.* (quoting *Baffa v. Donaldson Lufkin & Jenrette Secs. Corp.*, 2002 WL 1315603, at *1 (S.D.N.Y. June 17, 2002)). Indeed, over a decade ago, the Second Circuit described difficulties with the lodestar method:

> As so often happens with simple nostrums, experience with the lodestar method proved vexing. Our district courts found it created

> a temptation for lawyers to run up the number of hours for which they could be paid. For the same reason, the lodestar created an unanticipated disincentive to early settlements. But the primary source of dissatisfaction was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits. There was an inevitable waste of judicial resources.

Goldberger, 209 F.3d at 48-49; *see also Hyun v. Ippudo USA Holdings*, 2016 WL 1222347, at *3 (S.D.N.Y. Mar. 24, 2016) ("In this case, where the parties were able to settle relatively early and before any depositions occurred … the Court finds that the percentage method, which avoids the lodestar method's potential to 'creative a disincentive to early settlement' … is appropriate.") (citing *McDaniel*, 595 F.3d at 418); *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *16 (S.D.N.Y. July 27, 2007) ("From a public policy perspective, the percentage method is the most efficient means of compensating the work of class action attorneys. It does not waste judicial resources analyzing thousands of hours of work, where counsel obtained a superior result.").

Under the circumstances of this case—wherein Class Counsel received an exceptional result for the Settlement Class—the Court should employ the percentage-of-the-recovery method.

B. The Reasonableness Of The Requested Fees Under The Percentage-Of-The-Fund Method Is Supported By This Circuit's Six-Factor *Goldberger* Test

The Second Circuit has articulated six factors that should be considered when determining the reasonableness of a requested percentage to award as attorneys' fees: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation []; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger*, 209 F.3d at 50. A review of these factors supports Class Counsel's fee request.

1. Time And Labor Expended By Counsel

Since Class Counsel began investigating this matter on or about April 2020, Counsel has devoted 252.8 hours to the successful pursuit of this matter. Roberts Decl. ¶ 32; *see also id.* Ex. 3 (billing records for Bursor & Fisher). Class Counsel's dedication to this matter and expenditure of substantial time, effort, and resources has brought this complex litigation to a successful resolution.

Class Counsel's work included, *inter alia*:

i. identifying and investigation Plaintiffs' potential claims and that of the Settlement Class pre-suit, and aggressively pursuing those claims;

ii. drafting the initial Complaint and First Amended Complaint;

iii. briefing and largely defeating Defendants' Motion to Dismiss;

iv. holding numerous calls with defense counsel regarding settlement;

v. successfully moving for Preliminary Approval of the Settlement; and

vi. communicating with the Settlement Administrator regarding implementation of the Notice Plan.

See Roberts Decl. ¶¶ 4-13.

Further, Class Counsel's work in this litigation is far from over. On the contrary, Class Counsel will commit significant ongoing time and resources to this litigation, specifically related to administering the Settlement, responding to class member inquiries concerning the claims process, and preparing for the Final Approval Hearing. Roberts Decl. ¶ 34. Based on Class Counsel's experience in other cases, this ongoing work will likely involve approximately 50-75 total additional hours. *Id*. This additional work should be accounted for as well. *See Cohan v. Columbia Sussex Management, LLC*, 2018 WL 4861391, at *3 (E.D.N.Y. Sept. 28, 2018) ("The

requested fees are also meant to compensate Class Counsel for time that will be spent administering the settlement into the future."). Thus, this factor favors the fee request.

2. Magnitude And Complexity Of The Litigation

The complex nature of this litigation further favors the requested fee award. "[C]lass actions have a well-deserved reputation as being most complex." *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) (cleaned up); *see also Shapiro v. JPMorgan Chase 7 Co.*, 2014 WL 1224666, at *21 (S.D.N.Y. Mar. 24, 2014) ("It is well settled that class actions are notoriously complex and difficult to litigate.") (cleaned up). Indeed, as other courts in this Circuit have observed, "[t]he federal courts have established that a standard fee in complex class action cases … where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit," and "[d]istrict courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater." *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010).

Through more than two years of litigation, Class Counsel performed significant work in this Action, including but not limited to drafting extensive pleadings, largely prevailing on the motion to dismiss, and negotiating the Settlement. Argument § I.B.1, *supra*; *see also* Roberts Decl. ¶¶ 4-13. The next steps in the litigation would presumably have been depositions of the Parties, substantial electronically stored information discovery, and contested motions for summary judgment and class certification, creating a risk that a litigation class would not be certified and/or that the Settlement Class would recover nothing at all. Roberts Decl. ¶¶ 21-24. The work performed by Class Counsel in this complex litigation represents the highest caliber of legal work and strongly supports the requested fee.

3. The Risk Of Litigation

To date, Class Counsel has worked for over two years with no payment, and no guarantee of payment absent a successful outcome. That in itself presented considerable risk. This factor recognizes the risk of non-payment in cases prosecuted on a contingency basis where claims are not successful, which can justify higher fees. *See*, *e.g.*, *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk."); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008) (noting risk of non-payment in cases brought on contingency basis).

"Here, while Plaintiffs and Class Counsel believe that they would prevail on their claims asserted against [Turkish], they also recognize the risks and uncertainties inherent in pursuing the action through class certification, summary judgment, trial, and appeal." *Lowe v. NBT Bank, N.A.*, 2022 WL 4621433, at *8 (N.D.N.Y. Sept. 30, 2022). In particular, Plaintiffs would face "[t]he risk of obtaining … class certification and maintaining [it] through trial," which "would likely require extensive discovery and briefing." *Beckman v. KeyBank*, 293 F.R.D. 467, 475 (S.D.N.Y. 2013). And "[e]ven assuming that the Court granted certification, there is always the risk of decertification after the close of discovery." *Lowe*, 2022 WL 4621433, at *8; *see also Flores v. CGI Inc.*, 2022 WL 13804077, at *8 (S.D.N.Y. Oct. 21, 2022) ("The risks attendant to certifying a class and defending any decertification motion supports approval of the settlement."); *In re KIND LLC "Healthy and All Natural" Litig.*, 627 F. Supp. 3d 269, 274 (S.D.N.Y. 2022), *aff'd sub nom.*, *Bustamante v. KIND, LLC*, 100 F.4th 419 (2d Cir. 2024) (decertifying class and granting summary judgment for the defendant). Approval of the Settlement obviates the "[r]isk, expense, and delay" of further litigation, and thus supports preliminary approval. *Lowe*, 2022 WL 4621433, at *8. Thus, the risks of the litigation favor granting the requested fee award.

4. The Quality Of Representation

Class action litigation presents unique challenges and, by achieving an exceptional settlement, Class Counsel proved that they have the ability and resources to litigate this case zealously and effectively. Class Counsel has been recognized by courts across the country for its expertise, including courts in this Circuit. *See* Roberts Decl. Ex. 16 (Firm Resume of Bursor & Fisher); *see also Mogull v. Pete and Gerry's Organics, LLC*, 2022 WL 4661454, at *2 (S.D.N.Y. Sept. 30, 2022) ("Bursor & Fisher … has represented other plaintiffs in more than one hundred class action lawsuits, including several consumer class actions that proceeded to jury trials in which Bursor & Fisher achieved favorable results for the plaintiffs."); *Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) ("Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims … The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five [now six] class action jury trials since 2008."); *Perez v. Rash Curtis & Associates*, 2020 WL 1904533, at *21 (N.D. Cal. Apr. 17, 2020) ("The benefit obtained for the class [by Bursor & Fisher] is an extraordinary result…. Moreover, the general quality of the representation and the complexity and novelty of the issues presented weigh in favor of a higher lodestar multiplier.").

Furthermore, "[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance." *In re MetLife Demutalization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010); *see also In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."). Here, Defendant is represented by highly skilled and well-paid lawyers from Nelson Mullins Riley & Scarborough LLP. Indeed, Defendant's lead counsel, Jahmy Graham, was one of just five

attorneys named to Law360's 2023 "Top Attorneys' Under 40" list for class actions.[2] Mr. Graham and his colleagues vigorously represented their client, challenged Plaintiffs' claims, and sought to obtain a defense verdict and deprive the Settlement Class of any recovery. Roberts Decl. ¶ 20. Despite such formidable and well-resourced adversaries, Class Counsel achieved an exceptional result. *Marsh ERISA Litig.*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement.").

Class Counsel litigated this case efficiently, effectively, and civilly. The excellent result is a function of the high quality of that work, which supports the requested fee award.

5. The Requested Fee In Relation To The Settlement

Class Counsel seeks attorneys' fees of $275,000. "District courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater." *Velez*, 2010 WL 4877852, at *21. Further, under Second Circuit precedent, Class Counsel's fees must be measured against the relief *made available* to Class Members, not the relief actually claimed. *Masters v. Wilhelmia Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) ("An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not."). This applies to both common fund settlement and claims-made settlements. *See*, *e.g.*, *Torres v. Gristede's Operating Corp.*, 519 F. App'x 1, 5 (2d Cir. 2013) (calculating fee award "'on the basis of the total funds made available' … *i.e.*, as if it were a common settlement fund" (quoting *Masters*, 473 F.3d at 437)); *Zink v. First Niagara Bank, N.A.*, 2016 WL 7473278, at *7-8 (W.D.N.Y. Dec. 29, 2016) (finding "the weight of authority" holds that attorneys' fees should be based on the

[2] *Law360 Names 2023's Top Attorneys Under 40*, LAW360 (June 19, 2023), https://www.law360.com/articles/1683781/law360-names-2023-s-top-attorneys-under-40

amount made available, not the amount actually claimed).

Here, the requested attorney's fees ($275,000) represent approximately one-third (1/3) of the Settlement Fund ($825,000 million), in line with the Second Circuit's benchmark for fees. *See, e.g.*, *Beckman*, 293 F.R.D. at 477 ("Class Counsel's request for 33% of the Fund is reasonable and consistent with the norms of class litigation in this circuit."); *Aly v. Dr. Pepper Snapple Group, Inc.*, 2019 WL 3388947, at *4 (E.D.N.Y. June 13, 2019) (noting "a one-third contingency fee is generally considered reasonable in this Circuit"); *Butten v. Champion Auto Center, Inc.*, 2022 WL 2467511, at *1 (E.D.N.Y. Apr. 1, 2022) ("[A] one-third contingency fee is generally approved as a fair and reasonable attorney's fee award."). This factor thus supports the requested fee award.

6. Public Policy Considerations

The final *Goldberger* factor is public policy. "Private attorneys should be encouraged to take the risks required to represent those who would not otherwise be protected from socially undesirable activities like [] fraud." *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002); *see also Shapiro*, 2014 WL 1224666, at *24 ("Class actions serve as private enforcement tools when regulatory entities fail to adequately protect investors … to ensure that defendants who engage in misconduct will suffer serious financial consequences.") (cleaned up). "[P]laintiffs' attorneys need to be sufficiently incentivized to commence such actions," as "awarding counsel a fee that is too low would [] be detrimental to this system of private enforcement." *Shapiro*, 2014 WL 1224666, at *24 (cleaned up). Thus, society undoubtedly has a strong interest in incentivizing lawyers to bring complex litigation that is necessary to protect consumer rights, particularly where it is unlikely that the Class Members will pursue litigation on their own for economic or personal reasons.

Here, public policy considerations also favor Class Counsel's fee request. "[A]ccording to a study by IBM and the National Retail Federation, nearly 70% of consumers in the United States

and Canada think it is important that a brand is sustainable or eco-friendly." FAC ¶ 33. Likewise, the Federal Trade Commission has noted "[a] growing number of American consumers are looking to buy environmentally friendly, 'green' products, from recycled paper to biodegradable trash bags."[3] Thus, it is important to ensure that companies that are making environmental benefit claims are doing so truthfully. The FTC agrees, as it has specifically promulgated regulations (referred to as the "Green Guides") that are "designed to help marketers avoid making environmental claims that mislead consumers."[4] The Action here, which sought recourse against a company allegedly making false environmental benefit claims, clearly furthers this policy, and more lawsuits like it should be encouraged. Thus, this factor supports Class Counsel's fee request.

C. The Requested Attorneys' Fees Are Also Reasonable Under A Lodestar Cross-Check

While the Court need not employ a lodestar cross-check, the lodestar method also supports the requested fee. To calculate lodestar, counsel's reasonable hours expended on the litigation are multiplied by counsel's reasonable rates. *See Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986); *Blum v. Stenson*, 465 U.S. 886, 897 (1984); *Parker v. Time Warner Entertainment Co., L.P.*, 631 F. Supp. 2d 242, 264 (E.D.N.Y. 2009). The resulting figure may be adjusted at the court's discretion by a multiplier, taking into account various equitable factors. *See Parker*, 631 F. Supp. 2d at 264; *Shapiro*, 2014 WL 1224666, at *24 ("[U]nder the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.") (cleaned up). These factors include the contingent nature of the fee,

[3] ENVIRONMENTALLY FRIENDLY PRODUCTS: FTC'S GREEN GUIDES, https://www.ftc.gov/news-events/topics/truth-advertising/green-guides.

[4] *Id.*

the risks of non-payment, the quality of representation, and the results achieved. *See Wal–Mart Stores, Inc.*, 396 F.3d at 121. Further, here the lodestar is "used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50; *see also Cassese v. Williams*, 503 F. App'x 55, 59 (2d Cir. 2012) (noting the "need for exact [billing] records [is] not imperative" where the lodestar is used as a "mere cross-check").

The hourly billing rate to be applied is the hourly rate that is normally charged in the community where the counsel practices, *i.e.*, the "market rate." *See Blum*, 465 U.S. at 895; *see also Luciano v. Olsten Corp.*, 109 F.3d 111, 115-116 (2d Cir. 1997) ("The 'lodestar' figure should be 'in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation'") (alteration in original and citation omitted). Here, the hourly rates used by Class Counsel are comparable to rates charged by attorneys with similar experience, skill, and reputation, for similar services in the New York legal market. *See* Roberts Decl. ¶¶ 37-40.[5]

The hours worked, lodestar, and expenses for Class Counsel are set forth in the Roberts Declaration, submitted herewith. These records confirm Class Counsel's efficient billing, by, for example, striving to assign as much work as possible to more junior lawyers or paralegals who bill at lower hourly rates to minimize the fees for the Class. *See* Roberts Decl. Ex. 3. Thus, even under the optional lodestar cross check, Class Counsel's requested fees are reasonable given the unique circumstances of this case. Specifically:

[5] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) (recognizing "an appropriate adjustment for delay in payment—whether by the application of current rather than historic hourly rates or otherwise"); *LeBlanc-Sternberg v. Fletcher,* 143 F. 3d 748, 764 (2d Cir. 1998) ("The lodestar should be based on 'prevailing market rates' … and current rates, rather than historical rates, should be applied in order to compensate for the delay in payment.") (cleaned up).

- Class Counsel obtained an excellent Settlement, which will result in Settlement Class Members receiving a substantial amount of money.
- The litigation was conducted and the Settlement was obtained in an efficient manner, by experienced and qualified counsel.
- The case involved complex legal issues and factual theories, which involved significant litigation risks (*see* Argument §§ I.B.2-I.B.3, *supra*).
- Class Counsel devised a litigation and settlement strategy that factored in the complex and uncertain nature of the case.

In total, through September 6, 2024, Class County has devoted 252.8 hours to prosecuting this litigation. *See* Roberts Decl. ¶ 32; *see also id.* Ex. 3. Class Counsel's aggregate lodestar is $132,955.00, with a blended hourly rate of $525.93 (*id.* ¶ 32), which other courts have found reasonable. *Perez*, 2020 WL 1904533, at *20 (concluding Bursor & Fisher's "blended rate of $634.48 is within the reasonable range of rates"). Therefore, the requested fee award represents a multiplier of approximately 2.07, which is well within the accepted range in this Circuit. *See Asare v. Change Grp. of N.Y., Inc.*, 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar."); *Beckman*, 293 F.R.D. at 481-82 (approving 6.3 multiplier of lodestar and noting "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers"); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (approving attorneys' fees of $253,758,000, which reflected a "lodestar multiplier of just over 6").

Moreover, as courts in New York and elsewhere have noted, a high multiplier "should not result in penalizing plaintiffs' counsel for achieving an early settlement, particularly where, as here, the settlement amount was substantial." *Beckman*, 293 F.R.D. at 482; *Hyun*, 2016 WL 1222347, at *3 ("In this case, where the parties were able to settle relatively early and before any depositions occurred … the Court finds that the percentage method, which avoids the lodestar

method's potential to 'create a disincentive to early settlement' … is appropriate."); *see also Perez*, 2020 WL 1904533, at *21 ("The benefit obtained for the class is an extraordinary result, while there was and still is significant risk of nonpayment for class counsel. Moreover, the general quality of the representation and the complexity and novelty of the issues presented weigh in favor of a higher lodestar multiplier.").

Class Counsel's lodestar multiplier is also reasonable because it will decrease over time given the additional hours Class Counsel will likely spend on this litigation going forward. *See* Roberts Decl. ¶ 34. "[A]s class counsel is likely to expend significant effort in the future implementing the complex procedure agreed upon for collecting and distributing the settlement funds, the multiplier will diminish over time." *Parker v. Jekyll & Hyde Entm't Holdings, LLC*, 2010 WL 532960, at *2 (S.D.N.Y. Fed. 9, 2010). Here, "[t]he fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward, also supports their fee request." *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, 746 F. App'x. 655, 659 (9th Cir. 2018) ("The district court did not err in including projected time in its lodestar cross-check; the court reasonably concluded that class counsel would, among other things, defend against appeals and assist in implementing the settlement."); *Perez*, 2020 WL 1904533, at *19-20 (concluding that expected future hours should be counted towards lodestar cross-check and applying same). Specifically, as noted above, Class Counsel expects to bill another 50-75 hours on this matter. Roberts Decl. ¶ 34. At Class Counsel's blended hourly rate, this would push Class Counsel's lodestar to between $159,251.50-$172,399.75. *Id*. This higher lodestar would reduce Class Counsel's requested multiplier to between 1.60-1.73.

In sum, the lodestar cross-check also supports Class Counsel's requested attorneys' fees.

II. THE REQUESTED LITIGATION COSTS AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel also requests reimbursement for litigation costs and expenses. Settlement ¶ 3.1. Reasonable litigation-related expenses are customarily awarded in class action settlements and include costs such as document preparation and travel. *See*, *e.g.*, *Yuzary*, 2013 WL 5492998, at *11 ("Class Counsel's unreimbursed expenses, including court and process server fees, postage and courier fees, transportation, working meals, photocopies, electronic research, expert fees, and Plaintiffs' share of the mediator's fees, are reasonable and were incidental and necessary to the representation of the class."). Here, Class Counsel spent $4,240.04 in costs and expenses prosecuting this matter. Roberts Decl. ¶ 36; *see also id.* Ex. 4 (itemized list of Class Counsel's costs and expenses). These expenses consist primarily of filing fees, *pro hac vice* application fees, and costs associated with Hague service (Defendant is a Canadian company). Roberts Decl. ¶ 36; *see also id.* Ex. 4. Because these expenses were reasonably necessary and not excessive, they should be awarded in full. *See* Roberts Decl. ¶ 36.

III. THE REQUESTED SERVICE AWARD REFLECTS PLAINTIFFS' ACTIVE INVOLVEMENT IN THIS ACTION AND SHOULD BE APPROVED

"Service awards are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs." *Beckman*, 293 F.R.D. at 483; *see also Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *8 (E.D.N.Y. Nov. 20, 2012) (same).

Here, the participation of Plaintiffs was critical to the ultimate success of the case. *See* Roberts Decl. ¶¶ 44-46. Plaintiffs spent significant time protecting the interests of the class

through their involvement in this case. Declaration of Meganne Natale ¶¶ 4-6; Declaration of Chelsea Cheng ¶¶ 4-6. Plaintiffs assisted Class Counsel in investigating their claims by providing information necessary to draft and file the Complaint and First Amended Complaint. *Id*. During this litigation spanning over two years, Plaintiffs kept in regular contact with their attorneys to receive updates on the progress of the case and to discuss strategy and settlement. Declaration of Meganne Natale ¶¶ 7-8; Declaration of Chelsea Cheng ¶¶ 7-8.

On these facts, the $5,000 service awards to each Plaintiff are appropriate considering the efforts made by Plaintiffs to protect the interests of the other Settlement Class members, the time and effort they expended pursuing this matter, and the substantial benefit they helped achieve for the other Settlement Class members. Further, the service awards are reasonable and equivalent to awards approved by other courts in this Circuit. *See*, *e.g.*, *Massiah*, 2012 WL 5874655, at *8 ("The Court finds reasonable service awards of $5,000 each to Claude Massiah and Natalie Mieles."); *Toure v. Amerigroup Corp.*, 2012 WL 3240461, at *5 (E.D.N.Y. Aug. 6, 2012) (approving service awards of $5,000 and $10,000); *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 125 (S.D.N.Y. 2001) (noting case law supports payments of between $2,500 and $85,000). Finally, the requested service awards of $5,000 each amount to 0.61% of the total value of the Settlement. *D'Angelo v. Hunter Business School, Inc.*, 2023 WL 4838156, at *10 (E.D.N.Y. July 28, 2023) (granting $10,000 service award that was "a small fraction (less than 3%) of the total settlement fund").

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court (i) approve an award of attorneys' fees of $275,000; (ii) award Class Counsel $4,380.26 in reasonable litigation costs and expenses; (iii) grant Plaintiffs incentive awards of $5,000 each in recognition of their efforts on behalf of the Class; and (iii) award such other relief as the Court deems reasonable and just.

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Respectfully submitted,

By: */s/ Max S. Roberts*
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