

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

YAO-YI LIU, TUNG-HUNG HSIEH, and
CHIU-PAO TSAI Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

Civil No. 6:14-cv-06631-EAW-MJP

WILMINGTON TRUST COMPANY, and
WILMINGTON TRUST, NATIONAL
ASSOCIATION,

Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed Declaration of Paul J. Scarlato, Esq., dated January 9, 2023, together with exhibits 1 through 7 incorporated therein, and the accompanying Memorandum of Law in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Payment of Expenses, and For Service Awards, and upon all of the pleadings and proceedings herein, Plaintiffs, by their undersigned attorneys, move this Court pursuant to Fed. R. Civ. P. 23 for an Order granting the requested approval.

Dated: January 9, 2023

Submitted respectfully,

/s/ Paul J. Scarlato

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF
ATTORNEY FEES, PAYMENT OF EXPENSES, AND FOR SERVICE AWARDS**

Dated: January 9, 2023

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/s/ Paul J. Scarlato

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Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai, certified preliminarily by the Court on October 11, 2022 (ECF No. 240) as Class Representatives for the Settlement Class herein (the “Plaintiffs” or “Class Representatives”), by and through the law firm of Rosca Scarlato, LLC (“Class Counsel”), preliminarily appointed as Class Counsel for the Settlement Class (ECF 240), respectfully submit this memorandum in support of the Plaintiffs’ unopposed motion for final approval of attorney fees in the amount of 30% of the Settlement Fund. Class Counsel also seeks reimbursement in the amount of \$588,493.18 in Litigation Expenses that Lead Counsel reasonably incurred in litigating the dispute (the “Action”), as well as \$32,000 in reimbursement to each Class Representative Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai as Class Representatives, stemming directly from their representation of the Settlement Class.¹

I. PRELIMINARY STATEMENT

As appointed Class Representatives, the Plaintiffs presented the proposed Settlement (the “Settlement”) with defendants Wilmington Trust Co. and Wilmington Trust, N.A. (collectively, the “Wilmington” or “Defendants”) in support of their unopposed Motion for Preliminary Approval of Settlement (“Preliminary Approval Motion”), filed on August 12, 2022. (ECF 238-39). Plaintiffs’ Preliminary Approval Motion was granted on October 11, 2022. (ECF 240). If approved pursuant to Federal Rule of Civil Procedure 23{ TA \l "Fed. R. Civ. P. 23" \s "Fed. R.

¹ Class Counsel is simultaneously submitting the Declaration of Paul J. Scarlato in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation and Class Counsel’s Motion for an Award of Attorneys’ Fees, Payment of Expenses and For Service Awards (the “Scarlato Declaration”) (cited herein as “¶”). Capitalized terms have the meanings ascribed to them in the Scarlato Declaration or the Stipulation and Agreement of Settlement (ECF 239-1) (the “Stipulation”).

All exhibits referenced below are attached to the Scarlato Declaration. For clarity, citations to exhibits that themselves have attached exhibits will be referenced as “Ex. ____ - ____.” The first numerical reference is to the designation of the entire exhibit attached to the Scarlato Declaration and the second alphabetical reference is to the exhibit designation within the exhibit itself.

Civ. P. 23" \c 2 }, as requested, the Settlement will resolve, conclusively and on a class-wide basis, the Action now pending before the Court. The Settlement, if approved, would release all claims pleaded by the Class Representatives.

Plaintiffs herein move for approval and award of Attorneys' Fees, reimbursement of Litigation Expenses, and Service Awards. As an initial matter, the Court Ordered that any objections to the Settlement must be served upon Class Counsel and Defendants' counsel, and filed with the Court on a date not less than twenty-one (21) days prior to the scheduled Fairness Hearing, which is scheduled for 2:30 p.m. on February 13, 2023. That no Settlement Class Member has lodged an objection to date regarding the terms and conditions of the Settlement underscores its genuine fairness and propriety, which weighs in favor of its final approval by the Court. For the bases set herein, Plaintiffs respectfully request that the Court approve the requested fees, expenses and award the Class Representatives Service Awards for their extraordinary efforts on behalf of the Settlement Class.

II. BACKGROUND

The procedural history and background of the litigation and the efforts that led to the Settlement, as well as a description of the Settlement and its benefits are set forth in detail in Plaintiffs' Motion for Preliminary Approval as well as their Motion for Final Approval, filed simultaneously herewith. In particular, the Final Approval Motion includes the Scarlato Declaration, which sets forth in detail the history and background of the litigation in this matter, as well as the role played by Class Counsel and Class Representatives. Plaintiffs incorporate the Preliminary Approval and Final Approval Motions, including exhibits, herein and will not repeat the facts here.

III. ARGUMENT

A. THE FEE REQUEST IS REASONABLE UNDER EITHER THE PERCENTAGE OR LODESTAR METHOD

1. The Requested Attorneys' Fee Would be Reasonable Under the Percentage-of-the-Fund Method

Attorneys who achieve a benefit for class members in the form of a “common fund” are entitled to be compensated for their services from that settlement fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980){ TA \l "*Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980)" \s "*Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980)" \c 1 } (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000){ TA \l "*Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000)" \s "*Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000)" \c 1 }. The purpose of the common fund doctrine is to fairly and adequately compensate counsel for their creation of the fund and to ensure that all class members contribute equally towards the costs associated with litigation on their behalf. *See id.* at 47.

Courts have recognized that, in addition to providing just compensation, “awards of fair attorneys’ fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature.” *City of Providence v. Aeropostale Inc.*, 2014 WL 1883494, at *11 (S.D.N.Y. May 9, 2014){ TA \l "*City of Providence v. Aeropostale Inc.*, 2014 WL 1883494 (S.D.N.Y. May 9, 2014)" \s "*City of Providence v. Aeropostale Inc.*, 2014 WL 1883494, at *11 (S.D.N.Y. May 9, 2014)" \c 1 }.

The Second Circuit has authorized district courts to employ the percentage-of-the-fund method when awarding fees in common fund cases. *See Goldberger*, 209 F.3d at 47{ TA \s "*Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000)" } (holding that the percentage-

of-the-fund method may be used to determine appropriate attorneys' fees, although the lodestar method may also be used); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005){ TA \l "*Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96 (2d Cir. 2005)" \s "*Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005)" \c 1 } (finding that the “trend in this Circuit is toward the percentage method” and that the 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”); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999){ TA \l "*Savoie v. Merchs. Bank*, 166 F.3d 456 (2d Cir. 1999)" \s "*Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999)" \c 1 } (“percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases”); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 & n.7 (S.D.N.Y. 2008){ TA \l "*In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570 (S.D.N.Y. 2008)" \s "*In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 & n.7 (S.D.N.Y. 2008)" \c 1 } (“[T]here is a strong consensus – both in this Circuit and across the country – in favor of awarding attorneys’ fees in common fund cases as a percentage of the recovery.”).²

2. Fees Awarded in Comparable Cases Within this District

The 30% fee requested by Class Counsel is well within the range of percentage fees awarded within the Second Circuit in comparable class action cases. *See, e.g., Mohney v. Shelly’s Prime Steak, Stone Crab & Oyster Bar*, No. 06-cv-04270 (PAC), 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009){ TA \l "*Mohney v. Shelly’s Prime Steak, Stone Crab & Oyster Bar*, No. 06-cv-04270, 2009 WL 5851465 (S.D.N.Y. Mar. 31, 2009)" \s "*Mohney v. Shelly’s Prime Steak, Stone Crab & Oyster Bar*, No. 06 Civ. 4270 (PAC), 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009)" \c 1 } (collecting cases awarding over 30% and noting that “Class Counsel’s request for

² All internal quotations and citations are omitted unless otherwise stated.

33% of the Settlement Fund is typical in class action settlements in the Second Circuit”); *Stefaniak v. HSBC Bank USA, N.A.*, No. 05-cv-00720, 2008 WL 7630102, at *3 (W.D.N.Y. June 28, 2008){ TA \l "*Stefaniak v. HSBC Bank USA, N.A.*, No. 05-cv-00720, 2008 WL 7630102 (W.D.N.Y. June 28, 2008)" \s "*Stefaniak v. HSBC Bank USA, N.A.*, No. 05-720, 2008 WL 7630102, at *3 (W.D.N.Y. June 28, 2008)" \c 1 } (awarding 33% of fund, finding it “typical in class action settlements in the Second Circuit”); *see also Hicks v. Stanley*, No. 01-cv-10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005){ TA \l "*Hicks v. Stanley*, No. 01-cv-10071, 2005 WL 2757792 (S.D.N.Y. Oct. 24, 2005)" \s "*Hicks v. Stanley*, No. 01-CIV-10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005)" \c 1 } (awarding 30% of \$10 million settlement); *In re PPDAL Grp. Inc. Sec. Litig.*, No. 18-cv-6716, 2022 WL 198491, at *22 (E.D.N.Y. Jan. 21, 2022){ TA \l "*In re PPDAL Grp. Inc. Sec. Litig.*, No. 18-cv-6716, 2022 WL 198491 (E.D.N.Y. Jan. 21, 2022)" \s "*In re PPDAL Grp. Inc. Sec. Litig.*, No. 18-cv-6716, 2022 WL 198491, at *22 (E.D.N.Y. Jan. 21, 2022)" \c 1 } (awarding 33% of \$9 million settlement); *Hayes v. Harmony Gold Mining Co. Ltd.*, No. 08-cv-03653, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) *aff’d*, 509 F. App’x. 21 (2d Cir. 2013){ TA \l "*Hayes v. Harmony Gold Mining Co. Ltd.*, No. 08-cv-03653, 2011 WL 6019219 (S.D.N.Y. Dec. 2, 2011) *aff’d*, 509 F. App’x. 21 (2d Cir. 2013)" \s "*Hayes v. Harmony Gold Mining Co. Ltd.*, No. 08 Civ. 03653, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) *aff’d*, 509 F. App’x. 21 (2d Cir. 2013)" \c 1 } (approving 33% of \$9 million settlement); *In re Qudian Inc. Sec. Litig.*, No. 17-cv-09741, 2021 WL 2328437, at *1 (S.D.N.Y. June 8, 2021){ TA \l "*In re Qudian Inc. Sec. Litig.*, No. 17-cv-09741, 2021 WL 2328437 (S.D.N.Y. June 8, 2021)" \s "*In re Qudian Inc. Sec. Litig.*, No. 17-cv-09741, 2021 WL 2328437, at *1 (S.D.N.Y. June 8, 2021)" \c 1 } (awarding 33.33% of \$8.5 million); *In re TeleTech Litig.*, No. 08-cv-00913, slip op. at 1 (S.D.N.Y. June 11, 2010){ TA \l "*In re TeleTech Litig.*, No. 08-cv-00913, (S.D.N.Y. June 11,

2010)" \s "In re TeleTech Litig., No. 1:08-cv-00913, slip op. at 1 (S.D.N.Y. June 11, 2010)" \c 1 } (awarding 30% of \$11 million settlement) ; *In re China MediaExpress Holdings, Inc. S'holder Litig.*, No. 11-cv-00984, 2015 WL 13639423, at *1 (S.D.N.Y. Sept. 18, 2015){ TA \l "In re China MediaExpress Holdings, Inc. S'holder Litig., No. 11-cv-00984, 2015 WL 13639423 (S.D.N.Y. Sept. 18, 2015)" \s "In re China MediaExpress Holdings, Inc. S'holder Litig., No. 11-cv-0984, 2015 WL 13639423, at *1 (S.D.N.Y. Sept. 18, 2015)" \c 1 } (awarding 33.33% of \$12 million settlement); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2011){ TA \l "In re Giant Interactive Grp., Inc. Sec. Litig., 279 F.R.D. 151 (S.D.N.Y. 2011)" \s "In re Giant Interactive Grp., Inc. Sec. Litig., 279 F.R.D. 151, 165 (S.D.N.Y. 2011)" \c 1 } (awarding 33% of \$13 million settlement); *In re LaBranche Sec. Litig.*, No. 03-cv-08201, slip op. at 1 (S.D.N.Y. Jan. 22, 2009){ TA \l "In re LaBranche Sec. Litig., No. 03-cv-08201 (S.D.N.Y. Jan. 22, 2009)" \s "In re LaBranche Sec. Litig., No. 03-cv-8201, slip op. at 1 (S.D.N.Y. Jan. 22, 2009)" \c 1 } (awarding 30% of \$13 million settlement).

3. The Requested Attorneys' Fee Would be Reasonable Under the Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit encourages district courts to “cross-check” the proposed award against counsel’s lodestar. *Wal-Mart*, 396{ TA \s "Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 121 (2d Cir. 2005)" } F.3d at 123 (quoting *Goldberger*, 209{ TA \s "Goldberger v. Integrated Res., Inc., 209 F.3d 43, 47 (2d Cir. 2000)" } F.3d at 50); *see also In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 233 (S.D.N.Y. 2005){ TA \l "In re Bristol-Myers Squibb Sec. Litig., 361 F. Supp. 2d 229 (S.D.N.Y. 2005)" \s "In re Bristol-Myers Squibb Sec. Litig., 361 F. Supp. 2d 229, 233 (S.D.N.Y. 2005)" \c 1 } (“Typically, courts utilize the percentage method and then ‘cross-check’ the adequacy of the resulting fee by applying the lodestar method.”).

Here, Plaintiffs' Counsel spent more than 4,547 hours of attorney and other professional staff time litigating and settling the case from inception through January 2023. *See* Ex. 5-7. Plaintiffs' Counsel's lodestar, derived by multiplying the hours spent by each attorney and other professional by their current hourly rates, is \$3,190,208.50. *Id.*³ The hourly rates of Plaintiffs' Counsel here range from \$725 to \$950 for partners, \$425 to \$750 for of counsels, \$475 to \$550 for associates, \$300 for a contract attorney, and \$185 for a paralegal, and \$275 for a senior analyst. *See* Ex. 5-7. However, based on the substantial negative multiplier, the effective hourly rates are much lower as explained below. *See* Scarlato Decl. at ¶¶ 100-108; Ex. 5-7.

The requested fee of 30% of the Settlement Fund, *i.e.*, \$1,305,000, therefore represents a *negative* fractional multiplier of 0.419 (40.9%) of the total lodestar, meaning the effective blended hourly rate would be \$286 per hour (\$1,305,000/4,547.70). Moreover, a 0.41 “multiplier” is below the parameters used throughout district courts in the Second Circuit and is additional evidence that the requested fee is reasonable. *See, e.g., In re Bear Stearns Cos. Sec. Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012){ TA \1 "In re Bear Stearns Cos. Sec. Derivative & ERISA Litig., 909 F. Supp. 2d 259 (S.D.N.Y. 2012)" \s "In re Bear Stearns Cos. Sec. Derivative & ERISA Litig., 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012)" \c 1 } (approving fee with a negative multiplier and noting that the negative multiplier was a “strong indication of the reasonableness of the [requested] fee”); *In re Marsh & McLennan Inc. Sec. Litig.*, No. 04-V-08144, 2009 WL 5178546, at *20 (S.D.N.Y. Dec. 23, 2009){ TA \1 "In re Marsh & McLennan Inc. Sec. Litig., No. 04-cv-08144, 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009)" \s "In re Marsh & McLennan Inc. Sec. Litig., No. 04-8144, 2009 WL 5178546, at *20 (S.D.N.Y. Dec. 23, 2009)" \c 1 } (reasoning

³ Significantly, the reported lodestar does not include the time spent on the Action by Labaton Sucharow, who is not seeking a fee but is seeking reimbursement of expenses. If Labaton's lodestar were included in the calculation, the reported lodestar would be significantly higher.

that where the multiplier is negative, the lodestar cross-check “unquestionably supports the requested percentage fee award.”). Within the Second Circuit, lodestar multiples greater than 1.5 are regularly awarded. *See, e.g., Walmart*{ TA \s "Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 121 (2d Cir. 2005)" } *Stores Inc. v. Visa USA Inc.*, 396 F. 3d 96, 123 (2d Cir. 2005) (upholding a multiplier of 3.5 as reasonable on appeal); ; *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 347, 353 (S.D.N.Y. 2014){ TA \l "In re Colgate-Palmolive Co. ERISA Litig., 36 F. Supp. 3d 344 (S.D.N.Y. 2014)" \s "In re Colgate-Palmolive Co. ERISA Litig., 36 F. Supp. 3d 344, 347, 353 (S.D.N.Y. 2014)" \c 1 } (awarding 25% of \$45.9 million settlement, equating to multiplier of 5.2); *In re Deutsche Telekom, AG Sec. Litig.* No. 00-cv-09475, 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005){ TA \l "In re Deutsche Telekom, AG Sec. Litig. No. 00-cv-09475, 2005 WL 7984326 (S.D.N.Y. June 14, 2005)" \s "In re Deutsche Telekom, AG Sec. Litig. No. 00-cv-9475, 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005)" \c 1 } (awarding 25% of \$120 million settlement; a 3.96 multiplier).

Fees representing multiples above a lodestar are awarded to reflect the contingency risk and other relevant enhancement factors. *See In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-03400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010){ TA \l "In re FLAG Telecom Holdings, Ltd. Sec. Litig., No. 02-cv-03400, 2010 WL 4537550 (S.D.N.Y. Nov. 8, 2010)" \s "In re FLAG Telecom Holdings, Ltd. Sec. Litig., No. 02-cv-3400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010)" \c 1 } (“[A] positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors[.]”); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-cv-01825, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010){ TA \l "In re Comverse Tech., Inc. Sec. Litig., No. 06-cv-01825, 2010 WL 2653354 (E.D.N.Y. June 24, 2010)" \s "In re

Comverse Tech., Inc. Sec. Litig., No. 06-cv-1825, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010)" \c 1 } ("Where, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar[.]").

Here, Plaintiffs' Counsel carefully and efficiently staffed the Action from the beginning. Associates and of counsel with lower hourly rates handled the case on a day-to-day basis, as opposed to more costly partners for tasks not requiring that level of expertise. Additionally, the document review attorneys assisting Plaintiffs' Counsel on this matter are skilled attorneys who made meaningful, substantive contributions, beyond solely conducting document review, including preparing deposition and mediation materials.

Additional work will be required of Class Counsel on an ongoing basis, including: correspondence with Settlement Class Members; preparing for, and participating in, the final approval hearing; supervising the claims administration process to be conducted by the Claims Administrator; and supervising the distribution of the Net Settlement Fund to Settlement Class Members who have submitted valid Claim Forms. However, Class Counsel will not seek payment for this additional work. For all these reasons, the lodestar "cross-check" supports the reasonableness of the requested fee.

In sum, Class Counsel's requested fee award is reasonable whether calculated as a percentage of the fund or in relation to Lead Counsel's lodestar.

B. THE REQUESTED FEE IS FAIR AND REASONABLE WHEN APPLYING SECOND CIRCUIT GOLDBERGER FACTORS

The Second Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case, whether under the percentage approach or the lodestar multiplier approach:

- (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 TA \s “Goldberger v. Integrated Res., Inc., 209 F.3d 43, 47 (2d Cir. 2000)” }, 209 F.3d at 50. As discussed below, these factors and the analyses above demonstrate that the requested fee would be reasonable.

1. Plaintiffs’ Counsel Devoted Significant Time and Labor to the Action

The substantial time and effort expended by Plaintiffs’ Counsel in prosecuting the Action and achieving the Settlement support the requested fee. As set forth in greater detail in the Scarlato Declaration, Plaintiffs’ Counsel, has among other things:

- conducted a comprehensive investigation of the claims against Wilmington, including conducting interviews with numerous witnesses with knowledge;
- researched and drafted a detailed initial complaint and First Amended Complaint (*Id.*);
- successfully opposed, in part, Defendants’ motion to dismiss (§§ 17-24);
- engaged in diligent fact and expert discovery, which included the analysis of hundreds of thousands of pages of documents produced by Defendants and third-parties and the Receiver; consultation with experts in the fields of Corporate Trust, Bank Secrecy Act (“BSA”) and Anti-Money Laundering (“AML”) regulations, and accounting and damages, ; participated in the depositions of 12 fact witnesses, and prepared for several more (§28);
- engaged in extensive settlement negotiations with Defendants’ Counsel, including sessions with three different mediators, the exchange of mediation submissions, and additional negotiations (§§ 39-43).

As noted above and discussed in the Scarlato Declaration, Plaintiffs’ Counsel expended more than 4,547 hours prosecuting this Action with a lodestar value of \$3,190,208.00, not including the significant time expended by Labaton, for which the firm is not seeking fees. *See* Ex. 5-7. At all times, Plaintiffs’ Counsel staffed the matter efficiently and avoided needless duplication of effort.

2. Magnitude and Complexity of the Action Support the Requested Fee

The magnitude and complexity of the Action also support the fee request. Courts regularly recognize that class action litigation can be “notably difficult and notoriously uncertain.” *City of Providence*{ TA \s "City of Providence v. Aeropostale Inc., 2014 WL 1883494, at *11 (S.D.N.Y. May 9, 2014)" }, 2014 WL 1883494, at *5; *In re Signet Jewelers Ltd. Sec. Litig.*, No. 16-cv-06728, 2020 WL 4196468, at *4 (S.D.N.Y. July 21, 2020){ TA \l "In re Signet Jewelers Ltd. Sec. Litig., No. 16-cv-06728, 2020 WL 4196468 (S.D.N.Y. July 21, 2020)" \s "In re Signet Jewelers Ltd. Sec. Litig., No. 16 cv 06728, 2020 WL 4196468, at *4 (S.D.N.Y. July 21, 2020)" \c 1 } (“class actions are generally complex and expensive to prosecute”); *Guevoura Fund Ltd.. v. Sillerman*, No. 15-cv-07192, 2019 WL 6889901, at *7 (S.D.N.Y. Dec. 18, 2019){ TA \l "Guevoura Fund Ltd.. v. Sillerman, No. 15-cv-07192, 2019 WL 6889901 (S.D.N.Y. Dec. 18, 2019)" \s "Guevoura Fund Ltd.. v. Sillerman, No. 15 cv 7192, 2019 WL 6889901, at *7 (S.D.N.Y. Dec. 18, 2019)" \c 1 } (“class actions are notoriously complex.”). This case was no different, although not a PSLRA class action.

As detailed in the Scarlato Declaration, this Action raised particularly thorny questions concerning—among other things—damages, loss causation, and culpability within the scope of Defendants’ business practices and policies. Prosecuting the Settlement Class’s claims required expertise, skill and dedication, including extensive expert analysis across multiple fields. Accordingly, the magnitude and complexity of the Action support the conclusion that the requested fee is fair and reasonable. *See City of Providence*{ TA \s "City of Providence v. Aeropostale Inc., 2014 WL 1883494, at *11 (S.D.N.Y. May 9, 2014)" }, 2014 WL 1883494, at *16 (“[T]he complex and multifaceted subject matter involved in a [] class action such as this supports the fee request.”).

3. Litigation Risks Support the Requested Fee

The risks associated with this contingency fee case also support the requested fee. “Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.” *Comverse*{ TA \s "In re Comverse Tech., Inc. Sec. Litig., No. 06-cv-1825, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010)" }, 2010 WL 2653354, at *5; *see also In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001){ TA \l "In re Am. Bank Note Holographics, Inc. Sec. Litig., 127 F. Supp. 2d 418 (S.D.N.Y. 2001)" \s "In re Am. Bank Note Holographics, Inc. Sec. Litig., 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001)" \c 1 } (it is “appropriate to take [contingent-fee] risk into account in determining the appropriate fee.”).

The fact that the Class Representatives overcame, in part, Defendants’ motion to dismiss did not guarantee ultimate victory. Plaintiffs of course could face the substantial burdens of prevailing in summary judgment motion practice, trial, and likely appeals – a process that could extend for years and might lead to a smaller recovery, or no recovery at all. While Class Representatives remained confident in their ability to prove their claims and to effectively rebut Defendants’ defenses, many unresolved issues remained in connection with continuing the Action, the least of which would not be likely dispositive motion practice, and at trial proving culpability and causation, among other things. The contours of the ultimate class and actionable misconduct could also have compromised Class Representatives’ ability to succeed at trial and obtain a larger judgment for the class. *See, e.g., In re Bayer AG Sec. Litig.*, No. 03-cv-01546, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008){ TA \l "In re Bayer AG Sec. Litig., No. 03-cv-01546, 2008 WL 5336691 (S.D.N.Y. Dec. 15, 2008)" \s "In re Bayer AG Sec. Litig., No. 03-1546, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008)" \c 1 } (noting the “difficulty of establishing” loss causation proving Defendants acted with culpability, “militate in favor of fee awards.”).

The parties were deeply divided on a host of issues throughout the Action, as detailed in the Scarlato Declaration, and there was no guarantee the Class Representatives' positions would prevail. If Defendants had succeeded on any of their various defenses, Plaintiffs and the class could have recovered nothing or far less than the Settlement Amount.

In the face of many uncertainties, Plaintiffs' Counsel undertook this case, which lasted more than eight years, on a wholly contingent basis, knowing that the litigation would require the devotion of substantial time and expense with no guarantee of compensation. Scarlato Decl. ¶¶ 85-92. Plaintiffs' Counsel's assumption of this contingency fee risk strongly supports the requested fee. *See FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) } *Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award.").

4. The Quality of Plaintiffs' Counsel's Representation Supports the Requested Fee

The quality of the representation by Plaintiffs' Counsel is another important factor that supports the reasonableness of the requested fee. Class Counsel submits respectfully that the quality of Plaintiffs' Counsel's representation is best evidenced by the progress of the litigation and the quality of the result achieved. *See, e.g., In re Veeco Instruments Inc. Sec. Litig.*, No. 05-mdl-01695, 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007) } TA \l "*In re Veeco Instruments Inc. Sec. Litig.*, No. 05-mdl-01695, 2007 WL 4115808 (S.D.N.Y. Nov. 7, 2007)" \s "*In re Veeco Instruments Inc. Sec. Litig.*, MDL No. 05-1695, 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007)" \c 1 } ; *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) } TA \l "*In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436 (S.D.N.Y. 2004)" \s "*In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004)" \c 1 }. The attorneys

who were principally responsible for prosecuting this case relied upon their extensive skill and experience to develop and implement sophisticated strategies to overcome myriad obstacles raised by Defendants throughout the litigation.

The result obtained for the Settlement Class in this case is highly favorable under the circumstances, particularly when viewed in light of the serious risks of continued litigation. If Plaintiffs were able to prevail in all of their arguments, and with every assumption resolved in the class' favor, the Settlement represents a recovery of approximately 4.71% of the class's *maximum* recoverable damages, which are estimated to be approximately \$92.4 million. Scarlato Decl. ¶5.

Courts have regularly approved settlements with recoveries in this range involving financial tort class action litigation. *See, e.g., In re Merrill Lynch & Co. Rsch. Reps. Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007){ TA \l "*In re Merrill Lynch & Co. Rsch. Reps. Sec. Litig.*, 246 F.R.D. 156 (S.D.N.Y. 2007)" \s "*In re Merrill Lynch & Co. Rsch. Reps. Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007)" \c 1 } (approving settlement that was “between approximately 3% and 7% of estimated damages [and] within the range of reasonableness for recovery in the settlement of large securities class actions”); *In re Merrill Lynch & Co. Rsch. Reps. Sec. Litig.*, No. 02-mdl-01484, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007){ TA \l "*In re Merrill Lynch & Co. Rsch. Reps. Sec. Litig.*, No. 02-mdl-01484, 2007 WL 313474 (S.D.N.Y. Feb. 1, 2007)" \s "*In re Merrill Lynch & Co. Rsch. Reps. Sec. Litig.*, No. 02 MD 1484, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007)" \c 1 } (approving \$40.3 million settlement representing approximately 6.25% of estimated damages and noting this was at the “higher end of the range of reasonableness of recovery in class actions securities litigations”); *Hicks*{ TA \s "*Hicks v. Stanley*, No. 01-CIV-10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005)" }, 2005 WL 2757792, at *7 (approving \$10 million settlement representing 3.8% of estimated damages); *see also In re Patriot Nat'l, Inc.*

Sec. Litig., 828 F. App'x. 760, 762 (2d Cir. 2020){ TA \l "*In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x. 760 (2d Cir. 2020)" \s "*In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x. 760, 762 (2d Cir. 2020)" \c 1 } (affirming district court's approval of \$6.5 million settlement representing 6.1% of the class's maximum potentially recoverable damages).

The quality of Plaintiffs' Counsel's representation is further demonstrated by the fact that this substantial recovery was obtained after opposing years of intense and aggressive defense advocacy by well-regarded attorneys at the Buffalo firm, Hodgson Russ. Courts recognize that the strength of Plaintiffs' Counsel's opposition should be considered in assessing its performance. *See, e.g., Veeco*{ TA \s "*In re Veeco Instruments Inc. Sec. Litig.*, MDL No. 05-1695, 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007)" }, 2007 WL 4115808, at *7 (among factors supporting 30% fee award included that the defendants were represented by "one of the country's largest law firms"); *In re Adelphia Commc'ns Corp. Sec. and Derivative Litig.*, No. 03-mdl-01529, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006){ TA \l "*In re Adelphia Commc'ns Corp. Sec. and Derivative Litig.*, No. 03-mdl-01529, 2006 WL 3378705 (S.D.N.Y. Nov. 16, 2006), *aff'd* 272 F. App'x. 9 (2d Cir. 2008)" \s "*In re Adelphia Commc'ns Corp. Sec. and Derivative Litig.*, MDL No. 03-1529, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006)" \c 1 } ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."), *aff'd*, 272 F. App'x. 9 (2d Cir. 2008).

5. The Requested Fee Relative to the Settlement

"When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar [] class-action settlements of comparable value.'" *Comverse*{ TA \s "*In re Comverse Tech., Inc. Sec. Litig.*, No. 06-cv-1825, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010)" }, 2010 WL 2653354, at *3. As discussed in

detail in *supra*, the requested fee is squarely within the range of percentage fees that have been awarded in comparable cases throughout the Circuit and, accordingly, the fee requested is reasonable in its relation to the Settlement.

6. Public Policy Considerations Support the Requested Fee

A strong public policy favors compensating firms appropriately for bringing successful litigation of this sort. *See FLAG*{ TA \s "In re FLAG Telecom Holdings, Ltd. Sec. Litig., No. 02-cv-3400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010)" } *Telecom*, 2010 WL 4537550, at *29 (if the “important public policy is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook”); *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2008){ TA \l "Maley v. Del Global Tech. Corp., 186 F. Supp. 2d 358 (S.D.N.Y. 2008)" \s "Maley v. Del Global Tech. Corp., 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2008)" \c 1 } (“In considering an award of attorney’s fees, the public policy of vigorously enforcing the federal [] laws must be considered.”); *Hicks*{ TA \s "Hicks v. Stanley, No. 01-CIV-10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005)" }, 2005 WL 2757792, at *9 (“To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.”). This factor further supports the fee and expense application.

C. SETTLEMENT CLASS REACTION TO DATE SUPPORTS THE FEE REQUEST

The reaction of the Settlement Class to date also supports the fee request. First, the Claims Administrator has mailed and/or emailed 1,097 copies of the Notice to potential Settlement Class Members and nominees informing them that, among other things, Class Counsel intended to apply to the Court for an award of attorneys’ fees in an amount not to exceed 30% of the Settlement Fund and up to \$700,000 in Litigation Expenses. Declaration of Josephine Bravata Concerning (A)

Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections Received to Date (the “Mailing Declaration” or “Mailing Decl.”), dated January 9, 2023, Ex. 4 at ¶¶6. While the time to object to the Fee and Expense Application has not yet expired, no objections have been received as of today’s date. Class Counsel will address any that might be submitted in its reply, which will be filed on or before February 6, 2023. Additionally, the requested fee of 30% is made with the full support of the Class Representatives. *See* Declarations of Yao-Yi Liu, Tung-Hung Hsieh and Chiu-Pao Tsai dated December 9, 2022, Scarlato Declaration, Ex. 1-3.

For all the foregoing reasons, it is respectfully submitted that an award of a 30% attorneys’ fee to Lead Counsel under the circumstances before the Court would be fair, reasonable, and appropriate.

D. LEAD COUNSEL’S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel’s fee application includes a request for reimbursement of its Litigation Expenses, which were reasonably incurred and necessary to prosecute the Action. As detailed in the Scarlato Declaration, Plaintiffs’ Counsel incurred \$588,493.18 in Litigation Expenses. *See* Scarlato Declaration ¶¶100-108. This amount is below the \$700,000 cap that the Notice informed potential Settlement Class Members counsel may apply for, and which—to date—there has been no objections to by any member(s) of the Settlement Class.

The amount of Litigation Expenses is consistent with the stage of the Action. Plaintiffs’ Counsel incurred considerable expenses related to, among other things, expert fees, deposition reporting and transcripts, document hosting, mediation fees and travel expenses. A complete breakdown by category of the expenses incurred by Plaintiffs’ Counsel is set forth in Exhibits 5-7 to the Scarlato Declaration.

Among the largest expenses relates to the retention of Plaintiffs' experts. These fees total \$183,890.41, or approximately 31% of the total Litigation Expenses. Scarlato Decl. ¶ 102 Ex. 5. Principally, Plaintiffs' Counsel retained a Corporate Trust Specialist, experts in a bank's BSA/AML obligations, and an expert in forensic accounting and damages.

Costs related to discovery, and in particular e-discovery, comprise a sizable amount of the litigation expenses, totaling \$228,260.48, or approximately 39% of all expenses. Scarlato Decl. ¶ 103. These costs include \$27,873.78 in court reporting fees related to the 12 depositions taken by the Parties (*id.* ¶6103), as well as \$196,806.94 in litigation support e-discovery vendor fees incurred to forensically gather Plaintiffs' documents and data and to host and review the electronic documents produced in this litigation by Defendants, the Receiver, and Plaintiffs, and \$3,579.76 in interpreter fees for the Class Representatives' depositions. (*id.* ¶103).

The other requested expenses are typical of those incurred in complex, multi-year class actions such as: mediation fees (\$23,039.39); duplicating costs (\$4,605.57) and travel costs (\$82,091.45), which include Plaintiffs' Counsel's two trips to Taiwan, the cost of flying the three Class Representatives to Buffalo from Taiwan and meal and lodging costs for the Class Representatives, Plaintiffs' Counsel and the interpreter for the week of depositions, and Counsel's travel costs for Court appearances, mediations and depositions.

It is respectfully submitted that such expenses are necessary, appropriate, and reasonable, and as such, properly recoverable by counsel. *See In re Virtus Inv. Partners, Inc. Sec. Litig.*, No. 15-cv-01249, 2018 WL 6333657, at *5 (S.D.N.Y. Dec. 4, 2018){ TA \l "In re Virtus Inv. Partners, Inc. Sec. Litig., No. 15-cv-01249, 2018 WL 6333657 (S.D.N.Y. Dec. 4, 2018)" \s "In re Virtus Inv. Partners, Inc. Sec. Litig., No. 15-cv-1249, 2018 WL 6333657, at *5 (S.D.N.Y. Dec. 4, 2018)" \c 1 } (approving \$898,497.96 in litigation expenses, including over \$340,000 for experts and \$336,000

for litigation support). The *In Re Virtus* court stated aptly:

In class action settlements, [a]ttorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients. When the “lion's share” of expenses reflects the typical costs of complex litigation such as experts and consultants, trial consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses, courts should not depart from the common practice in this Circuit of granting expense requests.

Id. See *In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-mdl-02543, 2020 WL 7481292, at *2 (S.D.N.Y. Dec. 18, 2020){ TA \1 "*In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-mdl-02543, 2020 WL 7481292 (S.D.N.Y. Dec. 18, 2020)" \s "*In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543, 2020 WL 7481292, at *2 (S.D.N.Y. Dec. 18, 2020)" \c 1 } (finding expense request reasonable for fees paid to experts, mediation fees, computer research, document production and storage, and travel, among others, and noting that “[c]ourts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses”). Overall, the expenses sought herein are the types necessarily incurred in complex litigation and customarily charged to clients who pay by the hour.

E. CLASS REPRESENTATIVES’ SERVICE AWARD

Here, as described in Co-Lead Plaintiffs’ declaration, since their appointment, the Class Representatives have been committed to pursuing the class’s claims—and have taken an active role in so doing. Courts “award such costs and expenses to both reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as provide an incentive for such plaintiffs to remain involved in the litigation and incur such expenses in the first place.” *Hicks*{ TA \s "*Hicks v. Stanley*, No. 01-CIV-10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005)" }, 2005 WL 2757792, at *10.

Class Representatives actively and effectively fulfilled their obligations as representatives of the class, complying with all of the demands placed upon them during the litigation and settlement of the Action. The Class Representatives: (i) communicated with Class Counsel frequently regarding the posture and progress of the Action; (ii) reviewed pleadings and motions filed in the Action; (iii) coordinated Class Representatives' production of documents and written discovery responses to Defendants; (iv) traveled thousands of miles to participate in depositions; (v) discussed mediation strategy and evaluated settlement proposals; and (vi) participated directly in multiple mediated sessions. *See* Scarlato Declaration Ex. 1-3 at ¶¶3-4, 9. These efforts required the Class Representatives to dedicate significant time and resources to the Action that they would have otherwise devoted to their regular duties. The Class Representatives seek \$32,000 each as a Service Award for their efforts on behalf of the Settlement Class.

Numerous courts within this Circuit have approved payments to compensate representative plaintiffs under similar circumstances. *See, e.g., In re Petrobras Sec. Litig.*, 317 F. Supp. 3d 858, 879 (S.D.N.Y. 2018){ TA \l "In re Petrobras Sec. Litig., 317 F. Supp. 3d 858 (S.D.N.Y. 2018)" \s "In re Petrobras Sec. Litig., 317 F. Supp. 3d 858, 879 (S.D.N.Y. 2018)" \c 1 } (awarding university pension plan and state pension plan lead plaintiffs \$300,000, \$50,000, and \$50,000); *In re Bank of Am. Corp. Sec., Derivative & ERISA Litig.*, 772 F.3d 125, 132-34 (2d Cir. 2014){ TA \l "In re Bank of Am. Corp. Sec., Derivative & ERISA Litig., 772 F.3d 125 (2d Cir. 2014)" \s "In re Bank of Am. Corp. Sec., Derivative & ERISA Litig., 772 F.3d 125, 132-34 (2d Cir. 2014)" \c 1 } (affirming award of more than \$450,000 to representative plaintiffs for time spent by their employees); *Marsh*{ TA \s "In re Marsh & McLennan Inc. Sec. Litig., No. 04-8144, 2009 WL 5178546, at *20 (S.D.N.Y. Dec. 23, 2009)" } & *McLennan*, 2009 WL 5178546, at *21 (awarding a combined \$214,657 to two state pension fund lead plaintiffs). *See Stock v. Xerox Corp.*, 516 F.

Supp. 3d 308, 314 (W.D.N.Y. 2021){ TA \l "*Stock v. Xerox Corp.*, 516 F. Supp. 3d 308 (W.D.N.Y. 2021)" \s "Stock v. Xerox Corp., 516 F. Supp. 3d 308, 314 (W.D.N.Y. 2021)" \c 1 } (“The Court also is satisfied, based in part on the submission of additional information from Plaintiffs [], that the service awards of \$20,000 to Rifkin and \$10,000 to Stock, representing collectively less than 2.5% of the total settlement amount, are fair and reasonable.”) *See also Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187-88 (W.D.N.Y. 2005){ TA \l "*Frank v. Eastman Kodak Co.*, 228 F.R.D. 174 (W.D.N.Y. 2005)" \s "Frank v. Eastman Kodak Co., 228 F.R.D. 174, 187-88 (W.D.N.Y. 2005)" \c 1 } (approving enhancement award to class representative totaling 8.4% of the total settlement fund); *Chambery v. Tuxedo Junction Inc.*, No. 12-cvV-06539 (EAW), 2014 U.S. Dist. LEXIS 101939, 2014 WL 3725157, at *11 (W.D.N.Y. July 25, 2014){ TA \l "*Chambery v. Tuxedo Junction Inc.*, No. 12-cv-06539 (EAW), 2014 U.S. Dist. LEXIS 101939, 2014 WL 3725157 (W.D.N.Y. July 25, 2014)" \s "Chambery v. Tuxedo Junction Inc., No. 12-cv-06539 EAW, 2014 U.S. Dist. LEXIS 101939, 2014 WL 3725157, at *11 (W.D.N.Y. July 25, 2014)" \c 1 } (approving enhancement awards totaling roughly 5% of the total settlement fund). *Fero v. Excellus Health Plan, Inc.*, 2022 U.S. Dist. LEXIS 78331, at *13 (W.D.N.Y. Apr. 29, 2022){ TA \l "*Fero v. Excellus Health Plan, Inc.*, 2022 U.S. Dist. LEXIS 78331 (W.D.N.Y. Apr. 29, 2022)" \s "Fero v. Excellus Health Plan, Inc., 2022 U.S. Dist. LEXIS 78331, at *13 (W.D.N.Y. Apr. 29, 2022)" \c 1 } (Wolford, J.) (Representative plaintiff service awards “are common in class action cases and are important 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 plaintiffs.”); *Beebe v. V&J Nat'l Enters., LLC*, 2020 U.S. Dist. LEXIS 96059, at *28-29 (W.D.N.Y. June 1, 2020){ TA \l "*Beebe v. V&J Nat'l Enters., LLC*, 2020 U.S. Dist. LEXIS

96059 (W.D.N.Y. June 1, 2020)" \s "Beebe v. V&J Nat'l Enters., LLC, 2020 U.S. Dist. LEXIS 96059, at *28-29 (W.D.N.Y. June 1, 2020)" \c 1 }.

II. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court award attorneys' fees in the amount of 30% of the Settlement Fund, \$588,493.18 in Litigation Costs and Expenses incurred by Plaintiffs' Counsel; and \$32,000 each to the three Class Representatives

Dated: January 9, 2023

Submitted respectfully,

/s/ Paul J. Scarlato

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2023, a true and correct copy of the foregoing Motion and its supporting papers has been filed and served electronically via CM/ECF, which will be sent electronically to all counsel of record.

Submitted respectfully,

/s/ Paul J. Scarlato

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